

INDIGENT DEFENSE STUDY COMMISSION

REPORT AND RECOMMENDATIONS

Submitted to the North Carolina General Assembly
Pursuant to S.L. 1998-212, Section 16.5, as amended by
S.L. 1999-237 Section 17.11

May 1, 2000

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Members of the Indigent Defense Study Commission

Honorable Joe Hackney, Chair
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*Appointed by (former) Chief Justice
Burley Mitchell*

Honorable Frank Ballance
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Mr. Joseph B. Cheshire, V
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*Appointed by the N.C.
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Ms. Mary Ann Tally
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Ms. Isabel Day
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Honorable Edward H. McCormick
District Court Judge, Lillington
*Ex officio, Appointed by the AOC
Director at the Commission's request*

EXECUTIVE SUMMARY

Study Commission and Meetings: In 1998, the General Assembly established a study commission to make recommendations to improve the state's indigent defense system. The Commission considered extensive information about indigent defense in this state and nationwide, with assistance from the Administrative Office of the Courts, the Legislative Fiscal Research Division, the Institute of Government, the directors of indigent defense programs in Minnesota and Kentucky, and a nationally recognized consultant. A public hearing was held to obtain input from judges, public defenders, prosecutors, private defense counsel, and the public.

Findings: Indigent defense in this state suffers, as to both cost-effectiveness and quality of representation, from lack of any centralized authority to provide coordinated planning, oversight, or management. For a program costing some \$60 million per year, the Study Commission considers such lack of management unacceptable. It seems inescapable that the absence of proper management is, to some extent, associated with the dramatic growth in spending, 168% since 1988-89. Total spending in 1998-99 represented 18% of the entire Judicial Branch budget.

Authorities over indigent defense are scattered among the AOC, the State Bar and some 36 local bar committees, over 300 judges acting in thousands of separate cases, and 11 independent public defenders. No statewide uniform standards exist for determination of indigency, appointment, qualifications, compensation or performance of counsel, public defender operations, contractual arrangements, or other matters. Presiding judges make individual fee decisions in some 120,000 separate cases per year, without standards or information about prevailing rates. The AOC lacks staff resources for oversight or management, lacks discretion to allocate or reallocate resources, and needs drastic additional automation resources for the court system, including indigent defense. Crucial decisions that could be made flexibly for the most effective ways to provide services are instead fixed in legislation.

The state's approach to indigent defense also compromises the independence that defense lawyers should have for effective representation, and for that reason, conflicts with standards adopted by the American Bar Association. In accord with ABA standards, the indigent defense function must be independent of judicial or other control over policy and budgetary decisions, and free of the influences and priorities the AOC must set for core court functions, prosecutorial operations, and other programs under the AOC. The Study Commission's recommendation would establish a centralized, effective management authority clearly responsible for its decisions, and thus more accountable to the legislature.

Finally, it must be expected that costs for indigent defense will continue to increase due to growth in caseloads, population, the extent and severity of crime, inflation, and similar factors. However, the Study Commission believes that most, and potentially all, the costs for a proper administrative structure will be absorbed by the cost-effectiveness of proper management, including such potential cost-effective initiatives as expanded use of public defenders, contracts, fee schedules, part-time defenders, and other approaches.

Recommendation: *The General Assembly should create an Office of Indigent Defense Services with the comprehensive authority and resources necessary to provide for quality legal representation statewide in the most cost-effective manner possible. Draft implementing legislation is in Appendix B. Key features include the following:*

- *Establish the Commission on Indigent Defense Services as an independent entity in the Judicial Branch.* The AOC would provide administrative support, with no additional state expense incurred for payroll, purchasing and similar business needs. The AOC would not have control over policy or budgetary decisions.
- *Appointment of a 13-member Commission:* one member each appointed by the Chief Justice, Governor, President Pro Tempore of the Senate, Speaker of the House, State Bar, Bar Association, Public Defenders Association, Academy of Trial Lawyers, Association of Black Lawyers, and Association of Women Lawyers, and three members appointed by the Commission itself. Appointees must have significant criminal defense experience or demonstrated commitment to quality representation and, to promote the independence of the defense function, should not include active law enforcement officials or prosecutors, or active members of the judiciary, except as follows. The Chief Justice's appointee must be, and one of the Commission's appointees may be, an active or former member of the judiciary. At least two appointees, the Governor's and one of the Commission's, must be non-lawyers.
- *Duty and authority to effectively and comprehensively manage indigent defense programs:* including to prepare and administer the budget; promulgate comprehensive standards, policies and procedures, with substantial input from the judiciary, bar, and other interested persons; determine and implement the best approaches to provide representation in each area of the state among public defender offices, private counsel systems, and/or contracts; appoint an Executive Director, who would hire additional staff to assist the Commission and implement its decisions, and manage the business, planning, and other operational needs of the system.
- *General operations:* Following determination of indigency and a right to counsel by the court, appointment and compensation of lawyers would be handled by the program. Consistent with the Commission's rules, day-to-day decisions would be exercised by the Director or local staff, such as a public defender. Public defenders would be appointed by the Commission for four-year terms, with current incumbents serving to the end of their terms. Public defenders would be subject to removal by the Commission for cause, with a right to judicial review.
- *Budget:* The General Assembly should appropriate approximately \$535,000 for the first-year operations, facility, staff, and equipment needs. Staff should include an executive director; associate director; chief financial officer; information systems manager; research analyst, administrative assistant, and secretary.
- *Transition:* The existing system for indigent defense would continue until July 1, 2001. During the first year, the Commission on Indigent Defense Services would develop rules, policies, procedures, and implementation plans for delivery of services statewide, to be effective July 1, 2001. The Commission would report to the General Assembly detailing its plans by May 1, 2001.

INTRODUCTION

In 1998, the General Assembly established a commission to:

“study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants without compromising the quality of legal representation mandated by State and federal law.”

S.L. 1998-212, Section 16.5, as amended by S.L. 1999-237 Section 17.11 (reproduced in Appendix A). The members of the Commission, listed on the preceding page, include one member each of the North Carolina Senate and House of Representatives, a superior court judge and a district court judge, a public defender, and three private lawyers with extensive experience representing indigent defendants. As directed by the legislation, this report presents the findings and recommendation of the Commission, and includes estimates of the costs for personnel and equipment and draft legislation to implement the recommendation.

The Commission believes that its recommendation will strongly further the goals expressed by the legislature when it directed this study -- to improve the efficiency, cost-effectiveness, and accountability of quality indigent defense programs. More than that, however, the Study Commission believes that the right to counsel represents one of the most fundamental facts and symbols of justice and the rule of law in our legal system, and that implementation of the recommendation presented here is essential to the integrity and leadership of this state in the fair administration of justice.

MEETINGS OF THE COMMISSION

Over nine meetings, the Study Commission received various presentations from the Administrative Office of the Courts, the Fiscal Research Division of the General Assembly, the Institute of Government, and the directors of indigent defense programs in Minnesota and Kentucky. A nationally recognized consultant, Mr. Robert Spangenberg of The Spangenberg Group, attended most meetings and provided extensive written and oral information about indigent defense programs nationwide and the potential of cost savings from improved management and delivery of legal representation. (The consultant provided these services at no cost to the Commission, under a grant that the American Bar Association received from the Bureau of Justice Assistance of the U.S. Department of Justice to assist states engaged in evaluating how to improve indigent defense programs.) After reaching tentative conclusions, the Commission held a public hearing to obtain input from judges, public defenders, prosecutors, private defense counsel, and members of the public.

The Commission kept detailed minutes, copies of which are available from the AOC. Information considered by the Commission regarding the present indigent defense system in North Carolina is summarized in the following section, and information pertinent to the Commission's findings and recommendation is set forth later in this report.

OVERVIEW OF THE CURRENT INDIGENT DEFENSE SYSTEM

In North Carolina, as in some 22 other states, funding for indigent defense is provided entirely by the state. Counties are responsible only to provide facilities and furnishings for court-related offices, including public defenders. (In six other states, indigent defense is funded by the county, and in the remaining states, funding is divided between the state and counties.)

Legal representation in North Carolina, as in general nationwide, is provided through a combination of three methods: (1) private assigned counsel, under which private lawyers are appointed and compensated on an individual case-by-case basis; (2) public defenders, under which full-time lawyers are hired as state employees to provide representation in a given geographic area in all cases, unless there is a conflict of interest, and to the extent the public defender is adequately staffed for the caseload; and (3) contracts, under which a specific attorney or firm contracts to provide representation in, for example, all cases of a certain type, with compensation set contractually, such as at an hourly or per case rate, or a lump sum for a certain caseload. The AOC's contractual authority is limited to juvenile and civil cases, such as mental health commitments and contempt, and is used on a very limited basis.

The legislature determines whether and where public defender offices should be established, and approves all staffing levels. At present, there are 11 public defender offices, covering 13 counties. Public defenders are appointed by the senior resident superior court judge of the district, from nominees submitted by the local bar, and are subject to removal under the same statutory procedures for removal of a district attorney, involving a judicial hearing.

In addition, the Appellate Defender Office handles cases on appeal statewide, to the extent of available resources. The appellate defender is appointed by the Chief Justice, and is subject to removal under the same procedures as a public defender and district attorney.

The salaries of public defenders and the appellate defender are set by the General Assembly in budget bills. Historically, the salaries and benefits of public defenders have been the same as for district attorneys, with the major exception of retirement. District attorneys are on the judicial retirement system, while public defenders have remained on the retirement system for regular state employees.

Another public defender-like program is provided for representation in district court of persons subject to civil commitment at the four state mental health hospitals. One "special counsel" at each hospital, a state-salaried lawyer, is appointed by the senior resident superior court judge, and supervised by the AOC.

The bulk of representation in the state is provided by private assigned counsel -- in the state's 87 counties that do not have a public defender, and for conflict and overload cases in public defender districts. The State Bar and local bar committees regulate and maintain a system of appointment lists, by which attorneys who meet specified qualifications are eligible to be placed on the lists and appointed to cases. Upon determination of indigency by the court, attorneys must be appointed from the lists on a rotating basis, although judges have inherent discretion to deviate from the lists in the

interests of justice. The attorney's fee, as well as expenses of representation and allowance of any expert assistance, are determined by the presiding judge. Fee orders are sent to the AOC for issuance of a check to the attorney in the amount allowed by the judge. Processing these fee orders, nearly 120,000 in 1998-99, is a substantial administrative task. Except for fees ordered in capital cases, the AOC lacks staff resources to conduct significant oversight or management of this process, other than to write the checks.

When a defendant is convicted, and in certain instances for the parents of a juvenile in delinquency cases, a judgment is entered ordering reimbursement to the state for the costs of representation. Compared to other states, it appears that North Carolina recovers significant amounts on these judgments, some \$5 million per year, most through payments by the defendant as a condition of probation, and recovery on judgment liens, typically by attaching any state income tax refund that may be due.

The most important generalization about the organization of the foregoing system is that it lacks any centralized authority to provide coordinated planning, oversight, or management. For the very limited management that is provided, authorities are scattered among the AOC, the State Bar and some 36 local district bar committees, over 300 individual judges acting in thousands of separate cases, and eleven independent public defenders. There are no statewide uniform standards for determinations of indigency, appointment, qualifications, compensation or performance of counsel, public defender operations, contractual arrangements, or other matters. The AOC has virtually no staff resources to dedicate to management of indigent defense programs, and limited discretion to allocate or reallocate resources among the various programs. The AOC needs drastic improvement in its automation and information processing resources for the entire court system, including indigent defense programs. Data relevant to indigent defense are maintained on separate, largely incompatible systems for fiscal operations (payment of private assigned counsel), public defender caseload data, and the Court Information System for system-wide data on civil and criminal cases. As a result, the statistics and information needed for management of indigent defense programs are incomplete and suffer from numerous comparability problems.

Past and future growth in indigent defense funding requirements, as for the court system overall, can be traced to growth in caseloads and population, the extent and severity of crime, inflation, and similar factors. It seems inescapable, however, that the absence of proper management is, to some extent, associated with the dramatic growth that has been experienced in the indigent defense budget. From 1988-89 to 1998-99, total costs increased by 168%, while indigent defense caseloads increased by about 90%. The appropriated funds for indigent defense are generally depleted before the end of each fiscal year. The indigent defense portion of the courts' budget has witnessed the fastest growth of any court-related program, with total spending in 1998-99, of \$62.7 million, representing some 18% of the entire Judicial Branch budget. The caseload being handled by this ad hoc, as opposed to managed, system is quite substantial. In 1998-99, representation was provided by private counsel in some 118,000 cases, by public defenders in about some 48,000 cases, and by special counsel in about 17,000 commitment hearings.*

*As explained above, indigent defense data are maintained on separate automated systems. "Case" data for private assigned counsel are derived from the state fiscal/accounting system designed for payment of

A pervasive factor affecting indigent defense is the high cost and increasing demands of death penalty cases. Costs for private assigned counsel in capital cases increased by 338% since 1988-89, from \$2.1 million to \$9.2 million in 1998-99. The state faces the ongoing challenge of ensuring the availability of able lawyers willing to provide representation in capital cases.

FINDINGS AND CONCLUSIONS

Issues on which the Legislature Requested Study in General

In the course of its deliberations, the Study Commission considered each of the nine enumerated issues that the legislature directed it to study. The primary emphasis of the Commission's work, however, ultimately focused on two of those issues (issues 3 and 4 in the enabling legislation): to assess the present management structure for indigent defense, and evaluate the desirability of establishing an "Indigent Defense Council" to oversee programs and expenditures.

The Study Commission's findings set forth below focus substantially on those two issues (findings are summarized issue by issue in Appendix D). While the Study Commission evaluated each matter directed by the legislation --including the present procedures for determining indigency, the system for compensation of attorneys and experts, and the effectiveness and possible expansion of the various approaches to providing defense-- it finds that the common and very serious problems, and imperative common solutions, all trace to management.

Findings Regarding the Current Lack of Management

The Commission's principal conclusion is that both the quality of legal representation and the cost-effectiveness of indigent defense programs suffer from lack of management. The Study Commission considers it unacceptable that the state expends some \$60 million per year without providing any administrative body with the necessary authority, staff and other resources to properly and comprehensively plan, implement and manage the programs and the budget.

Specific deficiencies in the present organization and management system for indigent defense include the following:

lawyers; a "case" refers to an individual fee order signed by a judge and paid by the AOC. Data for public defenders are reported by public defenders on an AOC-designed system which counts separate dispositions. For both assigned counsel and public defenders, a "case" generally corresponds to representation of one individual defendant regardless of the number of charges, but there are exceptions. Some of the exceptions differ for private counsel and public defender data, and thus present comparability problems. Special counsel report "hearings" on a separate AOC system; a "hearing" is an initial hearing or rehearing for civil commitment.

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- Regulatory and management authority over indigent defense is scattered among the AOC, the State Bar, local bar committees in each judicial district, eleven individual public defenders, and more than 300 superior and district court judges making individual decisions in some 120,000 cases each year. Coordinated oversight and control are virtually impossible.
 - The AOC has a duty to manage the \$60 million budget, but has no control over the fees that judges award to lawyers in thousands of individual cases, no staff to dedicate to financial or policy management of programs, and lacks adequate resources for an automation system for the collection and maintenance of good data to evaluate and manage the programs.
 - No statewide uniform standards exist for determinations of indigency, appointment, qualifications, compensation or performance of counsel, public defender operations, contractual arrangements, or other matters.
 - The quality of legal representation provided in some cases is poor. Some local district bar committees do a poor job managing the local lists of attorneys that can be appointed to provide representation, particularly with regard to monitoring and when necessary sanctioning the performance of local attorneys.
 - Several serious problems arise by placing authorities over appointment of public defenders and appointment and compensation of private lawyers with judges, including:
 - These judicial authorities compromise the independence that defense lawyers should have for effective representation of clients, and for that reason, conflict with standards adopted by the American Bar Association. A lawyer dependent on the judge for the fact and amount of compensation can face constraints on zealous representation which do not exist for prosecutors or lawyers representing non-indigent clients.
 - In general, judges lack the time and information to exercise uniform or coordinated management, or monitor or control the quality of representation.
 - In some cases, judges award inadequate compensation. If attorneys are not adequately compensated, the state faces the prospect of having the most competent defense counsel decline to represent indigent defendants, a situation that can result in injustice for individual defendants and cost the state more for appeals and post-conviction motions due to ineffective assistance of counsel.
 - The legislature has historically restricted the discretion and flexibility needed to manage indigent defense programs in an efficient and cost-effective way. Statutory law fixes whether and where public defender offices are established and how they are staffed, and restricts the authority to contract with private lawyers, establish fee schedules, and allocate resources flexibly among programs or geographically.

Finding Regarding the Costs for Proper Management

It must be expected that overall costs for indigent defense will continue to increase due to growth in caseloads and population, the extent and severity of crime, inflation, and similar factors. It seems clear, however, that the uncontrolled increases in costs that have occurred over the past decade would only continue if the state fails to provide for proper management. The Study Commission believes that most, and potentially all, the costs to establish a proper administrative structure will be absorbed by the cost-effectiveness of proper management. Based on data and information provided to the Study Commission, cost-savings may be realized by careful planning for such potential initiatives as expansion of the public defender system, which is substantially cost-effective in present districts, greater use of contracts, fee schedules, part-time defenders, and other approaches.

RECOMMENDATION

The General Assembly should create an Office of Indigent Defense Services vested with the comprehensive authority and provided with the resources necessary to provide for quality legal representation statewide in the most cost-effective manner possible.

Draft implementing legislation is set forth in Appendix B. Key specific features include the following:

- *Establish the Commission on Indigent Defense Services within the Judicial Branch:*
 - *The Commission on Indigent Defense Services should function as an independent entity.* In accord with ABA standards for proper legal representation, the indigent defense function must be independent of judicial or other control over policy and budgetary decisions. The Commission's independence from the AOC (or for similar reasons, any other agency) is seen as essential to ensure that it can prepare its budget requests to the General Assembly and administer its budget and operations separate from the influences and priorities that the AOC must set for core court functions, prosecutorial operations, and other programs under the AOC's umbrella. The Commission would, of course, remain directly accountable to the General Assembly. Its independent status, and its duty to prepare and administer its own budget, would make the Commission clearly responsible for the results of its decisions, and thus more accountable to the legislature.
 - *The AOC should provide administrative support.* No additional state expense would be incurred for the payroll, purchasing and similar business needs that the AOC already manages, including functions for issuing checks to attorneys.
 - *The Indigent Defense Services Commission's authority should extend to all indigent defense cases.* The benefits of cohesive, coordinated management should extend to

all cases in which a statutory or constitutional right to counsel exists. The Study Commission does not recommend change to the scope of the right to counsel in G.S. 7A-451. (It is noted that the scope of the Indigent Defense Services Commission's authority would *not* extend to the provision of guardians ad litem for children, a program presently administered by a division of the AOC; this well-managed program focuses on recruitment, training and supervision of volunteer guardians ad litem for children in abuse and neglect cases -- representation which is different in nature than criminal and other cases where the right to counsel attaches for a person who, in general, faces loss of liberty.)

- *Appointment of a 13-member Commission:* The Commission should be appointed by and thus accountable to all branches of government and representative Bar groups. The recommended appointing authorities (and number of appointees) are:

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| Chief Justice (1) | Public Defenders Association (1) |
| Governor (1) | Academy of Trial Lawyers (1) |
| President Pro Tem Senate (1) | Association of Black Lawyers (1) |
| Speaker of the House (1) | Association of Women Lawyers (1) |
| State Bar (1) | The Commission itself (3) |
| Bar Association (1) | |

- Appointees should have significant criminal defense experience or demonstrated commitment to quality representation and, to promote the independence of the defense function, should not include active law enforcement officials or prosecutors, and limited appointment of active judges. The Chief Justice's appointee should mandatorily be an active or former member of the judiciary, and the Commission should be authorized to make one of its appointees an active or former member of the judiciary. Involvement of at least two non-lawyers should be specifically required, for the Governor's appointee and one of the Commission's. Employees of the Commission, including public defenders, should not be allowed to serve on the Commission.
- *Duties and authorities:* The Commission should be vested with the duty and authority needed to effectively and comprehensively manage indigent defense programs, including to:
 - prepare and administer the indigent defense budget;
 - promulgate comprehensive standards, policies and procedures, with substantial input and involvement of the judiciary, bar, and other interested persons, governing determinations of indigency, the appointment, qualifications, compensation and performance of counsel, public defender operations, contractual arrangements, expenses of representation including appointment and compensation of expert witnesses, and other matters;
 - determine how legal representation should be provided statewide by implementing for each area of the state the best mix of services among local public defender offices, private assigned counsel systems, and/or contracts with private lawyers;

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- appoint an Executive Director, who would hire additional staff, to assist the Commission in the preparation of a budget and development of rules, policies, and procedures, implement the Commission's decisions, and conduct the business, planning, and other operational needs of the centralized system.

 - General operation of the system:
 - *Appointment and compensation of lawyers:* Following determination of indigency and a right to counsel by the court, appointment and compensation of a specific lawyer in a case, and the allowance of expenses of representation, should be handled in accordance with procedures promulgated by the Commission. As may be delegated by the Commission, and consistent with its rules, policies, and procedures, day-to-day decisions should be exercised by the Executive Director or local or regional staff, such as a public defender.
 - *Appointment of public defenders:* Public defenders should be appointed by the Commission for four-year terms, with present incumbents serving to the end of their terms. The local bar would submit nominees to the Commission, as under existing law, but in exceptional circumstances, the Commission should be allowed to appoint from outside the bar's list of nominees. Public defenders should be subject to removal for cause by two-thirds of the full Commission, with a right to hearing before the Commission, and judicial review of the Commission's decision on the record (not *de novo*). Subject to rules and policies adopted by the Commission, public defenders should be responsible for the day-to-day administration and operations of their office.

 - **BUDGET:** The General Assembly should appropriate funds for the operations, facility, staff, and equipment needs of the Commission on Indigent Defense Services. Staff should include an executive director, associate director, financial officer; information systems manager, research analyst, administrative assistant, and secretary.
 - *First year costs:* approximately \$535,000 assuming delayed effective dates for the positions (approximately \$725,000 annualized). Details are set forth in Appendix C.

 - **Transition:** The Commission on Indigent Defense Services should be established immediately, and hold its first meeting by September 2000. After hiring its Director and other staff, the Commission would dedicate its first year to development of comprehensive rules, policies, and procedures, and plans for the delivery of services in various parts of the state. The Commission should report to the General Assembly by May 1, 2001, regarding the rules, policies and procedure, recommendations for delivery of indigent defense services, and implementation of the act in general. The Commission's direct authority over the budget and programs would take effect July 1, 2001. Prior to that time, the existing programs and the AOC's budgetary authorities would remain in effect, as under current law.

APPENDIX A

LEGISLATION ESTABLISHING THE INDIGENT DEFENSE STUDY COMMISSION

S.L. 1998-212, Section 16.5, as amended by S.L. 1999-237 Section 17.11

INDIGENT FUND STUDY COMMISSION

Section 16.5 (a) The Administrative Office of the Courts shall establish a Study Commission on the Indigent Persons' Attorney Fee Fund. The Commission shall consist of seven voting members as follows:

- (1) One member appointed by the Speaker of the House of Representatives;
- (2) One member appointed by the President Pro Tempore of the Senate;
- (3) One member appointed by the Chief Justice of the Supreme Court;
- (4) One member appointed by the North Carolina Association of Public Defenders;
- (5) One member appointed by the North Carolina State Bar;
- (6) One member appointed by the North Carolina Bar Association; and
- (7) One member appointed by the North Carolina Academy of Trial Lawyers.

The Commission shall elect a chair upon being convened at the call of the Chief Justice's appointee.

(b) The Commission shall study methods for improving the management and accountability of funds being expended to provide counsel to indigent defendants without compromising the quality of legal representation mandated by State and federal law. In conducting its study, the Commission shall:

- (1) Evaluate the current procedures for determining the indigency of defendants and recommend any possible improvements in those procedures;
- (2) Determine whether sufficient information is available when evaluating compensation requests from assigned private counsel and expert witnesses;
- (3) Assess the effectiveness of the current management structure for the Indigent Persons' Attorney Fee Fund and outline any additional standards or guidelines that could be implemented to allow for greater accountability of the funds being expended;
- (4) Evaluate whether establishing an Indigent Defense Council to oversee the State's expenditure of funds on a district, regional, or Statewide basis would make the functioning of the Indigent Persons' Attorney Fee Fund more efficient and economical;
- (5) Evaluate the effectiveness of existing methods of providing legal representation to indigent defendants, including the use of public defenders, appointed counsel, and contract lawyers;
- (6) Review methods used by other states to provide legal representation to indigent defendants;

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- (7) Assess the potential effectiveness of distributing funds in other ways, including the hiring of contract attorneys on a retainer basis and the expansion of public defender programs;
 - (8) Outline additional suggestions that would improve the provision of legal representation to indigent defendants; and
 - (9) Evaluate the report on the efficiency and cost-effectiveness of the public defender program provided by the Commission pursuant to Section 16.1 of S.L. 1998-212, and recommend any improvements to public defender programs or the expansion of public defender programs to additional districts, based upon the content of the report.

The Administrative Office of the Courts shall assign professional and clerical staff to assist in the work of the Commission. The Commission shall report its findings and recommendations to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety no later than May 1, 2000. The report shall include a cost analysis demonstrating the additional personnel and equipment necessary to implement the Commission's recommendations. The report shall also include any legislation necessary to implement the Commission's recommendations.

(c) The Administrative Office of the Courts may use up to the sum of fifty thousand dollars (\$50,000) from the Indigent Persons' Attorney Fee Fund to contract for consultant services to assist in meeting the Commission's responsibilities.

APPENDIX B

Draft Legislation on Indigent Representation

The following legislation is divided into four parts for ease of review.

- *Part I (pages B1 to B8) contains the new article on the Office of Indigent Defense Services and Commission on Indigent Defense Services.*
- *Part II (pages B9 to B22) revises the current statutes on indigent representation in G.S. Ch. 7A.*
- *Part III (pages B23 to B44) makes conforming amendments to the numerous provisions on indigent representation scattered throughout the General Statutes.*
- *Part IV (pages B45 to B46) contains transition, effective date, and appropriations provisions.*

Italicized language is not part of the proposed legislation; it is included only for guidance.

PART I. OFFICE OF INDIGENT DEFENSE SERVICES

This part of the legislation contains a new article in G.S. Ch. 7A describing the structure and authority of the Office of Indigent Defense Services.

Section 1. Subdivision IX of Chapter 7A of the General Statutes is amended by adding a new article to read:

Article 39B
Indigent Defense Services Act

§ 7A-498. Title.

This Article shall be known and may be cited as the “Indigent Defense Services Act of 2000.”

§ 7A-498.1. Purpose.

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 enhance oversight of the delivery of counsel and related services provided at state expense, improve the quality of representation and ensure the independence of counsel, establish uniform policies and procedures for the delivery of services, generate reliable statistical information in order to evaluate the services provided and funds expended, and deliver services in the most efficient and cost-effective manner without sacrificing quality representation.

Comments: The first sentence of new G.S. 7A-498.1 is based on current G.S. 7A-450(b), which describes the right to counsel. The remainder of the section is intended to provide a mission statement for the proposed Office of Indigent Defense Services.

§ 7A-498.2. Establishment of Office of Indigent Defense Services.

(a) The Office of Indigent Defense Services, which includes the Director of Indigent Defense Services and Commission on Indigent Defense Services, is created within the Judicial Department. As used in this Article, "Office" means the Office of Indigent Defense Services, "Director" means the Director of Indigent Defense Services, and "Commission" means the Commission on Indigent Defense Services.

(b) The Office shall exercise its prescribed powers independently of the head of the Administrative Office of the Courts. The Office may enter into contracts, own property, and accept funds, grants, and gifts from any public or private source to pay expenses incident to implementing its purposes.

(c) The Director of the Administrative Office of the Courts shall provide general administrative support to the Office. The term "general administrative support" includes purchasing, payroll, and similar administrative services.

(d) The budget of the Office shall be a part of the Judicial Department's budget. The Commission shall consult with the Director of the Administrative Office of the Courts, who shall assist the Commission in preparing and presenting to the General Assembly the Office's budget, but the Commission shall have the final authority with respect to preparation of the Office's budget and with respect to representation of matters pertaining to the Office before the General Assembly.

(e) The Director of the Administrative Office of the Courts shall not reduce or modify the Office's budget or use funds appropriated to the Office without the approval of the Commission.

Comments: Because the Office of Indigent Defense Services remains within the Judicial Department pursuant to subsection (a), all employees of the Office are state employees.

Subsections (b) through (e) describe the relationship between the AOC and the Office of Indigent Defense Services. The subsections providing for the Office's independent exercise of its powers and reliance on administrative support from the AOC are similar to other statutes creating agencies within, but independent of, principal departments. See, for example, G.S. 164-45 (describing Sentencing Commission's relationship to AOC).

§ 7A-498.3. Responsibilities of Office of Indigent Defense Services.

(a) The Office shall be responsible for establishing, supervising, and maintaining a system for providing legal representation and related services in the following cases:

- (1) cases in which an indigent person is subject to a deprivation of liberty or other constitutionally protected interest and is entitled by law to legal representation;
- (2) cases in which an indigent person is entitled to legal representation under G.S. 7A-451 and 7A-451.1; and
- (3) any other cases in which the Office of Indigent Defense Services is designated by statute as responsible for providing legal representation.

(b) The Office shall develop policies and procedures for determining indigency in cases subject to this Article, which shall be applied uniformly throughout the state. The

court shall determine in each case whether a person is indigent and entitled to legal representation; however, the Office may preliminarily assign itself to represent indigent persons subject to final determination by the court.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, and appointment of experts and use of funds for experts and other services related to legal representation shall be in accordance with rules and procedures adopted by the Office.

(d) The Office shall allocate and disburse funds appropriated for legal representation and related services in cases subject to this Article pursuant to rules and procedures established by the Office.

Comments: Subsection (a) identifies the cases subject to the Office's oversight. Subsection (a)(3) is necessary because the state provides counsel in cases not listed in G.S. 7A-451 and -451.1. For example, the state provides counsel to indigent defendants subject to a nontestimonial identification order. The statutes dealing with those cases are in Part III of the legislation and have been revised to reflect the responsibilities of the Office of Indigent Defense Services.

Subsection (b) describes the roles of the Office and the court in determining indigency and entitlement to counsel. The Office promulgates general policies; the court makes the individual determination. The Office may preliminarily appoint itself subject to approval of the court; public defenders currently have similar authority under G.S. 7A-453(a).

Subsections (c) and (d) describe the authority of the Office of Indigent Defense Services over delivery of indigent defense services.

§ 7A-498.4. Establishment of Commission on Indigent Defense Services.

(a) The Commission shall consist of thirteen members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who must be an active or former member of the North Carolina judiciary.

(2) The Governor shall appoint one member, who must be a non-attorney.

(3) The President Pro Tempore of the Senate shall appoint one member.

(4) The Speaker of the House of Representatives shall appoint one member.

(5) The North Carolina Public Defenders Association shall appoint one member.

(6) The North Carolina State Bar shall appoint one member.

(7) The North Carolina Bar Association shall appoint one member.

(8) The North Carolina Academy of Trial Lawyers shall appoint one member.

(9) The North Carolina Association of Black Lawyers shall appoint one member.

(10) The North Carolina Association of Women Lawyers shall appoint one member.

(11) The Commission shall appoint three members, who must reside in different judicial districts from one another. One appointee must be a non-attorney, and one appointee may be an active member of the North Carolina judiciary.

(c) The terms of members appointed pursuant to subsection (b) of this section shall be as follows:

(1) The initial appointments by the Chief Justice, Governor, President Pro Tempore, and the Speaker shall be for four years.

(2) The initial appointments by the Public Defenders Association and State Bar, and one appointment by the Commission, shall be for three years.

(3) The initial appointments by the Bar Association and Trial Academy, and one appointment by the Commission, shall be for two years.

(4) The initial appointments by the Black Lawyers Association and Women Lawyers Association, and one appointment by the Commission, shall be for one year.

At the expiration of these initial terms, appointments shall be for four years and shall be made by the appointing authorities designated in subsection (b) of this section. No person shall serve more than two consecutive four-year terms plus any initial term of less than four years.

(d) Persons appointed to the Commission must have significant experience in the defense of criminal or other cases subject to this Article or must have demonstrated a strong commitment to quality representation in indigent defense matters. No active prosecutors or law-enforcement officials, or active employees of such persons, may be appointed to or serve on the Commission. No active judicial officials, or active employees of such persons, may be appointed to or serve on the Commission, except as provided in subsection (b) of this section. No active public defenders, active employees of such persons, or other active employees of the Office may be appointed to or serve on the Commission, except that notwithstanding this subsection or any other provision of law, including G.S. 14-234, Commission members may include part-time public defenders employed by the Office and may include persons, or employees of persons or organizations, who provide legal services subject to this Article as contractors or appointed attorneys.

(e) All members of the Commission are entitled to vote on any matters coming before the Commission unless otherwise provided by the Commission in rules adopted by it concerning voting on matters in which a member has, or appears to have, a financial or other personal interest.

(f) Each member of the Commission shall serve until a successor in office has been appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired term. Removal of Commission members shall be in accordance with policies and procedures adopted by the Commission.

(g) A quorum for purposes of conducting Commission business shall be a majority of the members of the Commission.

(h) The Commission shall elect a Commission Chair from the members of the Commission for a term of two years.

(i) The Director shall attend all Commission meetings except those relating to removal or reappointment of the Director or allegations of misconduct by the Director. The Director shall not vote on any matter decided by the Commission.

(j) Commission members shall not receive compensation but are entitled to be paid necessary subsistence and travel expenses in accordance with G.S. 138-5 and 138-6 as applicable.

Comments: The Commission's membership reflects a broad array of persons and groups that may hold an interest in the provision of indigent defense services. There are some exclusions, detailed in subsection (d). Because of the need to ensure the continued involvement of qualified members of the private bar, subsection (d) recognizes that they may serve on the Commission notwithstanding their representation of indigent persons subject to the Commission's jurisdiction.

7A-498.5. Responsibilities of Commission.

(a) The Commission shall have as its principal purpose the development and improvement of programs by which the Office provides legal representation to indigent persons.

(b) The Commission shall appoint the Director of the Office, who must be chosen on the basis of training, experience, and other qualifications. The Commission shall consult with the Chief Justice and Director of the Administrative Office of the Courts in selecting a Director, but shall have final authority in making the appointment.

(c) The Commission shall develop standards governing the provision of services under this Article. The standards shall include, but are not limited to:

(1) Standards for maintaining and operating regional and district public defender offices and appellate defender offices, including requirements regarding qualifications, training, and size of the legal and supporting staff;

(2) Standards prescribing minimum experience, training, and other qualifications for appointed counsel;

(3) Standards for public defender and appointed counsel case loads;

(4) Standards for the performance of public defenders and appointed counsel;

(5) Standards for the independent, competent, and efficient representation of clients whose cases present conflicts of interest, in both the trial and appellate courts;

(6) Standards for providing and compensating experts and others who provide services related to legal representation;

(7) Standards for qualifications and performance in capital cases; and

(8) Standards for determining indigency and for assessing and collecting the costs of legal representation and related services.

(d) The Commission shall determine the methods for delivering legal services to indigent persons eligible for legal representation under this Article and shall establish in each district or combination of districts a system of appointed counsel, contract counsel, part-time public defenders, public defender offices, appellate defender services, and other methods for delivering counsel services, or any combination of these services.

(e) In determining the method of services to be provided in a particular district, the Director shall consult with the district bar as defined in G.S. 84-19 and the judges of the district or districts under consideration. The Commission shall adopt procedures ensuring that affected local bars have the opportunity to be significantly involved in determining the method or methods for delivering services in their districts.

(f) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including but not limited to rates of compensation for appointed counsel, schedules of allowable expenses, appointment and

compensation of expert witnesses, and procedures for applying for and receiving compensation.

(g) The Commission shall approve and recommend to the General Assembly a budget for the Office.

(h) The Commission shall adopt such other rules and procedures as it deems necessary for the conduct of its and the Office's business.

Comments: This section details the Commission's powers. Subsection (e) recognizes the role and interest of district bars in determining the methods for providing legal representation to indigent persons.

§ 7A-498.6. Director of Indigent Defense.

(a) The Director shall be appointed by the Commission for a term of four years. The Director may be removed during this term in the discretion of the Commission by a vote of two-thirds of all of the Commission members. The Director shall be an attorney licensed and eligible to practice in the courts of this state at the time of appointment and at all times during service as the Director.

(b) The Director shall:

(1) Prepare and submit to the Commission a proposed budget for the Office, an annual report containing pertinent data on the operations, costs, and needs of the Office, and such other information as the Commission may require;

(2) Assist the Commission in developing rules and standards for the delivery of services under this Article;

(3) Administer and coordinate the operations of the Office and supervise compliance with standards adopted by the Commission;

(4) Subject to policies and procedures established by the Commission, hire such professional, technical, and support personnel as deemed reasonably necessary for the efficient operation of the Office;

(5) Keep and maintain proper financial records for use in calculating the costs of the Office's operations;

(6) Apply for and accept on behalf of the Office any funds that may become available from government grants, private gifts, donations, or bequests from any source;

(7) Coordinate the Office's services with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this Article and consult with professional bodies concerning improving the administration of indigent services;

(8) Conduct training programs for attorneys and others involved in the legal representation of persons subject to this Article; and

(9) Perform such other duties as the Commission may assign.

Comments: Subsection (b) includes many of the duties previously assigned to the Director of the AOC under G.S. 7A-344.

§ 7A-498.7. Public Defender Offices.

(a) The Commission may establish and operate such regional and district public defender offices as it deems necessary to administer the provisions of this Article. In

districts in which the Commission has determined to provide services through public defender offices, the Commission shall appoint such regional and district public defenders as necessary to administer such offices.

(b) For each new term, and to fill any vacancy, public defenders shall be appointed by the Commission from a list of not less than two and not more than three names nominated by written ballot of the attorneys licensed to practice law in North Carolina and resident in the district or districts within the public defender's jurisdiction; however, in exceptional circumstances, the Commission may appoint a person as public defender who has not been so nominated. Public defenders shall be chosen by the Commission on the basis of training, experience, and other qualifications. Balloting shall be conducted pursuant to rules promulgated by the Commission.

(c) A public defender shall be an attorney licensed to practice law in North Carolina and shall devote his or her full time to the duties of his or her office. In lieu of merit and other increment raises paid to regular State employees, a public defender shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a public defender, appellate defender, assistant public or appellate defender, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(d) Subject to standards adopted by the Commission, the day-to-day operation and administration of public defender offices shall be the responsibility of the public defender in charge of the office. The public defender shall keep appropriate records and make periodic reports, as requested, to the Director of the Office of Indigent Defense Services on matters related to the operation of his or her office.

(e) The Office of Indigent Defense Services shall procure office equipment and supplies for the public defender, and provide secretarial and library support from State funds appropriated to his or her office for this purpose.

(f)(1) Each public defender is entitled to such assistant public defenders, investigators, and other staff, full-time or part-time, as may be authorized by the Commission. Assistants, investigators, and other staff are appointed by the public defender and serve at his or her pleasure. Average and minimum compensation of assistants shall be as provided in the biennial Current Operations Appropriations Act. The actual salaries of assistants shall be set by the public defender in charge of the office, subject to approval by the Commission. The Commission shall fix the compensation of investigators. Assistants and investigators shall perform such duties as may be assigned by the public defender.

(2) In lieu of merit and other increment raises paid to regular State employees, an assistant public defender shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, fourteen and four-tenths percent (14.4%) after 15 years of service, and nineteen and two-tenths percent (19.2%) after 20 years of service. "Service" means service as a public defender, appellate defender, assistant public or appellate defender, assistant district attorney, justice or judge of the General Court of Justice, or clerk of superior court.

(g) The term of office of public defenders appointed under this section is four years. The Commission may suspend or remove a public defender from office for cause during his or her term of appointment. If the Director of the Office of Indigent Defense Services believes that cause exists for suspension or removal of a public defender, the Director may recommend such action to the Commission. Within 10 days of the recommendation, the public defender may request a hearing before a panel of three Commission members appointed by the Chair of the Commission. If the public defender requests a hearing, the panel shall make a written report to the full Commission following the hearing. If the panel recommends that the public defender be suspended or removed from office, the Commission shall vote on whether to uphold, reject, or modify the panel's recommendation and, if two-thirds of all of the Commission members so find, the Commission may suspend or remove the public defender from office. If the public defender does not request a hearing, the Commission may vote on the recommendation without a hearing and may suspend or remove a public defender on two-thirds vote of all of the Commission members. If the Commission suspends or removes a public defender, the public defender may obtain judicial review by filing a petition within 30 days of the decision with the Superior Court of Wake County. Review of the Commission's decision shall be heard on the record and not as a de novo review or trial de novo. The Commission shall adopt rules implementing this subsection.

Comments: This section reflects concerns expressed at study commission meetings about maintaining the continuity of public defender offices.

Subsection (b) continues to provide for local bar nominations for public defender, as currently provided in G.S. 7A-466, but in exceptional circumstances the Commission may appoint a person as public defender who has not been nominated by the local bar.

Subsection (c) continues longevity pay for public defenders and modifies the definition of qualifying service to recognize the various court-related positions that a public defender may have held in the criminal justice system.

Subsection (d) confirms the public defenders' day-to-day authority over their offices.

Subsection (e) carries over many of the provisions on assistant defenders from current G.S. 7A-467. The Commission determines how many assistants each office may employ (as the AOC does now), but the public defender makes individual hiring decisions. Average and minimum compensation for assistant public defenders and assistant district attorneys is currently specified in a section of the annual appropriations act, and the above statute doesn't change that practice. It clarifies, however, that the actual salaries are set by the public defender in charge of the office, subject to Commission approval; currently, public defenders set salaries subject to AOC approval. Longevity pay is continued for assistant public defenders, with a definition of qualifying service that tracks the definition for public defenders.

Subsection (f) establishes an administrative procedure for removing or suspending public defenders. The procedure gives public defenders greater hearing rights than the Director enjoys under new G.S. 7A-498.6.

PART II. CHAPTER 7A

Most of the current statutes on indigent representation appear in G.S. Ch. 7A. Many are retained with minor revisions because they provide a framework for indigent representation while allowing the Office of Indigent Defense Services to make necessary changes to the system. The statutes on the offices of the public and appellate defender are the main statutes that are repealed outright; however, key language is retained in Part I of the legislation.

Shown below are those statutes within Ch. 7A that have been revised and those that touch on indigent representation but have not been revised. The primary aim of the revisions is to give the Office of Indigent Defense Services responsibility for the delivery of indigent defense services, including the appointment and compensation of counsel. The court continues to determine indigency and entitlement to counsel and continues to be responsible for ordering recoupment of costs of representation incurred by the state.

A number of sections in Art. 27 (expenses of judicial department) touch on indigent representation but may not require revision. Those statutes are as follows:

G.S. 7A-300 provides that the AOC shall prepare budget estimates, including estimated salaries of public defenders and fees of appointed counsel. This provision seems consistent with the expectation that the AOC will include in its budget the budget proposed by the Office of Indigent Defense Services.

G.S. 7A-301 provides that salaries and expenses of Judicial Department personnel are paid out of the state treasury. Employees of the Office of Indigent Defense Services will continue to be part of the Judicial Department and so will be paid from state funds.

G.S. 7A-302 requires counties to provide office space and furniture for judicial facilities. Counties would continue to have this obligation if the Office of Indigent Defense Services is created.

Section 2.1 deals with Art. 28 (uniform costs and fees in the trial division).

Section 2.1(a). G.S. 7A-304 reads as rewritten:

7A-304. Costs in criminal actions.

(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

(1) For each arrest or personal service of criminal process, including citations and subpoenas, the sum of five dollars (\$5.00), to be remitted to the county wherein the arrest was made or process was served, except that in those cases in which the arrest was made or process served by a law-enforcement officer employed by a municipality, the fee shall be paid to the municipality employing the officer.

(2) For the use of the courtroom and related judicial facilities, the sum of twelve dollars (\$12.00) in the district court, including cases before a magistrate, and the sum of thirty dollars (\$30.00) in superior court, to be remitted to the county in which the judgment is rendered. In all cases where the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used exclusively by the county or municipality for providing, maintaining, and constructing adequate courtroom and related judicial facilities, including: adequate space and furniture for judges, district attorneys, public defenders and other personnel of the Office of Indigent Defense Services, magistrates, juries, and other court related personnel; office space, furniture and vaults for the clerk; jail and juvenile detention facilities; free parking for jurors; and a law library (including books) if one has heretofore

been established or if the governing body hereafter decides to establish one. In the event the funds derived from the facilities fees exceed what is needed for these purposes, the county or municipality may, with the approval of the Administrative Officer of the Courts as to the amount, use any or all of the excess to retire outstanding indebtedness incurred in the construction of the facilities, or to reimburse the county or municipality for funds expended in constructing or renovating the facilities (without incurring any indebtedness) within a period of two years before or after the date a district court is established in such county, or to supplement the operations of the General Court of Justice in the county.

(3) For the retirement and insurance benefits of both State and local government law-enforcement officers, the sum of seven dollars and twenty-five cents (\$7.25), to be remitted to the State Treasurer. Fifty cents (50 cents of this sum shall be administered as is provided in Article 12C of Chapter 143 of the General Statutes. Five dollars and seventy-five cents (\$5.75) of this sum shall be administered as is provided in Article 12E of Chapter 143 of the General Statutes, with one dollar and twenty-five cents (\$1.25) being administered in accordance with the provisions of G.S. 143-166.50(e). One dollar (\$1.00) of this sum shall be administered as is provided in Article 12F of Chapter 143 of the General Statutes.

(3a) For the supplemental pension benefits of sheriffs, the sum of seventy-five cents (75 cents) to be remitted to the Department of Justice and administered under the provisions of Article 12G of Chapter 143 of the General Statutes.

(4) For support of the General Court of Justice, the sum of sixty-one dollars (\$61.00) in the district court, including cases before a magistrate, and the sum of sixty-eight dollars (\$68.00) in the superior court, to be remitted to the State Treasurer.

(5) For using pretrial release services, the district or superior court judge shall, upon conviction, impose a fee of fifteen dollars (\$15.00) to be remitted to the county providing the pretrial release services. This cost shall be assessed and collected only if the defendant had been accepted and released to the supervision of the agency providing the pretrial release services.

(6) For support of the General Court of Justice, for the issuance by the clerk of a report to the Division of Motor Vehicles pursuant to G.S. 20-24.2, the sum of fifty dollars (\$50.00), to be remitted to the State Treasurer. Upon a showing to the court that the defendant failed to appear because of an error or omission of a judicial official, a prosecutor, or a law-enforcement officer, the court shall waive this fee.

(a1) Repealed by Session Laws 1997-475, s. 4.1, effective September 1, 1997.

(b) On appeal, costs are cumulative, and costs assessed before a magistrate shall be added to costs assessed in the district court, and costs assessed in the district court shall be added to costs assessed in the superior court, except that the fee for the Law-Enforcement Officers' Benefit and Retirement Fund and the Sheriffs' Supplemental Pension Fund and the fee for pretrial release services shall be assessed only once in each case. No superior court costs shall be assessed against a defendant who gives notice of appeal from the district court but withdraws it prior to the expiration of the 10-day period for entering notice of appeal. When a case is reversed on appeal, the defendant shall not be liable for costs, and the State shall be liable for the cost of printing records and briefs in the Appellate Division.

(c) Witness fees, expenses for blood tests and comparisons incurred by G.S. 8-50.1(a), jail fees and cost of necessary trial transcripts shall be assessed as provided by law in addition to other costs set out in this section. Nothing in this section shall limit the power or discretion of the judge in imposing fines or forfeitures or ordering restitution.

(d)(1) In any criminal case in which the liability for costs, fines, restitution, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- a. Sums in restitution to the victim entitled thereto;
- b. Costs due the county;
- c. Costs due the city;
- d. Fines to the county school fund;
- e. Sums in restitution prorated among the persons other than the victim entitled thereto;
- f. Costs due the State;
- g. Attorney's fees.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

- a. Complete restitution has been received; or

b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or

c. Upon the request of the person or persons entitled thereto; and

d. In any event, at least once each calendar year.

(e) Unless otherwise provided by law, the costs assessed pursuant to this section for criminal actions disposed of in the district court are also applicable to infractions disposed of in the district court. The costs assessed in superior court for criminal actions appealed from district court to superior court are also applicable to infractions appealed to superior court. If an infraction is disposed of in the superior court pursuant to G.S. 7A-271(d), costs applicable to the original charge are applicable to the infraction.

Comments: Subsection (a)(2) is revised to reflect that facilities fees, which are a part of court costs in criminal cases, may need to be used for various functions performed by the Office of Indigent Defense Services.

Section 2.1(b). G.S. 7A-314 reads as rewritten:

7A-314. Uniform fees for witnesses; experts; limit on number.

(a) A witness under subpoena, bound over, or recognized, other than a salaried State, county, or municipal law-enforcement officer, or an out-of-state witness in a criminal case, whether to testify before the court, Judicial Standards Commission, jury of view, magistrate, clerk, referee, commissioner, appraiser, or arbitrator shall be entitled to receive five dollars (\$5.00) per day, or fraction thereof, during his attendance, which, except as to witnesses before the Judicial Standards Commission, must be certified to the clerk of superior court.

(b) A witness entitled to the fee set forth in subsection (a) of this section, and a law-enforcement officer who qualifies as a witness, shall be entitled to receive reimbursement for travel expenses as follows:

(1) A witness whose residence is outside the county of appearance but within 75 miles of the place of appearance shall be entitled to receive mileage reimbursement at the rate currently authorized for State employees, for each mile necessarily traveled from his place of residence to the place of appearance and return, each day.

(2) A witness whose residence is outside the county of appearance and more than 75 miles from the place of appearance shall be entitled to receive mileage reimbursement at the rate currently authorized State employees for one round-trip from his place of residence to the place of appearance. A witness required to appear more than one day shall be entitled to receive reimbursement for actual expenses incurred for lodging and meals not to exceed the maximum currently authorized for State employees, in lieu of daily mileage.

(c) A witness who resides in a state other than North Carolina and who appears for the purpose of testifying in a criminal action and proves his attendance may be compensated at the rate allowed to State officers and employees by subdivisions (1) and (2) of G.S. 138-6(a) for one round-trip from his place of residence to the place of appearance, and five dollars (\$5.00) for each day that he is required to travel and attend as a witness, upon order of the court based upon a finding that the person was a necessary witness. If such a witness is required to appear more than one day, he is also entitled to reimbursement for actual expenses incurred for lodging and meals, not to exceed the maximum currently authorized for State employees.

(d) An expert witness, other than a salaried State, county, or municipal law-enforcement officer, shall receive such compensation and allowances as the court, or the Judicial Standards Commission, in its discretion, may authorize. A law-enforcement officer who appears as an expert witness shall receive reimbursement for travel expenses only, as provided in subsection (b) of this section. Compensation of experts provided under G.S. 7A-454 shall be in accordance with rules established by the Office of Indigent Defense Services.

(e) If more than two witnesses are subpoenaed, bound over, or recognized, to prove a single material fact, the expense of the additional witnesses shall be borne by the party issuing or requesting the subpoena.

(f) In a criminal case when a person who does not speak or understand the English language is an indigent defendant, a witness for an indigent defendant, or a witness for the State and the court appoints a language interpreter to assist that defendant or witness in the case, the reasonable fee for the interpreter's services, as set by the court, are payable from funds appropriated to the Administrative Office of the Courts.

Comments: Subsection (d) is intended to be consistent with revised G.S. 7A-454, which provides that the Office of Indigent Defense Services oversees appointment and compensation of experts.

Subsection (f) deals with appointment of interpreters for persons who do not speak English. G.S. Ch 8B likewise provides for interpreters for deaf persons, appointed by the court and compensated by AOC. These services may involve functions other than the defense function and so are left under the oversight of the AOC.

Section 2.2 deals with Art. 29 (Administrative Office of the Courts).

Section 2.2. G.S. 7A-344 is repealed.

~~7A-344 Special duties of Director concerning representation of indigent persons.~~

~~In addition to the duties prescribed in G.S. 7A-343, the Director shall also:~~

~~(1) Supervise and coordinate the operation of the laws and regulations concerning the assignment of legal counsel for indigent persons under Subchapter IX of this Chapter to the end that all indigent persons are adequately represented;~~

~~(2) Advise and cooperate with the offices of the public defenders as needed to achieve maximum effectiveness in the discharge of the defender's responsibilities;~~

~~(3) Collect data on the operation of the assigned counsel and the public defender systems, and make such recommendations to the General Assembly for improvement in the operation of these systems as appear to him to be appropriate; and~~

~~(4) Accept and utilize federal or private funds, as available, to improve defense services for the indigent, including indigent juveniles alleged to be delinquent or undisciplined. To facilitate processing of juvenile cases and civil cases in which a party is entitled to counsel, the administrative officer is further authorized, in any district or set of districts as defined in G.S. 7A-41.1(a), with the approval of the chief district court judge for cases in the district court division and the approval of the senior resident superior court judge for cases in the superior court division, to engage the services of a particular attorney or attorneys to provide specialized representation on a full-time or part-time basis.~~

Comments: This section is repealed because the Commission and Director of the proposed Office of Indigent Defense Services will perform these sorts of duties.

No revision is made to G.S. 7A-343, which lists the general duties of the AOC Director. Subsection (4) of that section, which allows the Director to expend funds appropriated to the AOC, is qualified by new G.S. 7A-498.2(e) in Part I of this legislation, which provides that the AOC Director may not expend funds appropriated to the Office of Indigent Defense Services without the Commission's approval.

No revision is made to G.S. 7A-346, which requires various court officials, including public defenders and other court-related personnel, to submit statistical data to the AOC Director on request.

Section 2.3 deals with Art. 36 (entitlement of indigent persons). A number of statutes within this article touch on indigent defense but do not appear to require revision. Those statutes are as follows:

G.S. 7A-450.1 through 7A-450.4 deal with the court's authority to hold a third person responsible for payment of fees borne by the state.

G.S. 7A-451.1 requires the state to pay counsel fees for outpatient involuntary commitment proceedings.

G.S. 7A-456 deals with the penalty for making a false statement about indigency.

Section 2.3(a). G.S. 7A-450 reads as rewritten:

7A-450. Indigency; definition; entitlement; determination; change of status.

(a) An indigent person is a person who is financially unable to secure legal representation and to provide all other necessary expenses of representation in an action or proceeding enumerated in this Subchapter. An interpreter is a necessary expense as defined in Chapter 8AB of the General Statutes for a deaf person who is entitled to counsel under this subsection.

(b) Whenever a person, under the standards and procedures set out in this Subchapter, is determined to be an indigent person entitled to counsel, it is the responsibility of the State to provide him with counsel and the other necessary expenses of representation. The professional relationship of counsel so provided to the indigent person he represents is the same as if counsel had been privately retained by the indigent person.

(b1) An indigent person indicted for murder may not be tried where the State is seeking the death penalty without an assistant counsel being appointed in a timely manner. If the indigent person is represented by the public defender's office, the requirement of an assistant counsel may be satisfied by the assignment to the case of an additional attorney from the public defender's staff.

(c) The question of indigency may be determined or redetermined by the court at any stage of the action or proceeding at which an indigent is entitled to representation.

(d) If, at any stage in the action or proceeding, a person previously determined to be indigent becomes financially able to secure legal representation and provide other necessary expenses of representation, he must inform the counsel appointed by the court to represent him of that fact. In such a case, that information is not included in the attorney client privilege, and counsel must promptly inform the court of that information.

Comments: The only change that appears necessary is correction of the chapter number for interpreters.

Section 2.3(b). G.S. 7A-451 reads as rewritten:

7A-451. Scope of entitlement.

(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

(1) Any case in which imprisonment, or a fine of five hundred dollars (\$500.00), or more, is likely to be adjudged;

(2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of the General Statutes;

(3) A motion for appropriate relief under Chapter 15A of the General Statutes if the defendant has been convicted of a felony, has been fined five hundred dollars (\$500.00) or more, or has been sentenced to a term of imprisonment;

(4) A hearing for revocation of probation;

(5) A hearing in which extradition to another state is sought;

(6) A proceeding for an inpatient involuntary commitment to a facility under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a proceeding for commitment under Part 8 of Article 5 of Chapter 122C of the General Statutes.

(7) In any case of execution against the person under Chapter 1, Article 28 of the General Statutes, and in any civil arrest and bail proceeding under Chapter 1, Article 34, of the General Statutes;

(8) In the case of a juvenile, a hearing as a result of which commitment to an institution or transfer to the superior court for trial on a felony charge is possible;

(9) A hearing for revocation of parole at which the right to counsel is provided in accordance with the provisions of Chapter 148, Article 4, of the General Statutes;

(10) A proceeding for sterilization under Chapter 35, Article 7 (Sterilization of Persons Mentally Ill and Mentally Retarded) of the General Statutes; and

(11) A proceeding for the provision of protective services according to Chapter 108, Article 64, of the General Statutes;

(12) In the case of a juvenile alleged to be neglected under Chapter 7A, Article 23 of the General Statutes;

(13) A proceeding to find a person incompetent under Subchapter I of Chapter 35A, of the General Statutes;

(14) A proceeding to terminate parental rights where a guardian ad litem is appointed pursuant to G.S. 7B-1101;

(15) An action brought pursuant to Article 24B of Chapter 7A of the General Statutes to terminate an indigent person's parental rights.

(16) A proceeding involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to this proceeding.

(b) In each of the actions and proceedings enumerated in subsection (a) of this section, entitlement to the services of counsel begins as soon as feasible after the indigent is taken into custody or service is made upon him of the charge, petition, notice or other initiating process. Entitlement continues through any critical stage of the action or proceeding, including, if applicable:

(1) An in-custody interrogation;

(2) A pretrial identification procedure which occurs after formal charges have been preferred and at which the presence of the indigent is required;

(3) A hearing for the reduction of bail, or to fix bail if bail has been earlier denied;

(4) A probable cause hearing;

(5) Trial and sentencing; and

(6) Review of any judgment or decree pursuant to G.S. 7A-27, 7A-30(1), 7A-30(2), and Subchapter XIV of Chapter 15A of the General Statutes.

(c) In any capital case, an indigent defendant who is under a sentence of death may apply to the superior court of the district where the defendant was indicted for the appointment of counsel to represent the defendant in preparing, filing, and litigating a motion for appropriate relief. The application for the appointment of such postconviction counsel may be made prior to completion of review on direct appeal and shall be made no later than 10 days from the latest of the following:

(1) The mandate has been issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;

(2) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina; or

(3) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina, but subsequently left the defendant's death sentence undisturbed.

If there is not a criminal or mixed session of superior court scheduled for that district, the application must be made no later than 10 days from the beginning of the next criminal or mixed session of superior court in the district. Upon application, supported by the defendant's affidavit, the superior court shall enter an order appointing the Office of Indigent Defense Services two counsel if the court finds that the defendant is indigent and desires counsel, and the Office of Indigent Defense Services shall appoint two counsel to represent the defendant. The defendant does not have a right to be present at the time of appointment of counsel, and the appointment need not be made in open court. If the defendant was previously adjudicated an indigent for purposes of trial or direct appeal, the defendant shall be presumed indigent for purposes of this subsection.

(d) The appointment of counsel as provided in subsection (c) of this section and the procedure for compensation shall comply with rules adopted by the Office of Indigent Defense Services, the Rules and Regulations Relating to the Appointment of Counsel for Indigent Defendants pursuant to G.S. 7A-459. ~~The court may appoint counsel recruited by the Appellate Defender pursuant to G.S. 7A-486.3(5).~~

(e) No counsel appointed pursuant to subsection (c) of this section shall have previously represented the defendant at trial or on direct appeal in the case for which the appointment is made unless the defendant expressly requests continued representation and understandingly waives future allegations of ineffective assistance of counsel.

Comments: Revised subsections (c) and (d) recognize the authority of the Office of Indigent Defense Services over the delivery of counsel services.

Section 2.3(c). G.S. 7A-452 reads as rewritten:

7A-452. Source of counsel; fees; appellate records.

(a) Counsel for an indigent person shall be assigned by the court. Upon the court's determination that a person is indigent and entitled to counsel under this Article, counsel shall be appointed in accordance

~~with rules adopted by the Office of Indigent Defense Services. In the courts of those counties which have a public defender designated by the Office of Indigent Defense Services, however, the public defender may tentatively assign himself or an assistant public defender designee of the Office of Indigent Defense Services may tentatively assign himself or another person to represent an indigent person, subject to subsequent approval determination of entitlement to counsel by the court.~~

(b) Fees of assigned counsel and salaries and other operating expenses of the offices of the public defenders shall be borne by the State.

(c)(1) The clerk of superior court is authorized to make a determination of indigency and ~~entitlement to counsel~~~~to appoint counsel~~, as authorized by this Article. The word "court," as it is used in this Article and in any rules pursuant to this Article, includes the clerk of superior court.

(2) A judge of superior or district court having authority to ~~appoint~~~~determine~~ entitlement to counsel in a particular case may give directions to the clerk with regard to the ~~appointment of determination of entitlement to counsel~~ in that case; may, if he finds it appropriate, change or modify the ~~appointment of counsel when counsel has been appointed~~ determination made by the clerk; and may set aside a finding of waiver of counsel made by the clerk.

(d) Unless a public defender or assistant public defender is appointed to serve, ~~the trial judge appointing~~ standby counsel ~~appointed~~ under G.S. 15A-1243 shall ~~receive award~~ reasonable compensation to be paid by the State.

Comments: The revisions leave with the court the determination of indigency and entitlement to counsel while giving to the Office of Indigent Defense Services the authority over delivery of counsel services.

Section 2.3(d). G.S. 7A-453 reads as rewritten:

7A-453. Duty of custodian of a possibly indigent person; determination of indigency.

(a) In counties ~~which have a public defender~~ designated by the Office of Indigent Defense Services, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the ~~public defender designee of the Office of Indigent Defense Services~~. The ~~public defender designee of the Office of Indigent Defense Services~~ shall make a preliminary determination as to the person's entitlement to his services, and proceed accordingly. The court shall make the final determination.

(b) In counties ~~which do not have a public defender~~ that have not been designated by the Office of Indigent Defense Services, the authority having custody of a person who is without counsel for more than 48 hours after being taken into custody shall so inform the clerk of superior court.

(c) In any county, if a defendant, upon being taken into custody, states that he is indigent and desires counsel, the authority having custody shall immediately inform the ~~defender designee of the Office of Indigent Defense Services~~ or the clerk of superior court, as the case may be, who shall take action as provided in this Article.

(d) The duties imposed by this section upon authorities having custody of persons who may be indigent are in addition to the duties imposed upon arresting officers under G.S. 15-47.

Comments: The changes to this statute reflect that the Office of Indigent Defense Services may have a sufficient presence within a county to be able to provide assistance when a person without counsel has been held in custody for more than 48 hours. In counties that have a public defender's office, the Office of Indigent Defense Services may of course make the public defender its designee for purposes of this statute.

Section 2.3(e). G.S. 7A-454 reads as rewritten:

7A-454. Supporting services.

~~The court, in its discretion, may approve a fee for the service of an expert witness who testifies for an indigent person, and shall approve reimbursement for the necessary expenses of counsel. Fees and expenses accrued under this section shall be paid by the State. Fees for the services of an expert witness for an indigent person and other necessary expenses of counsel shall be paid by the State in accordance with rules adopted by the Office of Indigent Defense Services.~~

Comments: This statute continues to recognize the right of indigent persons to necessary support services but is revised to reflect the role of the Office of Indigent Defense Services.

Section 2.3(f). G.S. 7A-455 reads as rewritten:

7A-455. Partial indigency; liens; acquittals.

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for him by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, he shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall ~~fix the money value of services rendered by assigned counsel, the public defender, or the appellate defender, and such sum plus any sums allowed by the court for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, shall be entered as direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, and which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment, provided that counsel fees ordered paid to the clerk on behalf of the appointed counsel pursuant to G.S. 15A-1343(e) may be paid directly to the counsel. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. In fixing~~ the money value of services rendered by the public defender and the appellate defender, the court shall be based on consider the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. ~~The value of the services shall be fixed by a~~ A district court judge ~~shall direct entry of judgment~~ for actions or proceedings finally determined in the district court, and ~~by a superior court judge shall direct entry of judgment~~ for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

(b1) In every case in which the State is entitled to a lien pursuant to this section, the public defender shall at the time of sentencing or other conclusion of the proceeding petition the court to enter judgment for the value of the legal services rendered by the public defender, and the appellate defender shall upon completion of the appeal petition or request the trial court to enter judgment for the value of the legal services rendered by the appellate defender.

(c) No order for partial payment under subsection (a) of this section and no judgment under subsection (b) of this section shall be entered unless the indigent person is convicted. If the indigent person is convicted, the order or judgment shall become effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq., in the amount then owing, upon the later of (i) the date upon which the conviction becomes final if the indigent person is not ordered, as a condition of probation, to pay the State of North Carolina for the costs of his representation in the case or (ii) the date upon which the indigent person's probation is terminated or revoked if the indigent person is so ordered.

(d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender, or appellate defender who rendered the services or incurred the expenses for which the judgment is to be entered shall obtain the social security number, if any, of each person against whom judgment is to be entered. This number, or a certificate that the person has no social security number, shall be included in each fee application submitted by an assigned attorney, guardian ad litem, public defender, or appellate defender, and no order for payment entered upon an application which does not include the required social security number or certification shall be valid to authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any person under this section or under G.S. 7A-450.3 shall include the social security number, if any, of the judgment debtor.

Comments: The revisions reflect the division of responsibilities between the Office of Indigent Defense Services, which establishes rules for determining the value of services provided by counsel, and the court, which enters judgments for all or a portion of those costs.

New subsection (b1) incorporates the provisions from the repealed articles on public and appellate defenders requiring those offices to present their time to the court for entry of judgment.

Section 2.3(g). G.S. 7A-457 reads as rewritten:

7A-457. Waiver of counsel; pleas of guilty.

(a) An indigent person who has been informed of his right to be represented by counsel at any in-court proceeding, may, in writing, waive the right to in-court representation by counsel in accordance with rules adopted by the Office of Indigent Defense Services. ~~Any waiver of counsel shall be effective only if~~ the court finds of record that at the time of waiver the indigent person acted with full awareness of his rights and of the consequences of the waiver. In making such a finding, the court shall consider, among other things, such matters as the person's age, education, familiarity with the English language, mental condition, and the complexity of the crime charged.

(b) If an indigent person waives counsel as provided in subsection (a), and pleads guilty to any offense, the court shall inform him of the nature of the offense and the possible consequences of his plea, and as a condition of accepting the plea of guilty the court shall examine the person and shall ascertain that the plea was freely, understandably and voluntarily made, without undue influence, compulsion or duress, and without promise of leniency.

(c) An indigent person who has been informed of his right to be represented by counsel at any out-of-court proceeding, may, either orally or in writing, waive the right to out-of-court representation by counsel.

Comments: Subsection (a) is revised to authorize the Office of Indigent Defense Services to adopt rules on waiver of counsel; ultimately, however, a waiver is not effective unless accepted by the court.

Section 2.3(h). G.S. 7A-458 reads as rewritten:

7A-458. Counsel fees.

~~In districts which do not have a public defender, the court shall fix the fee to which an attorney who represents an indigent person is entitled shall be fixed in accordance with rules adopted by the Office of Indigent Defense Services. In doing so, the court shall allow a fee~~ Fees shall be based on the factors normally considered in fixing attorneys' fees, such as the nature of the case, and the time, effort and responsibility involved. Fees shall be fixed by the district court judge who hears the case for actions or proceedings finally determined in the district court and by the superior court judge who hears the case for actions or proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing or other proceeding is never held, preparation therefor is nevertheless compensable and, in capital cases and other extraordinary cases pending in superior court, the presiding judge may allow a fee for services rendered and payment for expenses incurred may be allowed pending final determination of the case.

Comments: This statute continues to recognize that compensation must be reasonable and must include necessary preparation time; it is revised only to reflect the role of the Office of Indigent Defense Services.

Section 2.3(i). G.S. 7A-459 is repealed.

~~7A-459 Implementing regulations by State Bar Council.~~

~~The North Carolina State Bar Council shall make rules and regulations consistent with this Article relating to the manner and method of assigning counsel, the procedure for the determination of indigency, the waiver of counsel, the adoption and approval of plans by any district bar as defined in G.S. 84-19 regarding the method of assignment of counsel among the licensed attorneys of the district bar district, and such other matters as shall provide for the protection of the constitutional rights of all indigent persons and the reasonable allocation of responsibility for the representation of indigent persons among the licensed attorneys of this~~

State. These rules and regulations shall apply in every county and shall not become effective until certified to and approved by the Supreme Court of North Carolina.

Comments: This section is repealed because the Office of Indigent Defense Services will be responsible for establishing rules for counsel paid with state funds. The Office must continue to consult with district bars, however, under new G.S. 7A-498.5(e) in Part I of this legislation.

Section 2.4 deals with Art. 37 (Public Defender Office).

A new section on public defenders, G.S. 7A-498.7, appears in Part I of this legislation and incorporates many of the repealed provisions from this article.

Section 2.4(a). G.S. 7A-465 is repealed

~~7A-465 Public defender; defender districts; qualifications; compensation.~~

~~(a) The following counties of the State are organized into the defender districts listed below and in each of those defender districts an office of public defender is established:~~

| Defender District | Counties |
|------------------------------|----------------------------|
| 3A | Pitt |
| 3B | Carteret |
| 12 | Cumberland |
| 14 | Durham |
| 15B | Orange, Chatham |
| 16A | Scotland, Hoke |
| 16B | Robeson |
| 18 | Guilford |
| 26 | Mecklenburg |
| 27A | Gaston |
| 28 | Buncombe |

~~Provided that the effective date of the establishment of the office of public defender in Defender District 16B shall be the date that a superior court judge for Superior Court District 16B, other than the judge holding the judgeship for that district established by Chapter 509, Session Laws of 1987, takes office.~~

~~(a1) The public defender for each of the above defender districts shall represent indigents and otherwise perform all other duties of a public defender in the district and superior courts of the counties included in his defender district.~~

~~(b) The public defender shall be an attorney licensed to practice law in North Carolina, and shall devote his full time to the duties of his office.~~

~~In lieu of merit and other increment raises paid to regular State employees, a public defender shall receive as longevity pay an amount equal to four and eight tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six tenths percent (9.6%) after 10 years of service, fourteen and four tenths percent (14.4%) after 15 years of service, and nineteen and two tenths percent (19.2%) after 20 years of service. "Service" means service as a public defender, assistant public defender, justice or judge of the General Court of Justice, or clerk of superior court.~~

Comments: Although this section is repealed, some provisions are incorporated in other parts of the proposed legislation.

The substance of subsection (b), including the concept of longevity pay, appears in new G.S. 7A-498.7 in Part I of this legislation. Part IV of the legislation makes clear that the public defender offices continue in operation unless otherwise determined by the Commission.

Section 2.4(b). G.S. 7A-466 is repealed.

7A-466 Term of defender; selection; removal.

(a) Except as provided in subsection (b) of this section, the term of office of each public defender is for four years, beginning on the date specified in subsection (b) or (c) of this section, and quadrennially thereafter.

(b) The public defender for each of the judicial districts listed below, as constituted on December 31, 1988, who is in office on that date, shall become the public defender for the defender district listed opposite that judicial district. The term of each such defender shall end on the date indicated and a new term shall begin on the following day:

| Judicial District as of 12/31/88 | Defender District | Term Ends |
|----------------------------------|-------------------|-------------------|
| 12 | 12 | December 31, 1989 |
| 15B | 15B | May 31, 1991 |
| 18 | 18 | June 30, 1991 |
| 26 | 26 | June 30, 1991 |
| 27A | 27A | June 30, 1991 |
| 28 | 28 | June 30, 1989. |

(c) The terms of the public defenders for Defender Districts 3A, 3B, and 16A shall begin on January 1, 1989. The term of the public defender for Defender District 16B shall begin upon the appointment of the initial public defender for that district. The term of the public defender for Defender District 14 shall begin on July 1, 1990.

(d) Except in Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than two and not more than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of the superior court district or set of districts as defined in G.S. 7A-44.1 which includes the county or counties of the defender district for which the public defender is being appointed.

(e) In Defender District 16B, for each new term beginning on or after January 1, 1989, and to fill any vacancy, the public defender for a defender district shall be appointed from a list of not less than three names nominated by written ballot of the attorneys resident in the defender district who are licensed to practice law in North Carolina. The balloting shall be conducted pursuant to regulations promulgated by the Administrative Office of the Courts. The appointment shall be made by the senior resident superior court judge of Superior Court District 16B.

(f) A public defender or assistant public defender may be suspended or removed from office, and reinstated, for the same causes and under the same procedures as are applicable to removal of a district attorney.

Comments: Although this section is repealed, some provisions are incorporated in other parts of the proposed legislation.

New G.S. 7A-498.7(b) continues to provide for local bar nominations for public defender. Part IV of the legislation makes clear that public defenders who are in office as of the effective date of this legislation would be entitled to complete their terms unless cause existed for their removal.

Section 2.4(c). G.S. 7A-467 is repealed.

7A-467 Assistant defenders; assigned counsel.

(a) Each public defender is entitled to such assistant public defenders and investigators, full-time or part-time, as may be authorized by the Administrative Office of the Courts. Assistants and investigators are appointed by the public defender and serve at his pleasure. Compensation of assistants shall be as provided in

the biennial Current Operations Appropriations Act. The Administrative Officer of the Courts shall fix the compensation of each investigator. Assistants and investigators shall perform such duties as may be assigned by the public defender.

(b) A member of the district bar of any judicial district as defined in G.S. 84-19, all or part of which includes or is included in a defender district, who resides or regularly practices in that district and who consents to such service may be assigned by the public defender to represent an indigent person. In addition, if a conflict of interests prohibits the public defender from representing an indigent person, or in unusual circumstances when, in the opinion of the court the proper administration of justice requires it, the court may assign a member of the district bar to represent an indigent person. All assignments made under this subsection shall be governed by the rules and regulations made by the North Carolina State Bar Council pursuant to G.S. 7A-459. Any attorney assigned under this subsection is entitled to the services of the defender's office to the same extent as counsel assigned by the public defender.

(c) In assigning assistant defenders and members of the bar generally the defender shall consider the nature of the case and the skill of counsel, to the end that all indigent persons are adequately represented. Any attorney assigned shall have the minimum experience and qualifications required by the rules and regulations made by the North Carolina State Bar Council pursuant to G.S. 7A-459. Members of the bar assigned by the defender or by the court are compensated in the same manner as assigned counsel are compensated in districts which do not have a public defender.

(d) In lieu of merit and other increment raises paid to regular State employees, an assistant public defender shall receive as longevity pay an amount equal to four and eight tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six tenths percent (9.6%) after 10 years of service, fourteen and four tenths percent (14.4%) after 15 years of service, and nineteen and two tenths percent (19.2%) after 20 years of service. "Service" means service as an assistant public defender.

Comments: Although this section is repealed, some provisions are incorporated in other parts of the legislation. New G.S. 7A-498.7(f) in Part I of this legislation retains the substance of subsections (a) (hiring of assistants) and (d) (longevity pay for assistants).

Section 2.4(d). G.S. 7A-469 is repealed.

7A-469. Support for office of defender.

The Administrative Officer of the Courts shall procure office equipment and supplies for the public defender, and provide secretarial and library support from State funds appropriated to his office for his purpose.

Comments: The substance of this section is retained in new G.S. 7A-498.7(e) in Part I of this legislation.

Section 2.4(e). G.S. 7A-470 is repealed.

7A-470 Reports.

The public defender shall keep appropriate records and make periodic reports, as requested, to the Administrative Office of the Courts on matters related to the operation of his office.

Comments: This substance of this section is retained in new G.S. 7A-498.7(d) in Part I of this legislation.

Section 2.4(f). G.S. 7A-471 is repealed.

7A-471 Judgment for legal fees.

In every case in which the State is entitled to a lien pursuant to G.S. 7A-455, the public defender shall at the time of sentencing or other conclusion of the proceeding petition the court to fix the value of the legal services rendered by the public defender, as provided in G.S. 7A-455(b).

Comments: The substance of this section appears in revised G.S. 7A-455(b1), above.

Section 2.5 deals with Art. 38 (Appellate Defender Office).

In place of this article, which is repealed, Part I gives the Office of Indigent Defense Services general authority over how to deliver services, including appellate counsel services, and Part IV reaffirms the Office's responsibility over the appellate defender's office.

Section 2.5(a). G.S. 7A-486 is repealed.

~~7A-486 Appellate defender office established.~~

~~(a) There is established the office of appellate defender.~~

~~(b) The appellate defender shall be an attorney licensed to practice law in North Carolina and shall devote his full time to the duties of the office.~~

Comments: Under Part IV of the legislation, the appellate defender office continues in operation until otherwise determined by the Commission.

Section 2.5(b). G.S. 7A-486.1 is repealed.

~~7A-486.1 Term of office.~~

~~The initial term of office of the appellate defender shall be from July 15, 1985, through June 30, 1989. Subsequent terms shall be for four years.~~

Comments: Part IV of the legislation provides that the appellate defender is entitled to complete his term unless cause exists for removal.

Section 2.5(c). G.S. 7A-486.2 is repealed.

~~7A-486.2 Appointment, vacancy, removal.~~

~~(a) The appellate defender shall be appointed by the Chief Justice of the Supreme Court.~~

~~(b) A vacancy in the office of appellate defender shall be filled by appointment of the Chief Justice for the unexpired term.~~

~~(c) The appellate defender may be suspended or removed from office and reinstated for the same causes and under the same procedures as are applicable to removal of a district attorney.~~

Comments: The Office of Indigent Defense Services will be responsible for appointing and, if necessary, removing the appellate defender.

Section 2.5(d). G.S. 7A-486.3 is repealed.

~~7A-486.3 Duties.~~

~~The appellate defender shall:~~

~~(1) Represent indigent persons subsequent to conviction in trial courts pursuant to assignment by trial court judges under the general supervision of the Chief Justice of the Supreme Court. The Chief Justice may, following consultation with the appellate defender and consistent with the resources available to the appellate defender to ensure quality criminal defense services by the appellate defender's office, authorize the appellate defender not to accept assignments of certain appeals but instead to cause those appeals to be assigned either to a local public defender's office or to private assigned counsel.~~

~~(2) Maintain a clearinghouse of materials and a repository of briefs prepared by the appellate defender to be made available to private counsel representing indigents in criminal cases.~~

~~(3) Provide continuing legal education training to assistant appellate defenders and to private counsel representing indigents in criminal cases, including capital cases, as resources are available.~~

~~(4) Provide consulting services to attorneys representing defendants in capital cases.~~

~~(5) Recruit qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.~~

~~(6) In his discretion, serve as counsel of record for indigent defendants in capital cases in State court.~~

~~(7) Undertake direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded.~~

Comments: The Office of Indigent Defense Services may require by rule that the appellate defender perform these and other duties.

Section 2.5(e). G.S. 7A-486.4 is repealed.

~~**7A-486.4 Assistants and staff.**~~

~~The appellate defender shall appoint assistants and staff, not to exceed the number authorized by the Administrative Office of the Courts. The assistants and staff shall serve at the pleasure of the appellate defender.~~

Comments: The Office of Indigent Defense Services may address the substance of this section by rule.

Section 2.5(f). G.S. 7A-486.5 is repealed.

~~**7A-486.5 Funds.**~~

~~Funds to operate the office of appellate defender, including office space, office equipment, supplies, postage, telephone, library, staff salaries, training, and travel, shall be provided by the Administrative Office of the Courts from funds authorized by law. Salaries shall be set by the Administrative Office of the Courts.~~

Comments: The Office of Indigent Defense Services may address the substance of this section by rule.

Section 2.5(g). G.S. 7A-486.6 is repealed.

~~**7A-486.6 Records and reports.**~~

~~The appellate defender shall keep appropriate records and make periodic reports, as requested, to the Administrative Office of the Courts.~~

Comments: The Office of Indigent Defense Services may address the substance of this section by rule.

Section 2.5(h). G.S. 7A-486.7 is repealed.

~~**7A-486.7 Judgment for legal fees.**~~

~~In every case in which the State is entitled to a lien pursuant to G.S. 7A-455, the appellate defender shall upon completion of the appeal petition or request the trial court to fix the value of the legal services rendered by the appellate defender, as provided in G.S. 7A-455(b).~~

Comments: The substance of this section appears in revised G.S. 7A-455(b1), above.

PART III. MISCELLANEOUS STATUTES

The following sections primarily make conforming amendments to the numerous, scattered statutes that deal with indigent representation. The changes bring some uniformity to the statutes by providing for appointment and compensation of counsel in accordance with rules adopted by the Office of Indigent Defense Services. The court continues to determine indigency and entitlement to counsel. The court also continues to be responsible for ordering recoupment of costs of representation borne by the state.

Section 3.1 deals with Article 28 (execution) in G.S. Ch. 1 (civil procedure).

Section 3.1. G.S. 1-311 reads as rewritten:

1-311. Against the person.

If the action is one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the State, after the return of an execution against his property wholly or partly unsatisfied. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the Article Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts is necessary to the cause of action or not. Provided, that where the facts are found by a jury, the verdict shall contain a finding of facts establishing the right to execution against the person; and where jury trial is waived and the court finds the facts, the court shall find facts establishing the right to execution against the person. Such findings of fact shall include a finding that the defendant either (i) is about to flee the jurisdiction to avoid paying his creditors, (ii) has concealed or diverted assets in fraud of his creditors, or (iii) will do so unless immediately detained. If defendant appears at the hearing on the debt and the judge has reason to believe that the defendant is indigent, he shall inform the defendant that if he is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. If defendant appears at the hearing on the debt and the judge provisionally concludes he is indigent, counsel should be appointed immediately pursuant to rules adopted by the Office of Indigent Defense Services.

Comments: Another section, G.S. 1-313(3), provides that the execution form must notify the person of the right to have counsel appointed by a judge if the person is indigent. That section does not appear to require revision because it only deals with the notice a person receives, not the actual appointment process.

Section 3.2 deals with Article 34 (arrest and bail of debtors) in G.S. Ch. 1 (civil procedure).

Section 3.2. G.S. 1-413 reads as rewritten:

1-413. Issuance and form of order.

The order may be made to accompany the summons, or to issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a place and time therein mentioned to the clerk of the court in which the action is brought. Notice of the return must be served on the plaintiff or his attorney as prescribed by law for the service of other notices. The order shall include a statement that if the person arrested is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and preliminary release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.

Section 4.1 deals with Article 6 (basic rights in abuse, neglect, and dependency proceedings) in G.S. Ch. 7B (Juvenile Code).

Section 4.1(a). G.S. 7B-602 reads as rewritten:

7B-602. Parent's right to counsel.

In cases where the juvenile petition alleges that a juvenile is abused, neglected, or dependent, the parent has the right to counsel and to appointed counsel in cases of indigency unless that person waives the right. ~~In no case may the court appoint a county attorney, prosecutor, or public defender.~~

Comments: This section is revised to eliminate the restriction on appointment of public defenders, giving the Office of Indigent Defense Services greater flexibility in configuring services.

Section 4.1(b). G.S. 7B-603 reads as rewritten:

7B-603. Payment of court-appointed attorney or guardian ad litem.

(a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 or G.S. 7B-602 pursuant to any other provision of the Juvenile Code shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency or by direct engagement for specialized guardian ad litem services through the Administrative Office of the Courts.

(b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other provision of the Juvenile Code for which the Office of Indigent Defense Services is responsible for providing counsel shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services.

(c) The court may require payment of the attorney or guardian ad litem fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21.

Comments: This section is revised to reflect that the AOC will continue to be responsible for cases in which a guardian ad litem is appointed to represent the juvenile under G.S. 7B-601 and that the Office of Indigent Defense Services will be responsible for the defense function in such cases. Subsection (c) leaves with the court the responsibility of deciding whether to require the parent to reimburse the state for the costs of representation.

Section 4.2 deals with Article 11 (termination of parental rights) in G.S. Ch. 7B (Juvenile Code).

Section 4.2(a). G.S. 7B-1101 reads as rewritten:

7B-1101. Jurisdiction.

The court shall have exclusive original jurisdiction to hear and determine any petition relating to termination of parental rights to any juvenile who resides in, is found in, or is in the legal or actual custody of a county department of social services or licensed child-placing agency in the district at the time of filing of the petition. The court shall have jurisdiction to terminate the parental rights of any parent irrespective of the age of the parent. The parent has the right to counsel and to appointed counsel in cases of indigency unless the parent waives the right. The fees of appointed counsel shall be borne by the Office of Indigent Defense Services, Administrative Office of the Courts. In addition to the right to appointed counsel set forth above, a guardian ad litem shall be appointed in accordance with the provisions of G.S. 1A-1, Rule 17, to represent a parent in the following cases:

(1) Where it is alleged that a parent's rights should be terminated pursuant to G.S. 7B-1111(6); or

(2) Where the parent is under the age of 18 years.

The fees of the guardian ad litem shall be borne by the ~~Office of Indigent Defense Services~~ ~~Administrative Office of the Courts~~ when the court finds that the respondent is indigent. In other cases the fees of the court-appointed guardian ad litem shall be a proper charge against the respondent if the respondent does not secure private legal counsel. Provided, that before exercising jurisdiction under this Article, the court shall find that it would have jurisdiction to make a child-custody determination under the provisions of G.S. 50A-3. Provided, further, that the clerk of superior court shall have jurisdiction for adoptions under the provisions of G.S. 48-2-100 and Chapter 48 of the General Statutes generally.

Section 4.2(b): G.S. 7B-1109 reads as rewritten:

7B-1109. Adjudicatory hearing on termination.

(a) The hearing on the termination of parental rights shall be conducted by the court sitting without a jury. Reporting of the hearing shall be as provided by G.S. 7A-198 for reporting civil trials.

(b) The court shall inquire whether the juvenile's parents are present at the hearing and, if so, whether they are represented by counsel. If the parents are not represented by counsel, the court shall inquire whether the parents desire counsel but are indigent. In the event that the parents desire counsel but are indigent as defined in G.S. 7A-450(a) and are unable to obtain counsel to represent them, ~~the court shall appoint counsel~~ shall be appointed to represent them in accordance with rules adopted by the Office of Indigent Defense Services. The court shall grant the parents such an extension of time as is reasonable to permit their appointed counsel to prepare their defense to the termination petition. In the event that the parents do not desire counsel and are present at the hearing, the court shall examine each parent and make findings of fact sufficient to show that the waivers were knowing and voluntary. This examination shall be reported as provided in G.S. 7A-198.

(c) The court may, upon finding that reasonable cause exists, order the juvenile to be examined by a psychiatrist, a licensed clinical psychologist, a physician, a public or private agency, or any other expert in order that the juvenile's psychological or physical condition or needs may be ascertained or, in the case of a parent whose ability to care for the juvenile is at issue, the court may order a similar examination of any parent of the juvenile.

(d) The court may for good cause shown continue the hearing for such time as is required for receiving additional evidence, any reports or assessments which the court has requested, or any other information needed in the best interests of the juvenile.

(e) The court shall take evidence, find the facts, and shall adjudicate the existence or nonexistence of any of the circumstances set forth in G.S. 7B-1111 which authorize the termination of parental rights of the respondent.

(f) The burden in such proceedings shall be upon the petitioner and all findings of fact shall be based on clear, cogent, and convincing evidence. No husband-wife or physician-patient privilege shall be grounds for excluding any evidence regarding the existence or nonexistence of any circumstance authorizing the termination of parental rights.

Comments: Another statute in this article, G.S. 7A-1106(b)(3), touches on indigent representation but does not appear to require revision. It provides that the summons must advise parents of their right to counsel if they're indigent and directs them to contact the clerk to request counsel.

Section 4.3 deals with Article 18 (venue, petition, and summons in delinquency cases) in G.S. Ch. 7B (Juvenile Code).

Section 4.3. G.S. 7B-1808 reads as rewritten:

7B-1808. First appearance for felony cases.

(a) A juvenile who is alleged in the petition to have committed an offense that would be a felony if committed by an adult shall be summoned to appear before the court for a first appearance within 10 days of the filing of the petition. If the juvenile is in secure or nonsecure custody, the first appearance shall take place at the initial hearing required by G.S. 7B-1906. Unless the juvenile is in secure or nonsecure custody, the court may continue the first appearance to a time certain for good cause.

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- (b) At the first appearance, the court shall:
- (1) Inform the juvenile of the allegations set forth in the petition;
 - (2) Determine whether the juvenile has retained counsel or has been assigned counsel ~~and, if the juvenile is not represented by counsel, appoint counsel for the juvenile;~~
 - (3) If applicable, inform the juvenile of the date of the probable cause hearing, which shall be within 15 days of the first appearance; and
 - (4) Inform the parent, guardian, or custodian that the parent, guardian, or custodian is required to attend all hearings scheduled in the matter and may be held in contempt of court for failure to attend any scheduled hearing.
- If the juvenile is not represented by counsel, counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.
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Section 4.4 deals with Article 19 (temporary custody, secure and nonsecure custody, and custody hearings in delinquency cases) in G.S. Ch. 7B (Juvenile Code).

Section 4.4. G.S. 7B-1906 reads as rewritten:

7B-1906. Secure or nonsecure custody hearings.

(a) No juvenile shall be held under a secure custody order for more than five calendar days or under a nonsecure custody order for more than seven calendar days without a hearing on the merits or an initial hearing to determine the need for continued custody. A hearing conducted under this subsection may not be continued or waived. In every case in which an order has been entered by an official exercising authority delegated pursuant to G.S. 7B-1902, a hearing to determine the need for continued custody shall be conducted on the day of the next regularly scheduled session of district court in the city or county where the order was entered if the session precedes the expiration of the applicable time period set forth in this subsection. If the session does not precede the expiration of the time period, the hearing may be conducted at another regularly scheduled session of district court in the district where the order was entered.

(b) As long as the juvenile remains in secure or nonsecure custody, further hearings to determine the need for continued secure custody shall be held at intervals of no more than 10 calendar days. A subsequent hearing on continued nonsecure custody shall be held within seven business days, excluding Saturdays, Sundays, and legal holidays, of the initial hearing required in subsection (a) of this section and hearings thereafter shall be held at intervals of no more than 30 calendar days. In the case of a juvenile alleged to be delinquent, further hearings may be waived only with the consent of the juvenile, through counsel for the juvenile.

(c) The court shall determine whether a juvenile who is alleged to be delinquent has retained counsel or has been assigned counsel; ~~and, if the juvenile is not represented by counsel, appoint counsel for the juvenile shall be~~ appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(d) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the juvenile and the juvenile's parent, guardian, or custodian an opportunity to introduce evidence, to be heard in their own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that restraints on the juvenile's liberty are necessary and that no less intrusive alternative will suffice. The court shall not be bound by the usual rules of evidence at the hearings.

(e) The court shall be bound by criteria set forth in G.S. 7B-1903 in determining whether continued custody is warranted.

(f) The court may impose appropriate restrictions on the liberty of a juvenile who is released from secure custody, including:

(1) Release on the written promise of the juvenile's parent, guardian, or custodian to produce the juvenile in court for subsequent proceedings;

(2) Release into the care of a responsible person or organization;

(3) Release conditioned on restrictions on activities, associations, residence, or travel if reasonably related to securing the juvenile's presence in court; or

(4) Any other conditions reasonably related to securing the juvenile's presence in court.

(g) If the court determines that the juvenile meets the criteria in G.S. 7B-1903 and should continue in custody, the court shall issue an order to that effect. The order shall be in writing with appropriate findings of fact.

The findings of fact shall include the evidence relied upon in reaching the decision and the purposes which continued custody is to achieve.

(b) The hearing to determine the need to continue custody may be conducted by audio and video transmission which allows the court and the juvenile to see and hear each other. If the juvenile has counsel, the juvenile may communicate fully and confidentially with the juvenile's attorney during the proceeding. Prior to the use of audio and video transmission, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the chief district court judge and approved by the Administrative Office of the Courts.

Section 4.5 deals with Article 20 (basic rights in delinquency and contempt cases) in G.S. Ch. 7B (Juvenile Code).

Section 4.5(a). G.S. 7B-2000 reads as rewritten:

7B-2000. Juvenile's right to counsel; presumption of indigence.

(a) A juvenile alleged to be within the jurisdiction of the court has the right to be represented by counsel in all proceedings. ~~The court shall appoint counsel for the juvenile~~ Counsel for the juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services, unless counsel is retained for the juvenile, in any proceeding in which the juvenile is alleged to be (i) delinquent or (ii) in contempt of court when alleged or adjudicated to be undisciplined.

(b) All juveniles shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any juvenile an affidavit of indigency.

Section 4.5(b). G.S. 7B-2002 reads as rewritten:

7B-2002. Payment of ~~court~~-appointed attorney.

An attorney appointed pursuant to G.S. 7B-2000 or pursuant to any other provision of this Subchapter shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services, fixed by the court in the same manner as fees for attorneys appointed in cases of indigency through the Administrative Office of the Courts. The court may require payment of the attorneys' fees from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2, and 7A-450.3. A person who does not comply with the court's order of payment may be found in civil contempt as provided in G.S. 5A-21.

Comments: The revised section continues to give the court authority to require a third person to pay the costs of representation borne by the state.

Section 4.6 deals with Article 27 (authority over parents or juveniles adjudicated delinquent or undisciplined) in G.S. Ch. 7B (Juvenile Code).

Section 4.6. G.S. 7B-2704 reads as rewritten:

7B-2704. Payment of support or other expenses; assignment of insurance coverage.

At the dispositional hearing or a subsequent hearing, if the court finds that the parent is able to do so, the court may order the parent to:

- (1) Pay a reasonable sum that will cover in whole or in part the support of the juvenile. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4;
- (2) Pay a fee for probation supervision or residential facility costs;
- (3) Assign private insurance coverage to cover medical costs while the juvenile is in secure detention, training school, or other out-of-home placement; and
- (4) Pay ~~court~~-appointed attorneys' fees.

All money paid by a parent pursuant to this section shall be paid into the office of the clerk of superior court.

If the court places a juvenile in the custody of a county department of social services and if the court finds that the parent is unable to pay the cost of the support required by the juvenile, the cost shall be paid by the county department of social services in whose custody the juvenile is placed, provided the juvenile is not receiving care in an institution owned or operated by the State or federal government or any subdivision thereof.

Section 4.7 deals with Article 28 (Interstate Compact on Juveniles).

Section 4.7(a). G.S. 7B-2804 reads as rewritten:

7B-2804 Return of runaways.

(a) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of the parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for the juvenile's return. The petition shall state the name and age of the juvenile, the name of the petitioner, and the basis of entitlement to the juvenile's custody, the circumstances of the running away, the juvenile's location if known at the time application is made, and any other facts that may tend to show that the juvenile who has run away is endangering the juvenile's own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Any further affidavits and other documents as may be deemed proper may be submitted with the petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this Compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not the juvenile is an emancipated minor, and whether or not it is in the best interests of the juvenile to compel the juvenile's return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, the judge shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of the juvenile. The requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to legal custody, and that it is in the best interests and for the protection of the juvenile that the juvenile be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when the juvenile runs away, the court may issue a requisition for the return of the juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing that person to take into custody and detain the juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon the order shall be delivered over to the officer whom the court has appointed to receive the juvenile unless the juvenile first is taken before a judge of a court in the state, who shall inform the juvenile of the demand made for the juvenile's return, and who may ~~appoint~~ determine that counsel or guardian ad litem for the juvenile should be appointed. If the court finds that the requisition is in order, the court shall deliver the juvenile over to the officer appointed to receive the juvenile by the court demanding the juvenile. The court, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding. Upon reasonable information that a person is a juvenile who has run away from another state party to this Compact without the consent of a parent, guardian, person, or agency entitled to legal custody, the juvenile may be taken into custody without a requisition and brought before a judge of the appropriate court who may ~~appoint~~ determine that counsel or guardian ad litem for the juvenile should be appointed and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for the juvenile's own protection and welfare, for such a time not exceeding 90 days as will enable the return of the juvenile to another state party to this Compact

pursuant to a requisition for return from a court of that state. In cases in which the court determines that counsel or guardian ad litem should be provided for the juvenile, appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein the juvenile is found, any criminal charge, or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed within the state a criminal offense or an act of juvenile delinquency, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport the juvenile through any and all states party to this Compact, without interference. Upon return of the juvenile to the state from which the juvenile ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(b) The state to which the juvenile is returned under this Article shall be responsible for payment of the transportation costs of return.

(c) The term "juvenile" as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of the minor.

Comments: The section is revised in the event that it is determined that cases involving runaways should be placed under the jurisdiction of the Office of Indigent Defense Services.

Section 4.7(b). G.S. 7B-2805 reads as rewritten:

7B-2805. Return of escapees and absconders.

(a) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody a delinquent juvenile has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of the delinquent juvenile. The requisition shall state the name and age of the delinquent juvenile, the particulars of the juvenile's adjudication as a delinquent juvenile, the circumstances of the breach of the terms of probation or parole or of the juvenile's escape from an institution or agency vested with legal custody or supervision, and the location of the delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects the delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Any further affidavits and documents as may be deemed proper may be submitted with the requisition. One copy of the requisition shall be filed with the Compact Administrator of the demanding state, there to remain on file subject to the provisions of the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing the person to take into custody and detain such delinquent juvenile. The detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon the order shall be delivered over to the officer whom the appropriate person or authority demanding the juvenile has appointed to receive the juvenile, unless the juvenile is first taken forthwith before a judge of an appropriate court in the state, who shall inform the juvenile of the demand made for the return, and who may ~~appoint~~ determine that counsel or guardian ad litem for the juvenile should be appointed. If the judge of the court finds that the requisition is in order, the judge shall deliver the delinquent juvenile over to the officer whom the appropriate person or authority demanding the juvenile appointed to receive the juvenile. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with legal custody or supervision in any state party to this Compact, the person may be taken into custody in any other state party to this Compact without a requisition. But in that event, the juvenile shall be taken forthwith before a judge of the appropriate court, who may ~~appoint~~ determine that counsel or guardian ad litem for the person should be appointed and who shall determine after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for a length of time, not exceeding 90 days, as will enable detention of the juvenile under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent who has either absconded while on probation or parole or escaped from an institution or agency vested with legal custody or supervision, there is pending in the state

wherein the juvenile is detained any criminal charge or any proceeding to have the juvenile adjudicated a delinquent juvenile for an act committed in the state, or if the juvenile is suspected of having committed a criminal offense or an act of juvenile delinquency within the state, the juvenile shall not be returned without the consent of the state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for the offense or juvenile delinquency. The duly accredited officers of any state party to this Compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport the delinquent juvenile through any and all states party to this Compact, without interference. Upon return to the state from which the juvenile escaped or absconded, the delinquent juvenile shall be subject to any further proceedings appropriate under the laws of that state.

(b) The state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of transportation costs of the return.

(c) If the court determines that counsel or guardian ad litem should be provided under this section, appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services.

Comments: The section is revised in the event that it is determined that cases involving juvenile escapees and absconders should be placed under the jurisdiction of the Office of Indigent Defense Services.

Section 5 deals with Article 2 (record and disposition of seized articles) in Ch. 15 (the original chapter on criminal procedure).

Section 5. G.S. 15-11.1 reads as rewritten:

15-11.1. Seizure, custody and disposition of articles; exceptions.

(a) If a law-enforcement officer seizes property pursuant to lawful authority, he shall safely keep the property under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial. 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. The court may enter such order as may be necessary to assure that the evidence will be available for use as evidence at the time of trial, and will otherwise protect the rights of all parties. Notwithstanding any other provision of law, photographs or other identification or analyses made of the property may be introduced at the time of the trial provided that the court determines that the introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.

(b) In the case of unknown or unapprehended defendants or of defendants willfully absent from the jurisdiction, the court shall ~~have discretion to appoint a guardian ad litem, who shall be a licensed~~ an attorney; should be appointed as guardian ad litem to represent and protect the interest of such unknown or absent defendants. Appointment shall be in accordance with rules adopted by the Office of Indigent Defense Services. The judicial findings concerning identification or value that are made at such hearing whereby property is returned to the lawful owner or a person, firm, or corporation entitled to possession, may be admissible into evidence at the trial. After final judgment all property lawfully seized by or otherwise coming into the possession of law-enforcement authorities shall be disposed of as the court or magistrate in its discretion orders, and may be forfeited and either sold or destroyed in accordance with due process of law.

(b1) Notwithstanding subsections (a) and (b) of this section or any other provision of law, if the property seized is a firearm and the district attorney determines the firearm is no longer necessary or useful as evidence in a criminal trial, the district attorney, after notice to all parties known or believed by the district attorney to have an ownership or a possessory interest in the firearm, including the defendant, shall apply to the court for an order of disposition of the firearm. The judge, after hearing, may order the disposition of the firearm in one of the following ways:

(1) By ordering the firearm returned to its rightful owner, when the rightful owner is someone other than the defendant and upon findings by the court (i) that the person, firm, or corporation determined by the court to be the rightful owner is entitled to possession of the firearm and (ii) that the person, firm, or corporation determined by the court to be the rightful owner of the firearm was unlawfully deprived of the same or had no knowledge or reasonable belief of the defendant's intention to use the firearm unlawfully.

(2) By ordering the firearm returned to the defendant, but only if the defendant is not convicted of any criminal offense in connection with the possession or use of the firearm, the defendant is the rightful owner of the firearm, and the defendant is not otherwise ineligible to possess such firearm.

(3) By ordering the firearm turned over to be destroyed by the sheriff of the county in which the firearm was seized or by his duly authorized agent. The sheriff shall maintain a record of the destruction of the firearm.

This subsection (b1) is not applicable to seizures pursuant to G.S. 113-137 of firearms used only in connection with a violation of Article 22 of Chapter 113 of the General Statutes or any local wildlife hunting ordinance.

(c) Any property, the forfeiture and disposition of which is specified in any general or special law, shall be disposed of in accordance therewith.

Comments: This section is revised in the event that it is determined that cases involving seizure of property of unknown or absent defendants should be placed under the jurisdiction of the Offense of Indigent Defense Services.

One other section, G.S. 15-194(3), touches on appointment of counsel, keying the setting of execution dates to, among other things, the failure of an indigent defendant to make a timely request for appointment of counsel under G.S. 7A-451(c). The section does not appear to require revision.

Several statutes in G.S. Ch. 15A, the subject of this section, touch on indigent representation but may not require revision. Those statutes are as follows:

G.S. 15A-141(4) provides that counsel enters a criminal proceeding by accepting assignment to represent an indigent defendant under Ch. 7A, Art. 36, which is revised in Part II of this legislation to provide for appointment of counsel pursuant to rules adopted by the Offense of Indigent Defense Services.

G.S. 15A-603(c) provides that at first appearance, if the defendant asserts that he or she is indigent and desires counsel, the judge must proceed in accordance with Ch. 7A, Art. 36.

G.S. 15A-611(c) provides that at a probable cause hearing, if the defendant has not waived counsel, the judge must take appropriate action to secure the defendant's right to counsel.

G.S. 15A-942 provides that if the defendant appears at arraignment without counsel, the judge must take any action necessary to effectuate the right to counsel.

G.S. 15A-1242 provides that the defendant may elect to represent himself or herself at trial after thorough inquiry by the trial judge.

G.S. 15A-1345(e) provides that at a probation revocation hearing the probationer, if indigent, is entitled to have counsel appointed.

G.S. 15A-1421 provides that the provisions of Ch. 7A regarding indigent representation apply to motions for appropriate relief.

G.S. 15A-1453 provides that while an appeal is pending the appellate court may direct that additional steps be taken in the trial court, including appointment of counsel.

One other statute, G.S. 15A-1444(e), touches on indigent representation, providing that the presiding superior court judge may order preparation of the record and transcript at state expense in certain cases in which an indigent defendant has pled guilty and seeks appellate review by writ of certiorari. This statute has not been revised.

Section 6.1 deals with Article 14 (nontestimonial identification orders) in G.S. Ch. 15A (Criminal Procedure Act).

Section 6.1. G.S. 15A-279 reads as rewritten:

15A-279. Implementation of order.

(a) Nontestimonial identification procedures may be conducted by any law-enforcement officer or other person designated by the judge issuing the order. The extraction of any bodily fluid must be conducted by a qualified member of the health professions and the judge may require medical supervision for any other test ordered pursuant to this Article when he considers such supervision necessary.

(b) In conducting authorized identification procedures, no unreasonable or unnecessary force may be used.

(c) No person who appears under an order of appearance issued under this Article may be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures, and in no event for longer than six hours, unless he is arrested for an offense.

(d) Any such person is entitled to have counsel present and must be advised prior to being subjected to any nontestimonial identification procedures of his right to have counsel present during any nontestimonial identification procedure and to the appointment of counsel if he cannot afford to retain counsel. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. No statement made during nontestimonial identification procedures by the subject of the procedures shall be admissible in any criminal proceeding against him, unless his counsel was present at the time the statement was made.

(e) Any person who resists compliance with the authorized nontestimonial identification procedures may be held in contempt of the court which issued the order pursuant to the provisions of G.S. 5A-12(a) and G.S. 5A-21(b).

(f) A nontestimonial identification order may not be issued against a person previously subject to a nontestimonial identification order unless it is based on different evidence which was not reasonably available when the previous order was issued.

(g) Resisting compliance with a nontestimonial identification order is not itself grounds for finding probable cause to arrest the suspect, but it may be considered with other evidence in making the determination whether probable cause exists.

Comments: This section is not mentioned in G.S. 7A-451, which lists the circumstances in which a person is entitled to counsel, but appears to deal with the kinds of cases that should be under the jurisdiction of the Office of Indigent Defense Services.

Section 6.2 deals with Article 42 (attendance of witnesses generally) in G.S. Ch. 15A (Criminal Procedure Act).

Section 6.2. G.S. 15A-803 reads as rewritten:

15A-803. Attendance of witnesses.

(a) Material Witness Order Authorized. -- A judge may issue an order assuring the attendance of a material witness at a criminal proceeding. This material witness order may be issued when there are reasonable grounds to believe that the person whom the State or a defendant desires to call as a witness in a pending criminal proceeding possesses information material to the determination of the proceeding and may not be amenable or responsive to a subpoena at a time when his attendance will be sought.

(b) When Order Issued. -- A material witness order may be issued by a judge of superior court at any time after the initiation of criminal proceedings. A judge of district court may issue a material witness order only at the time that a defendant is bound over to superior court at a probable-cause hearing.

(c) How Long Effective. -- A material witness order remains in effect during the period indicated in the order by the issuing judge unless it is sooner modified or vacated by a judge of superior court. In no event may a material witness order which provides for incarceration of the material witness be issued for a period longer than 20 days, but upon review a superior court judge in his discretion may renew an order one or more times for periods not to exceed five days each.

(d) Procedure. -- A material witness order may be obtained upon motion supported by affidavit showing cause for its issuance. The witness must be given reasonable notice, opportunity to be heard and present evidence, and the right of representation by counsel at a hearing on the motion. Counsel for a material witness may be appointed and compensated in the same manner as counsel for an indigent defendant. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. The order must be based on findings of fact supporting its issuance.

(e) Order. -- If the court makes a material witness order:

(1) It may direct release of the witness in the same manner that a defendant may be released under G.S. 15A-534.

(2) It may direct the detention of the witness.

(f) Modification or Vacation. -- A material witness order may be modified or vacated by a judge of superior court upon a showing of new or changed facts or circumstances by the witness, the State, or any defendant.

(g) Securing Attendance or Custody of Material Witness. -- The witness may be required to attend the hearing by subpoena, or if the court considers it necessary, by order for arrest. An order for arrest also may be issued if it becomes necessary to take the witness into custody after issuance of a material witness order.

Comments: This section is revised in the event that it is determined that cases involving witnesses subject to a material witness order should be placed under the jurisdiction of the Office of Indigent Defense Services.

Section 6.3 deals with Art. 73 (criminal jury trial in superior court) in G.S. Ch. 15A (Criminal Procedure Act).

Section 6.3. G.S. 15A-1243 reads as rewritten:

15A-1243. Standby counsel for defendant representing himself.

When a defendant has elected to proceed without the assistance of counsel, the trial judge in his discretion may ~~appoint~~ determine that standby counsel should be appointed to assist the defendant when called upon and to bring to the judge's attention matters favorable to the defendant upon which the judge should rule upon his own motion. Appointment and compensation of standby counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.

Comments: This section is revised in the event it is determined that cases involving standby counsel should be placed under the jurisdiction of the Office of Indigent Defense Services.

Section 6.4 deals with Art. 82 (probation) in G.S. Ch. 15A (Criminal Procedure Act).

Section 6.4. G.S. 15A-1343 reads as rewritten:

15A-1343 Conditions of probation.

(a) In General. -- The court may impose conditions of probation reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so.

(b) Regular Conditions. -- As regular conditions of probation, a defendant must:

(1) Commit no criminal offense in any jurisdiction.

(2) Remain within the jurisdiction of the court unless granted written permission to leave by the court or his probation officer.

(3) Report as directed by the court or his probation officer to the officer at reasonable times and places and in a reasonable manner, permit the officer to visit him at reasonable times, answer all reasonable inquiries by the officer and obtain prior approval from the officer for, and notify the officer of, any change in address or employment.

(4) Satisfy child support and other family obligations as required by the court. If the court requires the payment of child support, the amount of the payments shall be determined as provided in G.S. 50-13.4(c).

(5) Possess no firearm, explosive device or other deadly weapon listed in G.S. 14-269 without the written permission of the court.

(6) Pay a supervision fee as specified in subsection (c1).

(7) Remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip him for suitable employment. A defendant pursuing a course of study or of vocational training shall abide by all of the rules of the institution providing the education or training, and the probation officer shall forward a copy of the probation judgment to that institution and request to be notified of any violations of institutional rules by the defendant.

(8) Notify the probation officer if he fails to obtain or retain satisfactory employment.

(9) Pay the costs of court, any fine ordered by the court, and make restitution or reparation as provided in subsection (d).

(10) Pay the State of North Carolina for the costs of appointed counsel, public defender, or appellate defender to represent him in the case(s) for which he was placed on probation.

(11) At a time to be designated by his probation officer, visit with his probation officer a facility maintained by the Division of Prisons.

In addition to these regular conditions of probation, a defendant required to serve an active term of imprisonment as a condition of special probation pursuant to G.S. 15A-1344(e) or G.S. 15A-1351(a) shall, as additional regular conditions of probation, obey the rules and regulations of the Department of Correction governing the conduct of inmates while imprisoned and report to a probation officer in the State of North Carolina within 72 hours of his discharge from the active term of imprisonment.

Regular conditions of probation apply to each defendant placed on supervised probation unless the presiding judge specifically exempts the defendant from one or more of the conditions in open court and in the judgment of the court. It is not necessary for the presiding judge to state each regular condition of probation in open court, but the conditions must be set forth in the judgment of the court.

Defendants placed on unsupervised probation are subject to the provisions of this subsection, except that defendants placed on unsupervised probation are not subject to the regular conditions contained in subdivisions (2), (3), (6), (8), and (11).

(b1) Special Conditions. -- In addition to the regular conditions of probation specified in subsection (b), the court may, as a condition of probation, require that during the probation the defendant comply with one or more of the following special conditions:

(1) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(2) Attend or reside in a facility providing rehabilitation, counseling, treatment, social skills, or employment training, instruction, recreation, or residence for persons on probation.

(2a) Submit to a period of residential treatment in the Intensive Motivational Program of Alternative Correctional Treatment (IMPACT), pursuant to G.S. 15A-1343.1, for a minimum of 90 days or a maximum of 120 days and abide by all rules and regulations of that program. This condition may also include a period of supervision through the Post-Boot Camp Probation Program.

(3) Submit to imprisonment required for special probation under G.S. 15A-1351(a) or G.S. 15A-1344(e).

(3a) Repealed by Session Laws 1997-57, s. 3, effective December 1, 1997.

(3b) Submit to supervision by officers assigned to the Intensive Supervision Program established pursuant to G.S. 143B-262(c), and abide by the rules adopted for that Program. Unless otherwise ordered by the court, intensive supervision also requires multiple contacts by a probation officer per week, a specific period each day during which the offender must be at his or her residence, and that the offender remain gainfully and suitably employed or faithfully pursue a course of study or of vocational training that will equip the offender for suitable employment.

(3c) Remain at his or her residence unless the court or the probation officer authorizes the offender to leave for the purpose of employment, counseling, a course of study, or vocational training. The offender shall be required to wear a device which permits the supervising agency to monitor the offender's compliance with the condition electronically.

(4) Surrender his driver's license to the clerk of superior court, and not operate a motor vehicle for a period specified by the court.

(5) Compensate the Department of Environment and Natural Resources or the North Carolina Wildlife Resources Commission, as the case may be, for the replacement costs of any marine and estuarine resources or any wildlife resources which were taken, injured, removed, harmfully altered, damaged or destroyed as a result of a criminal offense of which the defendant was convicted. If any investigation is required by officers or agents of the

Department of Environment and Natural Resources or the Wildlife Resources Commission in determining the extent of the destruction of resources involved, the court may include compensation of the agency for investigative costs as a condition of probation. This subdivision does not apply in any case governed by G.S. 143-215.3(a)(7).

(6) Perform community or reparation service and pay any fee required by law or ordered by the court for participation in the community or reparation service program.

(7) Submit at reasonable times to warrantless searches by a probation officer of his person and of his vehicle and premises while he is present, for purposes specified by the court and reasonably related to his probation supervision, but the probationer may not be required to submit to any other search that would otherwise be unlawful. Whenever the warrantless search consists of testing for the presence of illegal drugs, the probationer may also be required to reimburse the Department of Correction for the actual cost of drug screening and drug testing, if the results are positive.

(8) Not use, possess, or control any illegal drug or controlled substance unless it has been prescribed for him by a licensed physician and is in the original container with the prescription number affixed on it; not knowingly associate with any known or previously convicted users, possessors or sellers of any such illegal drugs or controlled substances; and not knowingly be present at or frequent any place where such illegal drugs or controlled substances are sold, kept, or used.

(8a) Purchase the least expensive annual statewide license or combination of licenses to hunt, trap, or fish listed in G.S. 113-270.2, 113-270.3, 113-270.5, 113-271, 113-272, and 113-272.2 that would be required to engage lawfully in the specific activity or activities in which the defendant was engaged and which constitute the basis of the offense or offenses of which he was convicted.

(9) If the offense is one in which there is evidence of physical, mental or sexual abuse of a minor, the court should encourage the minor and the minor's parents or custodians to participate in rehabilitative treatment and may order the defendant to pay the cost of such treatment.

(10) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

(b2) Special Conditions of Probation for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. -- As special conditions of probation, a defendant who has been convicted of an offense which is a reportable conviction as defined in G.S. 14-208.6(4), or which involves the physical, mental, or sexual abuse of a minor, must:

(1) Register as required by G.S. 14-208.7 if the offense is a reportable conviction as defined by G.S. 14-208.6(4).

(2) Participate in such evaluation and treatment as is necessary to complete a prescribed course of psychiatric, psychological, or other rehabilitative treatment as ordered by the court.

(3) Not communicate with, be in the presence of, or found in or on the premises of the victim of the offense.

(4) Not reside in a household with any minor child if the offense is one in which there is evidence of sexual abuse of a minor.

(5) Not reside in a household with any minor child if the offense is one in which there is evidence of physical or mental abuse of a minor, unless the court expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the minor child's best interest to allow the probationer to reside in the same household with a minor child.

(6) Satisfy any other conditions determined by the court to be reasonably related to his rehabilitation.

Defendants subject to the provisions of this subsection shall not be placed on unsupervised probation.

(c) Statement of Conditions. -- A defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which he is being released. If any modification of the terms of that probation is subsequently made, he must be given a written statement setting forth the modifications.

(c1) Supervision Fee. -- Any person placed on supervised probation pursuant to subsection (a) shall pay a supervision fee of twenty dollars (\$20.00) per month, unless exempted by the court. The court may exempt a person from paying the fee only for good cause and upon written motion of the person placed on supervised probation. No person shall be required to pay more than one supervision fee per month. The court may require that the fee be paid in advance or in a lump sum or sums, and a probation officer may require payment by such methods if he is authorized by subsection (g) to determine the payment schedule. Supervision fees must be paid to the clerk of court for the county in which the judgment was entered or the deferred prosecution agreement was filed. Fees collected under this subsection shall be transmitted to the State for deposit into the State's General Fund.

(d) Restitution as a Condition of Probation. -- As a condition of probation, a defendant may be required to make restitution or reparation to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution or

reparation is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. As used herein, "reparation" shall include but not be limited to the performing of community services, volunteer work, or doing such other acts or things as shall aid the defendant in his rehabilitation. As used herein "aggrieved party" includes individuals, firms, corporations, associations, other organizations, and government agencies, whether federal, State or local, including the Crime Victims Compensation Fund established by G.S. 15B-23. A government agency may benefit by way of reparation even though the agency was not a party to the crime provided that when reparation is ordered, community service work shall be rendered only after approval has been granted by the owner or person in charge of the property or premises where the work will be done.

(e) Costs of Court and Appointed Counsel. -- Unless the court finds there are extenuating circumstances, any person placed upon supervised or unsupervised probation under the terms set forth by the court shall, as a condition of probation, be required to pay all court costs and costs for appointed counsel or public defender in the case in which he was convicted. The cost of appointed counsel or public defender services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The court shall determine the amount ~~due~~ of those costs to be repaid and the method of payment.

(f) Repealed by Session Laws 1983, c. 561, s. 5.

(g) Probation Officer May Determine Payment Schedules. -- If a person placed on supervised probation is required as a condition of that probation to pay any moneys to the clerk of superior court, the court may delegate to a probation officer the responsibility to determine the payment schedule. The court may also authorize the probation officer to transfer the person to unsupervised probation after all the moneys are paid to the clerk. If the probation officer transfers a person to unsupervised probation, he must notify the clerk of that action.

Comments: Subsection (e) is revised to reflect that the Office of Indigent Defense Services determines the value of services while the court determines whether the defendant must repay all or some of that amount.

Subsection (b)(10) also touches on indigent representation, allowing repayment of counsel costs to be imposed as a regular condition of probation; that subsection does not appear to require revision in light of the changes to subsection (e).

Section 7 deals with Art. 4 (discharge of insolvent debtors) in G.S. Ch. 23 (debtor and creditor).

Section 7. G.S. 23-30.1 reads as rewritten:

23-30.1. Provisional release.

Every person who has filed a petition under the provisions of G.S. 23-30 shall be brought before a judge within 72 hours after filing the petition and shall be provisionally released from imprisonment unless a hearing shall be held and the creditor shall establish that the prisoner has fraudulently concealed assets. If, at the time he is brought before a judge, the prisoner makes a showing of indigency, ~~the judge shall appoint counsel~~ shall be appointed for him in accordance with rules adopted by the Office of Indigent Defense Services. A provisional release under this section shall not constitute a discharge of the debtor, and the creditor may oppose the discharge by suggesting fraud even if he has unsuccessfully attempted to oppose the provisional release on the basis of fraudulent concealment. The debtor may be provisionally released even though actual service upon the creditor has not been accomplished if 72 hours has passed since the debtor delivered the notice to the sheriff for service upon the creditor.

G.S. Ch. 35 has only one section, G.S. 35-45, that touches on indigent representation. It provides that in sterilization proceedings a request for counsel by an indigent person shall be processed in accordance with G.S. Ch. 7A. In light of the changes to Ch. 7A, no changes appear to be necessary to Ch. 35.

Section 8.1 deals with Art. 1 (determination of incompetence) in G.S. Ch. 35A (incompetency and guardianship).

Section 8.1. G.S. 35A-1107 reads as rewritten:

35A-1107. Right to counsel or guardian ad litem.

The respondent is entitled to be represented by counsel of his own choice or by ~~court~~ an appointed guardian ad litem. Upon filing of the petition, ~~the clerk shall appoint as guardian ad litem an attorney who~~ an attorney shall be appointed as guardian ad litem to represent the respondent unless the respondent retains his own counsel, in which event the ~~clerk may discharge the guardian ad litem~~ may be discharged. Appointment and discharge of an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent Defense Services.

Comments: One other section in this article, G.S. 35A-1116, touches on indigent representation, requiring the AOC to bear certain costs in incompetency cases. That section has not been revised because the share of expenses attributable to representation provided by the Office of Indigent Defense Services could be handled internally by the AOC and Office of Indigent Defense Services.

Section 8.2 deals with Art. 3 (restoration to competency) in G.S. Ch. 35A (incompetency and guardianship).

35A-1130. Proceedings before clerk.

(a) The guardian, ward, or any other interested person may petition for restoration of the ward to competency by filing a motion in the cause of the incompetency proceeding with the clerk who is exercising jurisdiction therein. The motion shall be verified and shall set forth facts tending to show that the ward is competent.

(b) Upon receipt of the motion, the clerk shall set a date, time, and place for a hearing, which shall be not less than 10 days or more than 30 days from service of the motion and notice of hearing on the ward and the guardian, or on the one of them who is not the petitioner, unless the clerk for good cause directs otherwise. The petitioner shall cause notice and a copy of the motion to be served on the guardian and ward (but not on one who is the petitioner) and any other parties to the incompetency proceeding. Service shall be in accordance with provisions of G.S. 1A-1, Rule 4, Rules of Civil Procedure.

(c) At the hearing on the motion, the ward shall be entitled to be represented by counsel or guardian ad litem, and ~~the clerk shall appoint a guardian ad litem~~ shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services if the ward is indigent and not represented by counsel. Upon motion of any party or the clerk's own motion, the clerk may order a multidisciplinary evaluation. The ward has a right, upon request by him, his counsel, or his guardian ad litem to trial by jury. Failure to request a trial by jury shall constitute a waiver of the right. The clerk may nevertheless require trial by jury in accordance with G.S. 1A-1, Rule 39(b), Rules of Civil Procedure, by entering an order for trial by jury on his own motion. Provided, if there is a jury in a proceeding for restoration to competency, it shall be a jury of six persons selected in accordance with the provisions of Chapter 9 of the General Statutes.

(d) If the clerk or jury finds by a preponderance of the evidence that the ward is competent, the clerk shall enter an order adjudicating that the ward is restored to competency. Upon such adjudication, the ward is authorized to manage his affairs, make contracts, control and sell his property, both real and personal, and exercise all rights as if he had never been adjudicated incompetent.

(e) The filing and approval of final accounts from the guardian and the discharge of the guardian shall be as provided in Subchapter II of this Chapter.

(f) If the clerk or jury fails to find that the ward should be restored to competency, the clerk shall enter an order denying the petition. The ward may appeal from the clerk's order to the superior court for trial de novo.

Section 9 deals with Art. 1A (treatment of minors) in G.S. Ch. 90 (medicine and allied occupations).

90-21.8. Procedure for waiver of parental consent.

(a) The requirements and procedures under Part 2 of this Article are available and apply to unemancipated minors seeking treatment in this State.

(b) The court shall ensure that the minor or her guardian ad litem is given assistance in preparing and filing the petition and shall ensure that the minor's identity is kept confidential.

(c) The minor may participate in proceedings in the court on her own behalf or through a guardian ad litem. The court shall advise her that she has a right to court-appointed counsel, and ~~shall provide her with counsel~~ shall be provided upon her request in accordance with rules adopted by the Office of Indigent Defense Services.

(d) Court proceedings under this section shall be confidential and shall be given precedence over other pending matters necessary to ensure that the court may reach a decision promptly. In no case shall the court fail to rule within seven days of the time of filing the application. This time limitation may be extended at the request of the minor. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the minor; the nature, possible consequences, and alternatives to the abortion; and any other evidence that the court may find useful in determining whether the parental consent requirement shall be waived.

(e) The parental consent requirement shall be waived if the court finds:

(1) That the minor is mature and well-informed enough to make the abortion decision on her own; or

(2) That it would be in the minor's best interests that parental consent not be required; or

(3) That the minor is a victim of rape or of felonious incest under G.S. 14-178.

(f) The court shall make written findings of fact and conclusions of law supporting its decision and shall order that a confidential record of the evidence be maintained. If the court finds that the minor has been a victim of incest, whether felonious or misdemeanor, it shall advise the Director of the Department of Social Services of its findings for further action pursuant to Article 3 of Chapter 7B of the General Statutes.

(g) If the female petitioner so requests in her petition, no summons or other notice may be served upon the parents, guardian, or custodian of the minor female.

(h) The minor may appeal an order issued in accordance with this section. The appeal shall be a de novo hearing in superior court. The notice of appeal shall be filed within 24 hours from the date of issuance of the district court order. The de novo hearing may be held out of district and out of session and shall be held as soon as possible within seven days of the filing of the notice of appeal. The record of the de novo hearing is a confidential record and shall not be open for general public inspection. The Chief Justice of the North Carolina Supreme Court shall adopt rules necessary to implement this subsection.

(i) No court costs shall be required of any minor who avails herself of the procedures provided by this section.

Section 10 deals with Art. 6 (Protection of the Abused, Neglected, or Exploited Disabled Adult Act) in Ch. 108A (social services).

108A-105. Provision of protective services to disabled adults who lack the capacity to consent; hearing, findings, etc.

(a) If the director reasonably determines that a disabled adult is being abused, neglected, or exploited and lacks capacity to consent to protective services, then the director may petition the district court for an order authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the disabled adult is in need of protective services and lacks capacity to consent to them.

(b) The court shall set the case for hearing within 14 days after the filing of the petition. The disabled adult must receive at least five days' notice of the hearing. He has the right to be present and represented by counsel at the hearing. If the person, in the determination of the judge, lacks the capacity to waive the right to counsel, then ~~the court shall appoint~~ a guardian ad litem shall be appointed pursuant to G.S. 1A-1, Rule 17, and rules adopted by the Office of Indigent Defense Services. If the person is indigent, the cost of representation shall be borne by the State.

(c) If, at the hearing, the judge finds by clear, cogent, and convincing evidence that the disabled adult is in need of protective services and lacks capacity to consent to protective services, he may issue an order authorizing the provision of protective services. This order may include the designation of an individual or organization to be responsible for the performing or obtaining of essential services on behalf of the disabled adult or otherwise consenting to protective services in his behalf. Within 60 days from the appointment of such an individual or organization, the court will conduct a review to determine if a petition should be initiated in accordance with Chapter 35A; for good cause shown, the court may extend the 60 day period for an additional 60 days, at the end of which it shall conduct a review to determine if a petition should be initiated in accordance with Chapter 35A. No disabled adult may be committed to a mental health facility under this Article.

(d) A determination by the court that a person lacks the capacity to consent to protective services under the provisions of this Chapter shall in no way affect incompetency proceedings as set forth in Chapters 33, 35 or 122 of the General Statutes of North Carolina, or any other proceedings, and incompetency proceedings as set forth in Chapters 33, 35, or 122 shall have no conclusive effect upon the question of capacity to consent to protective services as set forth in this Chapter.

Comments: One other section, G.S. 108A-101(k), touches on indigent representation, providing that the meaning of "indigent" is as defined in G.S. 7A-450. That section does not appear to require revision.

A few statutes in G.S. Chapter 122C, the subject of this section, touch on indigent representation but do not appear to require revision. Those statutes are as follows:

G.S. 122C-232(c), which deals with hearing rights, incorporates the provisions of Part 7 of Article 5 of this chapter, which is revised below to reflect the role of the Office of Indigent Defense Services.

G.S. 122C-261(c) and 122C-281(c) require the clerk or magistrate to determine indigency in accordance with G.S. 7A-450.

Section 11 deals with Art. 5 (procedures for admission and discharge of clients) in G.S. Ch. 122C (Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985).

Section 11.1. G.S. 122C-224.1 reads as rewritten:

122C-224.1. Duties of clerk of court.

(a) Within 48 hours of receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, ~~the clerk of superior court, under direction of the district court judge, an attorney shall be appointed an attorney~~ for the minor in accordance with rules adopted by the Office of Indigent Defense Services. When a minor has been admitted to a State facility for the mentally ill, the attorney appointed shall be the attorney employed in accordance with G.S. 122C-270(a) through (c). All minors shall be conclusively presumed to be indigent, and it shall not be necessary for the court to receive from any minor an affidavit of indigency. The attorney shall be paid a reasonable fee in accordance with rules adopted by the Office of Indigent Defense Services ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency~~. The judge may require payment of the attorney's fee from a person other than the minor as provided in G.S. 7A-450.1 through G.S. 7A-450.4.

(b) Upon receipt of notice that a minor has been admitted to a 24-hour facility wherein his freedom of movement will be restricted, the clerk shall calendar a hearing to be held within 15 days of admission for the purpose of review of the minor's admission. Notice of the time and place of the hearing shall be given as provided in G.S. 1A-1, Rule 4(j) to the attorney in lieu of the minor, as soon as possible but not later than 72 hours before the scheduled hearing. Notice of the hearing shall be sent to the legally responsible person and the responsible professional as soon as possible but not later than 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address.

(c) The clerk shall schedule all hearings and rehearings and send all notices as required by this Part.

Comments: The revisions in this and succeeding statutes in Ch. 122C reflect the responsibility of the Office of Indigent Defense Services for counsel services in commitment matters.

Section 11.2. G.S. 122C-267 reads as rewritten:

122C-267. Outpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody pursuant to G.S. 122C-261(e). Upon its own motion or upon motion of the proposed outpatient treatment physician or the respondent, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the proposed outpatient treatment physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence.

(d) At the hearing to determine the necessity and appropriateness of outpatient commitment, the respondent need not, but may, be represented by counsel. However, if the court determines that the legal or factual issues raised are of such complexity that the assistance of counsel is necessary for an adequate presentation of the merits or that the respondent is unable to speak for himself, the court may continue the case for not more than five days and order the appointment of counsel for an indigent respondent. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Hearings may be held at the area facility in which the respondent is being treated, if it is located within the judge's district court district as defined in G.S. 7A-133, or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the client is indigent, the copies shall be provided at State expense.

(h) To support an outpatient commitment order, the court is required to find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-263(d)(1). The court shall record the facts which support its findings and shall show on the order the center or physician who is responsible for the management and supervision of the respondent's outpatient commitment.

Section 11.3. G.S. 122C-268 reads as rewritten:

122C-268. Inpatient commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into law enforcement custody pursuant to G.S. 122C-261(e) or G.S. 122C-262. A continuance of not more than five days may be granted upon motion of:

- (1) The court;
- (2) Respondent's counsel; or
- (3) The State, sufficiently in advance to avoid movement of the respondent.

(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held for respondents admitted pursuant to this Part or G.S. 15A-1321 at the facility to which he is assigned.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill.

(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found incapable of proceeding may represent the State's interest at the hearing.

(d) The respondent shall be represented by counsel of his choice; or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services ~~by the court.~~

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) Hearings may be held in an appropriate room not used for treatment of clients at the facility in which the respondent is being treated if it is located within the judge's district court district as defined in G.S. 7A-133 or in

the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(h) The hearing shall be closed to the public unless the respondent requests otherwise.

(i) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(j) To support an inpatient commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent is mentally ill and dangerous to self, as defined in G.S. 122C-3(11)a., or dangerous to others, as defined in G.S. 122C-3(11)b. The court shall record the facts that support its findings.

Section 11.4. G.S. 122C-268.1 reads as rewritten:

122C-268.1. Inpatient commitment; hearing following automatic commitment.

(a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.

(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing, rehearings, and supplemental rehearings. Notwithstanding the provisions of G.S. 122C-269, if the district attorney elects to represent the State's interest, upon motion of the district attorney, the venue for the hearing, rehearings, and supplemental rehearings shall be the county in which the respondent was found not guilty by reason of insanity. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.

(c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).

(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed in accordance with rules adopted by the Office of Indigent Defense Services ~~by the court.~~

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, "trial division" means either the superior court division or the district court division of the General Court of Justice.

(h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.

(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he (i) no longer has a mental illness as defined in G.S. 122C-3(21), or (ii) is no longer dangerous to others as defined in G.S. 122C-3(11)b. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burden of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days. The court shall make a written record of the facts that support its findings.

(j) Nothing in this section shall limit the respondent's right to habeas corpus relief.

Section 11.5. G.S. 122C-269 reads as rewritten:

122C-269. Venue of hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending hearing as provided in G.S. 122C-268, G.S. 122C-268.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue,

the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-264. ~~The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.~~

(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b), G.S. 122C-276.1, or subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change.

Section 11.6. G.S. 122C-270 reads as rewritten:

122C-270 Attorneys to represent the respondent and the State.

(a) ~~The senior regular resident superior court judge of~~ In a superior court district or set of districts as defined in G.S. 7A-41.1 in which a State facility for the mentally ill is located, the Commission on Indigent Defense Services shall appoint an attorney licensed to practice in North Carolina as special counsel for indigent respondents who are mentally ill. ~~These~~ special counsel shall serve at the pleasure of the Commission ~~appointing judge~~, may not privately practice law, and shall receive annual compensation within the salary range for assistant public defenders ~~district attorneys~~ as fixed by the Office of Indigent Defense Services ~~Administrative Officer of the Courts~~. The special counsel shall represent all indigent respondents at all hearings, rehearings, and supplemental hearings held at the State facility and on appeals held under this Article. Special counsel shall determine indigency in accordance with G.S. 7A-450(a). Indigency is subject to redetermination by the presiding judge.

(b) The State facility shall provide suitable office space for the counsel to meet privately with respondents. ~~The Administrative Office of the Courts~~ Office of Indigent Defense Services shall provide secretarial and clerical service and necessary equipment and supplies for the office.

(c) In the event of a vacancy in the office of special counsel, counsel's incapacity, or a conflict of interest, counsel for indigents at hearings or rehearings may be assigned in accordance with rules adopted by the Office of Indigent Defense Services ~~by a district judge of the district~~. No mileage or compensation for travel time is paid to a counsel appointed pursuant to this subsection. Counsel may also be so assigned when, in the opinion of the Director of the Office of Indigent Defense Services ~~Administrative Officer of the Courts~~, the volume of cases warrants.

(d) At hearings held in counties other than those designated in subsection (a) of this section, ~~a district court judge shall appoint~~ counsel for indigent respondents shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services from members of the bar of the county in accordance with G.S. 122C-268(d).

(e) Counsel assigned to represent an indigent respondent at the initial district court hearing is also responsible for perfecting and concluding an appeal, if there is one. Upon completion of an appeal, or upon transfer of the respondent to a State facility for the mentally ill, if there is no appeal, assigned counsel is discharged. If the respondent is committed to a non-State 24-hour facility, assigned counsel remains responsible for his representation until discharged by order of district court, until the respondent is unconditionally discharged from the facility, or until the respondent voluntarily admits himself to the facility.

(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at commitment hearings, rehearings and supplemental hearings held for respondents admitted to the University of North Carolina Hospitals at Chapel Hill pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321.

Comments: Consistent with other changes, subsections (a) through (c) are revised to make the Commission on Indigent Defense Services the appointing authority for special counsel and responsible for special counsel services.

Subsection (d) is also revised to reflect that the Office of Indigent Defense Services oversees services in counties that do not have special counsel offices.

Subsection (e) addresses the responsibilities of counsel once assigned to a case. G.S. 122C-289 contains similar language. Neither section is revised.

Section 11.7. G.S. 122C-286 is reads as rewritten:

122C-286. Commitment; district court hearing.

(a) A hearing shall be held in district court within 10 days of the day the respondent is taken into custody. Upon its own motion or upon motion of the responsible professional, the respondent, or the State, the court may grant a continuance of not more than five days.

(b) The respondent shall be present at the hearing. A subpoena may be issued to compel the respondent's presence at a hearing. The petitioner and the responsible professional of the area authority or the proposed treating physician or his designee may be present and may provide testimony.

(c) Certified copies of reports and findings of physicians and psychologists and medical records of previous and current treatment are admissible in evidence, but the respondent's right to confront and cross-examine witnesses shall not be denied.

(d) The respondent may be represented by counsel of his choice. If the respondent is indigent within the meaning of G.S. 7A-450, ~~the court shall appoint counsel~~ shall be appointed to represent him in accordance with rules adopted by the Office of Indigent Defense Services.

(e) Hearings may be held at a facility if it is located within the judge's district court district as defined in G.S. 7A-133 or in the judge's chambers. A hearing may not be held in a regular courtroom, over objection of the respondent, if in the discretion of a judge a more suitable place is available.

(f) The hearing shall be closed to the public unless the respondent requests otherwise.

(g) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of a district court judge. If the respondent is indigent, the copies shall be provided at State expense.

(h) To support a commitment order, the court shall find by clear, cogent, and convincing evidence that the respondent meets the criteria specified in G.S. 122C-283(d)(1). The court shall record the facts that support its findings and shall show on the order the area authority or physician who is responsible for the management and supervision of the respondent's treatment.

Section 11.8. G.S. 122C-286.1 reads as rewritten:

122C-286.1. Venue of district court hearing when respondent held at a 24-hour facility pending hearing.

(a) In all cases where the respondent is held at a 24-hour facility pending the district court hearing as provided in G.S. 122C-286, unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated.

(b) An official of the facility shall immediately notify the clerk of superior court of the county in which the facility is located of a determination to hold the respondent pending hearing. That clerk shall request transmittal of all documents pertinent to the proceedings from the clerk of superior court where the proceedings were initiated. The requesting clerk shall assume all duties set forth in G.S. 122C-284. ~~The requesting clerk shall appoint as counsel for indigent respondents the counsel provided for in G.S. 122C-286(d)~~ shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

Section 12 deals with Art. 4 (paroles) in G.S. Ch. 148 (state prison system).

Section 12. G.S. 148.62.1 reads as rewritten:

148-62.1. Entitlement of indigent parolee and post-release supervisee to counsel, in discretion of Post-Release Supervision and Parole Commission.

Any parolee or post-release supervisee who is an indigent under the terms of G.S. 7A-450(a) may be determined entitled, in the discretion of the Post-Release Supervision and Parole Commission, to the services of counsel at State expense at a parole revocation hearing at which either:

(1) The parolee or post-release supervisee claims not to have committed the alleged violation of the parole or post-release supervision conditions; or

(2) The parolee or post-release supervisee claims there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, even if the violation is a matter of public record or is uncontested, and that the reasons are complex or otherwise difficult to develop or present; or

(3) The parolee or post-release supervisee is incapable of speaking effectively for himself; and where the Commission feels, on a case by case basis, that such appointment in accordance with either (1), (2) or (3) above is necessary for fundamental fairness.

If the parolee or post-release supervisee is determined to be indigent and entitled to services of counsel, counsel shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

The following rules of court touch on indigent representation and may need to be addressed at a later time:

Rule 24, General Rules of Practice for Superior and District Courts (pretrial conference in capital cases) provides that the court may appoint assistant counsel in advance of the pretrial conference.

Rule 9(a)(3)h, Rules of Appellate Procedure (record on appeal) provides that the record shall include any order finding the defendant indigent and assigning counsel.

PART IV. TRANSITION, EFFECTIVE DATE, AND APPROPRIATIONS

Section 13.1. Except as otherwise provided in this Part, this act is effective July 1, 2001.

Section 13.2. G.S. 7A-498, 7A-498.1, 7A-498.2, 7A-498.4, 7A-498.5, and 7A-498.6 in Part I of this act are effective when this bill becomes law; however, except as otherwise provided in this Part, no rules, standards, or other regulations issued by the Commission on Indigent Defense Services, and no decisions regarding the actual delivery of services, shall take effect prior to July 1, 2001, and all authority over the expenditure of funds shall remain with the Director of the Administrative Office of the Courts prior to July 1, 2001. The Commission shall be responsible for the expenditure of funds for all cases pending on or after July 1, 2001.

Section 13.3. Effective when this bill becomes law, the Commission on Indigent Defense Services shall be responsible for appointing public defenders and the appellate defender to any new term or to fill any vacancy. To that end, G.S. 7A-498.7(b) in Part I of this act is effective when this bill becomes law, and G.S. 7A-466(d) and (e) and G.S. 7A-486.2(a) and (b) in Part II of this act are repealed effective when this bill becomes law. Persons holding the position of public defender or appellate defender as of the date this bill becomes law are entitled to serve the remainder of their terms, and the Commission on Indigent Defense Services may not take any action to shorten their terms, unless such persons are removed pursuant to the applicable statutes on removal. After July 1, 2001, public defender offices and the appellate defender's office shall automatically continue in operation unless otherwise determined by the Commission on Indigent Defense Services. The Commission shall adopt standards for the operation of the appellate defender's office after July 1, 2001, including standards on salary and longevity pay consistent with G.S. 7A-498.7.

Section 13.4. No later than September 15, 2000, the Commission on Indigent Defense Services shall hold its first meeting. All appointments to the Commission shall be made by the appointing authorities specified in G.S. 7A-498.4(b)(1) through (10) by September 1, 2000. The appointee of the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the Commission shall make the appointments specified in G.S. 7A-498.4(b)(11) and shall elect its chair.

Section 13.5. The Director of the Administrative Office of the Courts shall assist the Chair of the Commission on Indigent Defense Services in retaining the Commission's initial Director of Indigent Defense Services. The Director of the Administrative Office of the Courts and the Chair of the Commission shall recruit and interview prospective candidates and shall submit at least three names to the full Commission for its consideration. The Commission may hire its initial Director of Indigent Defense Services from that list or may request that the Chair of the Commission and Director of the Administrative Office of the Courts submit additional names.

Section 13.6. The Commission on Indigent Defense Services shall report on or before May 1, 2001, to the Chairs of the Senate and House Appropriations Committees and the Chairs of the Senate and House Appropriations Subcommittees on Justice and Public Safety regarding (a) a plan for the orderly transfer of budget and related authority from the Administrative Office

of the Courts to the Commission on Indigent Defense Services, effective July 1, 2001, (b) the rules, standards, and other regulations developed by the Commission for the delivery of indigent defense services, and (c) other matters for implementation of the provisions of this act.

Section 13.7. From the funds appropriated to the Indigent Persons' Attorney Fee Fund for the 2000-01 fiscal year, the sum of five hundred thirty-five thousand six hundred forty-four dollars (\$535,644) shall be used for the operations and expenses of the Commission on Indigent Defense Services and its staff.

Comments: This part contains two principal effective dates so that the Commission has time to become established before it assumes responsibility for indigent representation.

The provisions in Part I establishing the Office of Indigent Defense Services, Commission, and position of Director are effective as soon as the act becomes law, but the Commission does not assume responsibility over indigent representation until July 1, 2001. Between the time the bill becomes law and July 1, 2001, the Commission must develop rules for an orderly transition and continuation of services. For some districts, the rules may establish new procedures and services; for others the rules may provide that the current system for providing and compensating counsel remains the same until other procedures are adopted.

The effective date of G.S. 7A-498.7, which replaces the existing statutes on public defenders, is also delayed until July 1, 2001, except that once the statutes establishing the Commission are effective, the Commission appoints the public defenders and the appellate defender with whom it will be working. Parts II and III of the legislation, which amend the existing statutes on indigent representation, likewise are not effective until July 1, 2001, except for the provisions on appointment of public defenders and the appellate defender.

Section 13.4 of this part places a time limit on appointment of Commission members so that the Commission will have time to recruit and hire a Director and begin its work well in advance of the date it assumes responsibility for indigent representation.

APPENDIX C

**ESTIMATED FIRST YEAR BUDGET AND STAFF REQUIREMENTS
TO IMPLEMENT THE RECOMMENDATIONS
OF THE INDIGENT DEFENSE STUDY COMMISSION**

| | Base salary | Recurring Benefits, Supplies, Etc.* | Subtotal Recurring | Non-recur'g Equip. Etc.* | Grand Total Full First Year | Est. 1st Year, Delayed Eff. Dates |
|--|------------------|-------------------------------------|--------------------|--------------------------|-----------------------------|---|
| Staff | | | | | | |
| Executive Director: execute all statutory authorities; nominally appointed to all cases/supervising all regional personnel; manage all programs, hire/ supervise staff; recommend, implement commission standards; maintain relations with bar and other agencies | \$97,000 | \$31,304 | \$128,304 | \$40,910 | \$169,214 | Eff. 10/1/00, \$137,138 |
| Associate Director: execute all duties of Director as delegated by Director | \$80,000 | \$21,312 | \$101,312 | \$10,287 | \$111,599 | All Other Staff Eff. 11/1/00, \$339,881 |
| Chief Financial Officer: responsible for all budget accounting & other oversight, forecasting, contractual systems and oversight, and related business operations of the program | \$65,000 | \$18,541 | \$83,541 | \$10,087 | \$93,628 | |
| Information systems manager: develop coordinated automation needs incl. hardware and software requirements, database design and maintenance, and statistical systems | \$65,000 | \$18,541 | \$83,541 | \$10,087 | \$93,628 | |
| Research analyst: programmatic fiscal, case-load, and statistical research & planning; grants | \$55,000 | \$16,693 | \$71,693 | \$10,087 | \$81,780 | |
| Administrative Assistant: | \$38,809 | \$12,718 | \$51,527 | \$6,788 | \$58,315 | |
| Secretary: | \$27,491 | \$9,317 | \$36,808 | \$6,930 | \$43,738 | |
| TOTAL STAFF: | \$428,300 | \$128,426 | \$556,726 | \$95,176 | \$651,902 | \$477,019 |
| Commission meeting costs (travel etc.) | | | \$25,000 | | \$25,000 | Eff. 8/1/00, \$22,917 |
| Facilities Rent: c. 2,760 sf @ \$15, + utilities | | | \$47,610 | | \$47,610 | Eff. 10/1/00, \$35,708 |
| GRAND TOTAL | \$428,300 | \$128,426 | \$629,336 | \$95,176 | \$724,512 | \$535,644 |

*Recurring costs include base salary, social security, retirement, health benefits, supplies, telephone, travel, training, equipment maintenance, and similar annual costs. Non-recurring (first year only) costs include PC system, furniture, equipment and other one-time purchases. Non-recurring costs for the Executive Director include major items to establish the office, including LAN hardware and software, library, etc. Position costs for the positions shown have not been established, and all amounts are estimates.

APPENDIX D

ADDITIONAL FINDINGS OF THE COMMISSION ON SPECIFIC ISSUES ON WHICH THE LEGISLATURE REQUESTED STUDY AND RECOMMENDATIONS

Following is a list of the issues that the legislature directed the Study Commission to address, and the Commission's findings and conclusions with respect to each.

"(1) Evaluate the current procedures for determining the indigency of defendants and recommend any possible improvements in those procedures"

The state has no uniform statewide procedures or standards for determinations of indigency. Defendants who request counsel complete an affidavit of indigency listing assets and liabilities, but there is no guidance or consistency for how to evaluate the information in affidavits. Indigency screener positions in some districts were eliminated in past budget cuts. Screening, including verification of facts in the affidavits, is performed by various approaches across the state, usually with the assistance of deputy clerks. There is substantial doubt, however, regarding the cost-effectiveness of screening, and experience nationwide has been similar: the vast majority of defendants who request counsel are in fact indigent, and it can cost more to engage in careful screening than might be saved from the relatively few cases where counsel might otherwise have been appointed inappropriately.

The Study Commission concluded that it was not well situated or best able to recommend specific standards or procedures. The Commission's recommendation is to establish proper management for indigent defense programs, including for the promulgation of standards and procedures for determining indigency.

"(2) Determine whether sufficient information is available when evaluating compensation requests from assigned private counsel and expert witnesses"

Compensation for lawyers and experts is awarded by the presiding judge in each individual case. While the presiding judge will generally have first-hand information about the performance of counsel in a case, in some cases different judges may hear different parts of a case. There is also disparity in fee awards across the state. There are no uniform fee schedules or standards for compensation of lawyers or experts (with the exception of capital cases, for which an hourly rate of \$85 is generally applied). Thus, individual judges award fees in relative isolation, without information about what prevailing rates are or should be.

The Study Commission concluded that it was not well situated or best able to recommend specific standards or procedures. The Commission's recommendation is to establish proper management for indigent defense programs, including the promulgation of standards and procedures for compensation of lawyers and experts.

“(3) Assess the effectiveness of the current management structure for the Indigent Person’s Attorney Fee Fund and outline any additional standards or guidelines that could be implemented”

and

“(4) Evaluate whether establishing an Indigent Defense Council to oversee the State’s expenditure of funds on a district, regional, or Statewide basis would make the functioning of the Indigent Persons’ Attorney Fee Fund more efficient and economical”

The Study Commission’s findings regarding the lack of proper management for indigent defense programs are detailed in the body of this report, and the Study Commission’s recommendation is to establish an independent administrative body in the Judicial Branch to comprehensively manage the delivery of services.

The Study Commission considered other approaches to the administrative organization of indigent defense. Consideration was given to placing the necessary authorities directly under the AOC. It was decided that placement in the Judicial Branch would offer the advantages of a nexus to and potential support of the Chief Justice, and the efficiency of the AOC’s existing support services for personnel and payroll, purchasing, and similar business needs. These advantages led the Study Commission to conclude that creation of an entirely independent authority would be unnecessarily costly and inefficient. However, as to policy and budgetary decisions, the Study Commission concluded that it is very important for the indigent defense function to avoid the potential conflicts in policy and priorities that could arise by virtue of the many functions under the AOC’s umbrella, including core court and judicial operations and prosecutors. Similar concerns over competing interests and priorities would arise from placement in the Executive Branch. Placement in the Judicial Branch is most logical and effective due to the nexus of the defense function to court operations, and the AOC’s existing experience with and automated and other systems for court operations generally, and indigent defense specifically. Finally, it was determined that the separate status and focused responsibility of indigent defense administration would best enhance accountability to the General Assembly.

“(5) Evaluate the effectiveness of existing methods of providing legal representation to indigent defendants, including the use of public defenders, appointed counsel, and contract lawyers”

The Study Commission concluded that quality legal representation can be provided by all three of these existing methods. A proper management structure is needed, however, to develop and implement standards and qualifications for attorneys, monitor attorney performance, and determine the best mix of services to provide in each region of the state. One pressing concern, set forth in relevant ABA standards, is that the authorities judges now have over appointment and compensation decisions conflict with the independence that defense counsel must have to most effectively represent their clients. The new Office of Indigent Defense Services recommended by the Commission should exercise those authorities.

“(6) Review methods used by other states to provide legal representation to indigents”

The Study Commission received extensive information about indigent defense nationwide through written and oral presentations of a nationally recognized expert who attended most Commission meetings. The Commission also brought in the directors of the indigent defense programs of two other states, Minnesota and Kentucky. A summary of the indigent defense systems in those two states is set forth at the end of this Appendix (beginning on page D4). There is no one “best” model for provision of indigent defense. Common key requirements for effective operation are sound management, adequate funding, and standards. The Study Commission’s recommendations are in accord with a national trend for the creation of a centralized state-level commission or other oversight body for management of indigent defense.

“(7) Assess the potential effectiveness of distributing funds in other ways, including the hiring of contract attorneys on a retainer basis and the expansion of public defender programs”

The Study Commission considered information suggesting that expansion of the public defender system and increased use of contracts would be cost-effective. However, the Commission also considered the importance of ensuring that a significant portion of the private bar remain very involved in and committed to indigent defense. The Study Commission concluded that specific decisions in this area -- relating to the mix of services most appropriate for the delivery of indigent defense-- should be left to the new Office of Indigent Defense Services.

“(8) Outline additional suggestions that would improve the provision of legal representation to indigent defendants”

(The Study Commission’s recommendation in this report and the draft legislation incorporate it’s suggestions for the present priority.)

“(9) Evaluate the report on the efficiency and cost-effectiveness of the public defender program provided by the Commission pursuant to Section 16.1 of S.L. 1998-212, and recommend any improvements to public defender programs or the expansion of public defender programs to additional districts, based upon the content of the report.”

The Study Commission received that report and a presentation from the AOC regarding it, and concludes that the public defender system is cost-effective overall and in most individual districts. The AOC report, which received a favorable reaction as to methodology and substance from the Legislative Fiscal Research Division, concludes that the public defender system overall (for all districts combined) results in a savings of at least some \$2.5 million compared to what private assigned counsel would cost if there were no public defenders. Both from survey information presented in the AOC report, and other sources, the Study Commission received information about the high quality of the representation provided by public defenders, subject to the major caveat that staff and other resources are in general not adequate to handle the large caseloads. While from all this information, expansion of the public defender

system seems to offer a very positive potential, again the Study Commission concluded that specific decisions relating to the mix of services most appropriate for the delivery of indigent defense should be left to the new Office of Indigent Defense Services. In addition, as previously noted, decisions regarding expansion of the public defender system should take into account that it is strongly desirable for a significant portion of the private bar to remain very involved in and committed to indigent defense.

* * *

Summary of Indigent Defense Programs in Minnesota and Kentucky

One charge given to the Study Commission was to examine indigent defense systems in other states. Extensive information about programs nationwide was received from a nationally recognized consultant. In addition, the Indigent Defense Study Commission expresses its appreciation to Mr. Fred Friedman, Regional Director of Indigent Defense Programs, State of Minnesota, Mr. Kevin Cuyler, Fiscal Director, Minnesota State Board of Public Defense, and Mr. Ed Monahan, Deputy Public Advocate, Kentucky Department of Public Advocacy, for their willingness to attend meetings of the Study Commission, for no compensation beyond reimbursement of expenses. The presentations these knowledgeable and experienced professionals offered and their participation in the Study Commission's discussions offered invaluable depth and a practical perspective on the issues and alternatives to consider for management and operation of a statewide defense system. Following is a summary of the programs in those two states.

Kentucky Department of Public Advocacy

The Kentucky Department of Public Advocacy administers all provision of indigent defense in the state of Kentucky. The Department is housed in the "Public Protection and Regulation Cabinet," an Executive Branch unit. The legislation creating the agency establishes a 12-member Public Advocacy Commission, representing a variety of interests, appointed by the Governor, legislative leadership, Supreme Court, and Bar (nominees). The Chief Executive (also called "Public Advocate") is appointed by the Governor from three names provided by the Commission, and serves a four year term. The Commission approves the budget that the Department submits to the General Assembly and has general supervision of the Public Advocate

The internal organization of the Department consists of various branches responsible for indigent defense programs. For example, the "trial division" consists of regional managers, supervised by a trial division director, responsible to oversee full-time public defender offices and/or contracts in their respective regions. Contract attorneys are used for conflict and complex cases that could debilitate an office. The central office has some 40-50 staff, including lawyers who maintain caseloads in addition to supervisory and administrative duties; some 12 to 14 staff are purely administrative. In addition, the

Department provides an automation system, supported by one list-serve manager and three computer staff, to maximize networking and communication with a PC on every attorney's desk. The Department also administers extensive training programs, including new attorney education, an annual public defender conference, a litigation practice institute, and training in negotiating skills.

Minnesota State Board of Public Defense

The Minnesota State Board of Public Defense administers indigent defense services in the state of Minnesota. Prior to 1981, indigent defense was handled by each county. By 1992, following the recommendations of two studies, county funding of indigent defense ended, and the legislature brought all judicial districts under the authority of the Board (although representation in commitment and paternity cases is still handled under county systems). As now constituted, the seven-member independent Board consists of four attorneys appointed by the Supreme Court and three lay members appointed by the Governor. Staff for central administration grew from three employees in 1989 to 10 at present -- four attorneys, two secretaries, two fiscal officers, and two technical personnel. The Board appoints a State Public Defender whose duties include to supervise regional public defenders, recommend standards and policies to the Board, and plan and provide lawyer training. The Board receives a biennial appropriation from the legislature, and has maintained good relations with the legislature, the Supreme Court, the bar, and lay people.

The Board provides defense services through Board-appointed regional Public Defenders, each of which submits a budget to and receives funding from the Board's state funding. Subject to hiring and other standards established by the Board, each regional Public Defender is responsible to provide services in the district and is held accountable for the budget. Services are provided by the regional Public Defender through a combination of full-time and part-time public defender attorneys, depending on caseload and geographic considerations. The majority of public defender attorneys are part-time, and are paid a fixed amount to handle a certain number of cases. They may practice law, including criminal, in addition to their public defender duties. Full-time public defender attorneys are salaried employees and may not practice law on the side. A uniform data system within each office tracks the hours and caseload of each public defender attorney. Within this technologically strong system, Public Defenders have access through an Internet-based password system to Lexis, Westlaw, and a Minnesota brief bank.



APPENDIX E

CASE AND COST DATA FOR INDIGENT DEFENSE, 1988-89 to 1998-99

**ASSIGNED COUNSEL AND PUBLIC DEFENDER CASES*
1988-89 to 1998-99**

| | 1988-89 | 1993-94 | 1998-99 | % Change since 1988 89 |
|---|---------|---------|---------|------------------------------|
| Private Assigned Counsel | | | | |
| Capital | 598 | 1,049 | 1,071 | 79.1% |
| Adult | 51,070 | 65,591 | 101,174 | 98.1% |
| Juvenile | 7,799 | 9,785 | 15,784 | 102.4% |
| Guardian ad Litem | 472 | 232 | 581 | 23.1% |
| Total Assigned Counsel | 59,939 | 76,657 | 118,610 | 97.9% |
| Public Defenders | | | | |
| District 3A | 1,544 | 1,995 | 3,068 | 98.7% |
| District 3B | 507 | 484 | 460 | -9.3% |
| District 12 | 2,941 | 2,545 | 2,496 | -15.1% |
| District 14 (established 7/1/90) | NA | 2,956 | 6,670 | |
| District 15B | 1,097 | 1,326 | 2,296 | 109.3% |
| District 16A** | 407 | 1,091 | 1,642 | |
| District 16B** | 228 | 2,041 | 2,108 | |
| District 18 | 3,179 | 4,257 | 6,504 | 104.6% |
| District 26 | 14,221 | 11,720 | 13,447 | -5.4% |
| District 27A | 1,954 | 4,030 | 6,180 | 216.3% |
| District 28 | 2,285 | 3,428 | 3,504 | 53.3% |
| Total Public Defenders | 28,363 | 35,873 | 48,375 | 70.6% |
| Total assigned counsel and public defender | 88,302 | 112,530 | 166,985 | 89.1% |
| Public Defender as a % of Total | 32.1% | 31.9% | 29.0% | |

* "Case" data for private assigned counsel refer to individual fee orders signed by a judge and paid by the AOC. Data for public defenders are reported by public defenders on an AOC-designed system which counts separate dispositions. For both assigned counsel and public defenders, data generally correspond to one defendant represented, although there are comparability problems.

**These offices were established effective January 1, 1989

INDIGENT DEFENSE EXPENDITURES -- 1988-89 to 1998-99

| | | | | | Average per Case | |
|---|---------------------|---------------------|---------------------|------------------------|------------------|--------------|
| | 1988-89 | 1993-94 | 1998-99 | % Change since 1988-89 | 1988-89 | 1998-99 |
| Private Counsel | | | | | | |
| Capital | \$2,095,675 | \$5,189,722 | \$9,176,899 | 337.9% | \$3,504 | \$8,569 |
| Adult | \$11,724,097 | \$16,309,410 | \$27,428,944 | 134.0% | \$230 | \$271 |
| Juvenile | \$1,045,401 | \$1,712,647 | \$2,966,086 | 183.7% | \$134 | \$188 |
| Guardian ad Litem | \$102,770 | \$71,827 | \$159,776 | 55.5% | \$218 | \$275 |
| Total Private Counsel | \$14,967,943 | \$23,283,606 | \$39,731,705 | 165.4% | \$250 | \$335 |
| Public Defenders | | | | | | |
| District 3A | \$408,137 | \$483,616 | \$694,598 | 70.2% | \$264 | \$226 |
| District 3B | \$55,851 | \$218,982 | \$233,647 | 318.3% | \$110 | \$508 |
| District 12 | \$724,758 | \$1,047,365 | \$1,192,966 | 64.6% | \$246 | \$478 |
| Dist. 14 (estab. 7/1/90) | | \$868,222 | \$1,193,623 | | | \$179 |
| District 15B | \$244,023 | \$442,840 | \$704,202 | 188.6% | \$222 | \$307 |
| District 16A (eff. 1/1/89) | \$114,132 | \$393,727 | \$443,003 | 288.1% | \$280 | \$270 |
| District 16B (eff. 1/1/89) | \$141,001 | \$537,616 | \$892,781 | 533.2% | \$618 | \$424 |
| District 18 | \$816,537 | \$1,421,887 | \$1,763,706 | 116.0% | \$257 | \$271 |
| District 26 | \$1,306,922 | \$2,022,476 | \$2,596,856 | 98.7% | \$92 | \$193 |
| District 27A | \$502,533 | \$777,688 | \$1,108,440 | 120.6% | \$257 | \$179 |
| District 28 | \$403,557 | \$663,433 | \$885,042 | 119.3% | \$177 | \$253 |
| Total Public Defenders | \$4,717,451 | \$8,877,852 | \$11,708,864 | 148.2% | \$166 | \$242 |
| Total assigned counsel and public defender | \$19,685,394 | \$32,161,458 | \$51,440,569 | 161.3% | | |
| Public Defender as a % of Total | 24.0% | 27.6% | 22.8% | -5.0% | | |
| Other programs: | | | | | | |
| Appellate defender | \$575,534 | \$811,277 | \$1,025,609 | 78.2% | | |
| Death Penalty Res. Cnt. | \$205,503 | \$724,230 | | -100.0% | | |
| Special Counsel | \$264,601 | \$378,859 | \$502,067 | 89.7% | | |
| Expert Witnesses | \$132,882 | \$496,412 | \$1,599,294 | 1103.5% | | |
| Other support services | \$496,384 | \$748,829 | \$1,371,457 | 176.3% | | |
| Indigency screening | \$339,316 | \$505,913 | | -100.0% | | |
| Guardian ad Litem Prg. | \$1,688,951 | \$5,307,054 | \$6,475,003 | 283.4% | | |
| Other | \$36,736 | \$448,425 | \$266,385 | 625.1% | | |
| GRAND TOTAL | \$23,425,301 | \$41,582,457 | \$62,680,384 | 167.6% | | |

INDIGENT DEFENSE TREND DATA

