

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

SESSION LAW 2000-144  
SENATE BILL 1323

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE INDIGENT  
DEFENSE STUDY COMMISSION TO ESTABLISH AN OFFICE OF INDIGENT  
DEFENSE SERVICES.

The General Assembly of North Carolina enacts:

**PART I. 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:

- (1) Enhance oversight of the delivery of counsel and related services  
provided at State expense;
- (2) Improve the quality of representation and ensure the independence of  
counsel;
- (3) Establish uniform policies and procedures for the delivery of services;
- (4) Generate reliable statistical information in order to evaluate the  
services provided and funds expended; and
- (5) Deliver services in the most efficient and cost-effective manner  
without sacrificing quality representation.

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

(a) The Office of Indigent Defense Services, which is administered by the  
Director of Indigent Defense Services and includes the 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 of Indigent Defense Services 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 of Indigent Defense Services. The term 'general administrative support' includes purchasing, payroll, and similar administrative services.

(d) The budget of the Office of Indigent Defense Services shall be a part of the Judicial Department's budget. The Commission on Indigent Defense Services 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 budget of the Office of Indigent Defense Services or use funds appropriated to the Office without the approval of the Commission.

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

(a) The Office of Indigent Defense Services 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 G.S. 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 of Indigent Defense Services shall develop policies and procedures for determining indigency in cases subject to this Article, and those policies shall be applied uniformly throughout the State. The court shall determine in each case whether a person is indigent and entitled to legal representation, and counsel shall be appointed as provided in G.S. 7A-452.

(c) In all cases subject to this Article, appointment of counsel, determination of compensation, 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 of Indigent Defense Services.

(d) The Office of Indigent Defense Services 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.

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

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 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 shall be an active or former member of the North Carolina judiciary.
- (2) The Governor shall appoint one member, who shall be a nonattorney.
- (3) The General Assembly shall appoint one member upon the recommendation of the President Pro Tempore of the Senate.
- (4) The General Assembly shall appoint one member upon the recommendation of the Speaker of the House of Representatives.
- (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 shall reside in different judicial districts from one another. One appointee shall be a nonattorney, and one appointee may be an active member of the North Carolina judiciary. One appointee shall be Native American. The initial three members satisfying this subdivision shall be appointed as provided in subsection (k) of this section.

(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, the Governor, and the General Assembly 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 shall have significant experience in the defense of criminal or other cases subject to this Article or shall 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 public defenders, or other active employees of the Office of Indigent Defense Services may be appointed to or serve on the Commission, except that notwithstanding this subsection, G.S. 14-234, or any other provision of law, Commission members may include part-time public defenders employed by the Office of Indigent Defense Services 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 rules adopted by the Commission 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 of Indigent Defense Services 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 G.S. 138-6 as applicable.

(k) The Commission shall hold its first meeting no later than September 15, 2000. All appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of this section shall be made by the appointing authorities 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 subdivision (11) of subsection (b) of this section and shall elect its chair.

**"§ 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 of Indigent Defense Services provides legal representation to indigent persons.

(b) The Commission shall appoint the Director of the Office of Indigent Defense Services, who shall 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:

- (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 caseloads;
- (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. The Commission shall solicit written comments from the affected local district bar, senior resident superior court judge, and chief district court judge. Those comments, along with the recommendations of the Commission, shall be forwarded to the members of the General Assembly who represent the affected district and to other interested parties.

(f) The Commission shall establish policies and procedures with respect to the distribution of funds appropriated under this Article, including 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 of Indigent Defense Services.

(h) The Commission shall adopt such other rules and procedures as it deems necessary for the conduct of business by the Commission and the Office of Indigent Defense Services.

**"§ 7A-498.6. Director of Indigent Defense Services.**

(a) The Director of Indigent Defense Services 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 of Indigent Defense Services, 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 of Indigent Defense Services;
- (5) Keep and maintain proper financial records for use in calculating the costs of the operations of the Office of Indigent Defense Services;
- (6) Apply for and accept on behalf of the Office of Indigent Defense Services any funds that may become available from government grants, private gifts, donations, or bequests from any source;
- (7) Coordinate the services of the Office of Indigent Defense 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 other duties as the Commission may assign.

**"§ 7A-498.7. Public Defender Offices.**

(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:

<u>Defender</u> <u>District</u>	<u>Counties</u>
<u>3A</u>	<u>Pitt</u>

<u>3B</u>	<u>Carteret</u>
<u>12</u>	<u>Cumberland</u>
<u>14</u>	<u>Durham</u>
<u>15B</u>	<u>Orange, Chatham</u>
<u>16A</u>	<u>Scotland, Hoke</u>
<u>16B</u>	<u>Robeson</u>
<u>18</u>	<u>Guilford</u>
<u>26</u>	<u>Mecklenburg</u>
<u>27A</u>	<u>Gaston</u>
<u>28</u>	<u>Buncombe</u>

After notice to, and consultation with, the affected district bar, senior resident superior court judge, and chief district court judge, the Commission on Indigent Defense Services may recommend to the General Assembly that a district or regional public defender office be established. A legislative act is required in order to establish a new office or to abolish an existing office.

(b) For each new term, and to fill any vacancy, public defenders 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 rules adopted by the Commission on Indigent Defense Services. 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 that includes the county or counties of the defender district for which the public defender is being appointed.

(c) A public defender shall be an attorney licensed to practice law in North Carolina and shall devote full time to the duties of the 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 the 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 the public defender's office for this purpose.

(f) Each public defender is entitled to 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 the pleasure of the public defender. 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.

(g) 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.

(h) The term of office of public defender appointed under this section is four years. 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.

**"§ 7A-498.8. Appellate Defender.**

(a) The appellate defender shall be appointed by the Commission on Indigent Defense Services for a term of four years. A vacancy in the office of appellate defender shall be filled by appointment of the Commission on Indigent Defense Services for the unexpired term. The appellate defender may be suspended or removed from office for cause by two-thirds vote of all the members of the Commission on Indigent Defense Services. The Commission shall provide the appellate defender with timely written notice of the alleged causes and an opportunity for hearing before the Commission prior to taking any final action to remove or suspend the appellate defender, and the appellate defender shall be given written notice of the Commission's decision. The appellate defender may obtain judicial review of suspension or removal by the Commission by filing a petition within 30 days of receiving notice 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 section.

(b) The appellate defender shall perform such duties as may be directed by the Office of Indigent Defense Services, including:

- (1) Representing indigent persons subsequent to conviction in trial courts. The Office of Indigent Defense Services 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, assign appeals, or authorize the appellate defender to assign appeals, to a local public defender's office or to private assigned counsel.



- (2) Maintaining 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) Providing 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) Providing consulting services to attorneys representing defendants in capital cases.
- (5) Recruiting qualified members of the private bar who are willing to provide representation in State and federal death penalty postconviction proceedings.
- (6) In the appellate defender's discretion, serving as counsel of record for indigent defendants in capital cases in State court.
- (7) Undertaking direct representation and consultation in capital cases pending in federal court only to the extent that such work is fully federally funded.

(c) The appellate defender shall appoint assistants and staff, not to exceed the number authorized by the Office of Indigent Defense Services. The assistants and staff shall serve at the pleasure of the appellate defender.

(d) 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 Office of Indigent Defense Services from funds authorized by law. Salaries shall be set by the Office of Indigent Defense Services."

## **PART II. AMENDMENTS TO CHAPTER 7A OF THE GENERAL STATUTES**

Section 2. G.S. 7A-304(a) reads as rewritten:

"(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,~~ 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¢) 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¢) 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."

Section 3. G.S. 7A-314(d) reads as rewritten:

"(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."

Section 4. G.S. 7A-344 is repealed.

Section 5. G.S. 7A-450(a) reads as rewritten:

"(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 8A~~ Chapter 8B of the General Statutes for a deaf person who is entitled to counsel under this subsection."

Section 6. 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 4, Chapter 108A, Article 6~~ 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 ~~two counsel~~ the Office of Indigent Defense Services if the court finds that the defendant is indigent and desires ~~counsel~~ counsel, and the Office of 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 ~~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).~~ rules adopted by the Office of Indigent Defense Services.

(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."

Section 7. 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 noncapital cases, the court shall assign counsel pursuant to rules adopted by the Office of Indigent Defense Services. In capital cases, the Office of~~

Indigent Defense Services or designee of the Office of Indigent Defense Services shall assign counsel; at least one member of each capital defense team, where practicable, shall be a member of the bar in that division. In the courts of those counties which have a public defender, however, the public defender may tentatively assign himself or an assistant public defender to represent an indigent person, subject to subsequent approval determination of entitlement to counsel by the court. court and approval by the court in noncapital cases and by the Office of Indigent Defense Services in capital cases.

(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 to appoint counsel, entitlement to 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 ~~award~~ receive reasonable compensation to be paid by the State."

Section 8. 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."

Section 9. 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.~~"

Section 10. 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, and 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, 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.~~ judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. In fixing the The money value of services rendered by the public defender and the appellate defender, the court shall consider defender shall be based upon 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

proceedings 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."

Section 11. G.S. 7A-457(a) reads as rewritten:

"(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~~, 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."

Section 12. 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~~ 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."~~

Section 13. G.S. 7A-459, 7A-465, 7A-466, 7A-467, 7A-469, 7A-470, 7A-471, 7A-486, 7A-486.1, 7A-486.2, 7A-486.3, 7A-486.4, 7A-486.5, 7A-486.6, and 7A-486.7 are repealed.

### **PART III. AMENDMENTS TO MISCELLANEOUS OTHER STATUTES**

Section 14. 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.~~ immediately pursuant to rules adopted by the Office of Indigent Defense Services."

Section 15. 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 16. 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.~~"

Section 17. 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."

Section 18. 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 ~~Administrative Office of the Courts.~~ Office of Indigent Defense Services. 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 ~~Administrative Office of the Courts~~ Office of Indigent Defense Services 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-201, 50A-203, or 50A-204. 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 19. G.S. 7B-1109(b) reads as rewritten:

"(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. ~~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."

Section 20. G.S. 7B-1808(b) reads as rewritten:

- "(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; counsel;~~
  - (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 Services."

Section 21. G.S. 7B-1906(c) reads as rewritten:

"(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. juvenile shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 22. G.S. 7B-2000(a) reads as rewritten:

"(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."

Section 23. 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 ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency through the Administrative Office of the Courts.~~ in accordance with rules adopted by the Office of Indigent Defense Services. 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."

Section 24. 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~~ 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 25. G.S. 7B-2804(a) reads as rewritten:

"(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~~ 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."

Section 26. 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. 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."

Section 27. G.S. 15-11.1(b) reads as rewritten:

"(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 attorney,~~ determine whether 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."

Section 28. G.S. 15A-279(d) reads as rewritten:

"(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."

Section 29. G.S. 15A-803(d) reads as rewritten:

"(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."

Section 30. 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."

Section 31. G.S. 15A-1343(e) reads as rewritten:

"(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."

Section 32. 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, the prisoner 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."

Section 33. 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 appointed an appointed~~ guardian ad litem. Upon filing of the ~~petition, the clerk shall appoint as guardian ad litem an attorney who shall petition, 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. 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."

Section 34. G.S. 35A-1130(c) reads as rewritten:

"(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."

Section 35. G.S. 90-21.8(c) reads as rewritten:

"(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~~ counsel, and shall provide her with counsel shall be provided upon

her ~~request.~~ request in accordance with rules adopted by the Office of Indigent Defense Services."

Section 36. G.S. 108A-105(b) reads as rewritten:

"(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.~~ 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."

Section 37. G.S. 122C-224.1(a) reads as rewritten:

"(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 ~~appoint an attorney be~~ appointed for the ~~minor.~~ 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 ~~fixed by the court in the same manner as fees for attorneys appointed in cases of indigency.~~ in accordance with rules adopted by the Office of Indigent Defense Services. 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."

Section 38. G.S. 122C-267(d) reads as rewritten:

"(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."

Section 39. G.S. 122C-268(d) reads as rewritten:

"(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 ~~by the court.~~ in accordance with rules adopted by the Office of Indigent Defense Services."

Section 40. G.S. 122C-268.1(d) reads as rewritten:

"(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 ~~by the court.~~ in accordance with rules adopted by the Office of Indigent Defense Services."

Section 41. G.S. 122C-269(b) reads as rewritten:

"(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).~~ G.S. 122C-268(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 42. 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~~ 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. This ~~These~~ special counsel shall serve at the pleasure of the ~~appointing judge, Commission,~~ may not privately practice law, and shall receive annual compensation within the salary range for assistant ~~district attorneys~~ public defenders as fixed by the ~~Administrative Officer of the Courts, Office of Indigent Defense Services.~~ 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 ~~by a district judge of the district, in accordance with rules adopted by the Office of Indigent Defense Services.~~ 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 Administrative Officer of the Courts, Director of the Office of Indigent Defense Services, 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 from members of the bar of the county in accordance with G.S. 122C 268(d).~~ shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services.

(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."

Section 43. G.S. 122C-286(d) reads as rewritten:

"(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. the respondent in accordance with rules adopted by the Office of Indigent Defense Services."

Section 44. G.S. 122C-286.1(b) reads as rewritten:

"(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).~~ G.S. 122C-286(d) shall be appointed in accordance with rules adopted by the Office of Indigent Defense Services."

Section 45. 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."

#### **PART IV. TRANSITION AND EFFECTIVE DATES**

Section 46. 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 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 47. 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 (i) 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; (ii) the rules, standards, and other regulations developed by the Commission for the delivery of indigent defense services; and (iii) other matters for implementation of the provisions of this act.

Section 48. Persons holding the position of public defender or appellate defender on the date this act becomes law are entitled to serve the remainder of their terms.

Section 49. Except as otherwise provided in this Part, this act becomes effective July 1, 2001. G.S. 7A-498, 7A-498.1, 7A-498.2, 7A-498.4, 7A-498.5, and 7A-498.6, as enacted in Section 1 of this act, are effective when they become 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 that date. The Commission shall be responsible for the expenditure of funds for all cases pending on or after July 1, 2001.

In the General Assembly read three times and ratified this the 13th day of July, 2000.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 9:15 a.m. this 2nd day of August, 2000