

# Law Enforcement and Criminal Justice Subcommittee Meeting

August 28, 2018 - Office of Circuit Public Defenders

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# AGENDA

**South Carolina  
House of Representatives**



**Legislative Oversight Committee**

***LAW ENFORCEMENT AND CRIMINAL JUSTICE SUBCOMMITTEE***

***Chairman Edward R. Tallon Sr.***

***The Honorable Katherine E. (Katie) Arrington***

***The Honorable William M. (Bill) Hixon***

***The Honorable Jeffrey E. (Jeff) Johnson***

***Tuesday, August 28, 2018***

***11:00am***

***Room 110 - Blatt Building***

***Pursuant to Committee Rule 6.8, S.C. ETV shall be allowed access for internet streaming whenever technologically feasible.***

**AMENDED AGENDA**

- I. Approval of Meeting Minutes**
- II. Discussion of the study of the Commission on Indigent Defense**
- III. Adjournment**

# MEETING MINUTES

**Chair Wm. Weston J. Newton**

*First Vice-Chair:*  
*Laurie Slade Funderburk*

## **Legislative Oversight Committee**



*Katherine E. (Katie) Arrington*  
*William K. (Bill) Bowers*  
*Neal A. Collins*  
*MaryGail K. Douglas*  
*William M. (Bill) Hixon*  
*Jeffrey E. (Jeff) Johnson*  
*Robert L. Ridgeway, III*  
*Bill Taylor*  
*John Taliaferro (Jay) West, IV*

*Bruce W. Bannister*  
*Gary E. Clary*  
*Chandra E. Dillard*  
*Phyllis J. Henderson*  
*Joseph H. Jefferson, Jr.*  
*Mandy Powers Norrell*  
*Tommy M. Stringer*  
*Edward R. Tallon, Sr.*  
*Robert Q. Williams*

### **South Carolina House of Representatives**

*Jennifer L. Dobson*  
*Research Director*

*Cathy A. Greer*  
*Administration Coordinator*

*Charles L. Appleby IV*  
*Legal Counsel*

*Carmen J. McCutcheon Simon*  
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*Kendra H. Wilkerson*  
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### **Law Enforcement and Criminal Justice Subcommittee**

**Monday, August 20, 2018**

**11:00 am**

**Blatt Room 110**

#### **Archived Video Available**

- I. Pursuant to House Legislative Oversight Committee Rule 6.8, South Carolina ETV was allowed access for streaming the meeting. You may access an archived video of this meeting by visiting the South Carolina General Assembly's website (<http://www.scstatehouse.gov>) and clicking on *Committee Postings and Reports*, then under *House Standing Committees* click on *Legislative Oversight*. Then, click on *Video Archives* for a listing of archived videos for the Committee.

#### **Attendance**

- I. The Law Enforcement and Criminal Justice Subcommittee meeting was called to order by Chairman Edward R. Tallon, Sr., on Monday, August 20, 2018, in Room 110 of the Blatt Building. All members of the Subcommittee, except Representative Katie Arrington, were present for either all or a portion of the meeting.

## Minutes

- I. House Rule 4.5 requires standing committees to prepare and make available to the public the minutes of committee meetings, but the minutes do not have to be verbatim accounts of meetings. It is the practice of the Legislative Oversight Committee to provide minutes for its subcommittee meetings.
- II. Representative Hixon makes a motion to approve the meeting minutes from the prior Subcommittee meetings.

Rep. Hixon's motion to approve the minutes from the August 14, 2018, meeting:	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

## Discussion of the Commission on Prosecution Coordination

- I. Subcommittee Chairman Tallon explains the purpose of the meeting today is for a representative from the Office of the Attorney General to testify about the Office's interpretation of its authority and supervision of solicitors which is outlined in the state constitution and statutes; representatives from the Law Enforcement Training Council, Sheriff's Association, Police Chief's Association, Association of Counties, and Municipal Association to provide comments on warrant approval process, county grand juries having investigative authority, and cloud based evidence databases; and the agency to present information not finished in previous meetings.

Subcommittee Chairman Tallon notes representatives from the Law Enforcement Training Council and Police Chief's Association are unable to attend, but they plan to provide written comments.

- II. Subcommittee Chairman Tallon swears in the following agency personnel:
  - a. Ms. Lisa Catalanotto, Executive Director of the S.C. Commission on Prosecution Coordination;
  - b. Mr. Tiger Wells, Government Affairs Liaison, Municipal Association of South Carolina;
  - c. Mr. James Knox, Staff Attorney, S.C. Association of Counties;
  - d. Mr. Bob Cook, Solicitor Attorney General, Office of the Attorney General;
  - e. Mr. Jeff Young, Chief Deputy General, Office of the Attorney General; and
  - f. Mr. Matthew Gates, Deputy General of Governmental Affairs, Office of the Attorney General.

- III. Mr. Young testifies about the Office of Attorney General's interpretation of its authority and supervision of solicitors which is outlined in the state constitution and statutes. Members ask questions, which Mr. Young and Mr. Cook answer.
- IV. Fifth Circuit Solicitor Isaac McDuffie Stone, Chair of the S.C. Commission on Prosecution Coordination, provides a brief summary of the following topics: (1) warrant approval process; (2) county grand juries having investigative authority; and (3) cloud based evidence databases. After the summary of each, representatives from the S.C. Sheriff's Association, S.C. Association of Counties, and Municipal Association of S.C., provide comments on the topics. Additional members ask questions, which Solicitor Stone and applicable association representatives answer.
- V. Members tour the S.C. Commission on Prosecution Coordination offices on the state house grounds, which lasts approximately forty five minutes.
- VI. Representative Hixon makes a motion which includes three recommendations for the Subcommittee's study of the agency. A roll call vote is held for the motion, and, among the members present, the motion passes unanimously.

Rep. Hixon's motion that the Subcommittee Study include the following <b>recommendations</b> : (1) General Assembly add prerequisites to circuit solicitor offices receiving state funding, including, but not limited to, proof of policies in place regarding spending, such as those recommended in the audit of the fifth circuit solicitors office, and assurances those with access to funds have undergone and passed appropriate background checks; (2) when the Prosecution Commission's finance task force finishes its review, it provide a written report, which is available to the general public, that outlines the questions the task force was seeking to answer, information reviewed, recommendations, and basis for the recommendations; and (3) the Committee follow up with the agency on the information in the tasks forces report, as well as about any other information and inquiries.	Yea	Nay	Not Voting (Absent)
Rep. Arrington			✓
Rep. Hixon	✓		
Rep. Johnson	✓		
Rep. Tallon	✓		

- VII. There being no further business, the meeting is adjourned.

# STUDY TIMELINE

The House Legislative Oversight Committee's (Committee) process for studying the Commission on Indigent Defense (agency, Commission, or SCCID) includes actions by the full Committee; Law Enforcement and Criminal Justice Subcommittee (Subcommittee); the agency; and the public. Key dates and actions are listed below.

## Legislative Oversight Committee Actions

- December 19, 2017 - Prioritizes the agency for study
- January 22, 2018 - Provides the agency notice about the oversight process
- January 23 - March 1, 2018 - Solicits input about the agency in the form of an online public survey
- April 26, 2018 - **Meeting #2** to obtain public input about the agency

## Law Enforcement and Criminal Justice Subcommittee Actions

- April 24, 2018 - Holds **Meeting #1** to discuss the agency's history, legal directives, mission, vision, general information about employees and finances, details about the agency's administration unit, and agency recommendations for internal and law changes
- May 1, 2018 - Holds **Meeting #3** to discuss questions from information presented by the agency during the previous meeting
- August 14, 2018 - Holds **Meeting #4** to discuss the process from the time an indigent defendant is arrested to case resolution, indigency screening, death penalty trial division, and division of appellate defense.
- August 28, 2018 - (TODAY) Holds **Meeting #5** to discuss the performance measures that may be utilized in indigent defense, and the Office of the Circuit Public Defenders.

## Commission on Indigent Defense Actions

- March 9, 2015 - Submits its **Annual Restructuring and Seven-Year Plan Report**
- January 20, 2016 - Submits its **2016 Annual Restructuring Report**
- September 2016 - Submits its **2015-16 Accountability Report**
- September 2017 - Submits its **2016-17 Accountability Report**
- March 16, 2018 - Submits its **Program Evaluation Report**

## Public's Actions

- January 23 - March 1, 2018 - Provides input about the agency via an **online public survey**
- Ongoing - Submits written comments on the Committee's webpage on the General Assembly's website ([www.scstatehouse.gov](http://www.scstatehouse.gov))

Figure 1. Key dates in the study process.

# AGENCY SNAPSHOT

## Commission on Indigent Defense

### Major Agency Organizational Units

#### **Office of Circuit Public Defenders**

Provides a statewide public defender system with standards and accountability for the delivery of legal representation to indigent defendants in state courts.

#### **Division of Appellate Defense**

Represents indigents in the majority of criminal appeals, including death penalty appeals before the SC Court of Appeals and the SC Supreme Court.

#### **Administration**

Provides leadership and direction for the agency to include administrative, financial, and support services.

#### **Death Penalty Trial Division**

Represents indigents in trials involving the death penalty (i.e., capital trials) statewide.

#### **FY 17-18 Resources**

Employees  
Available FTE: 70.50  
Filled FTE: 68.50  
Temp/Grant: 1.00

Funding  
\$45.06 million  
appropriated and  
authorized

#### **SUCCESES**

- Implementing the statewide public defender system which enabled oversight by the Commission.

- Coordinating the Rule 608 contract system which allows the agency to take applications and select those attorneys qualified to handle specific types of cases to include criminal, post-conviction relief, sexual violent predator, and certain family court matters.

- Conducting focused seminars and workshops for public defenders with fewer than three years experience and continued annual training for other public defenders and contract attorneys.

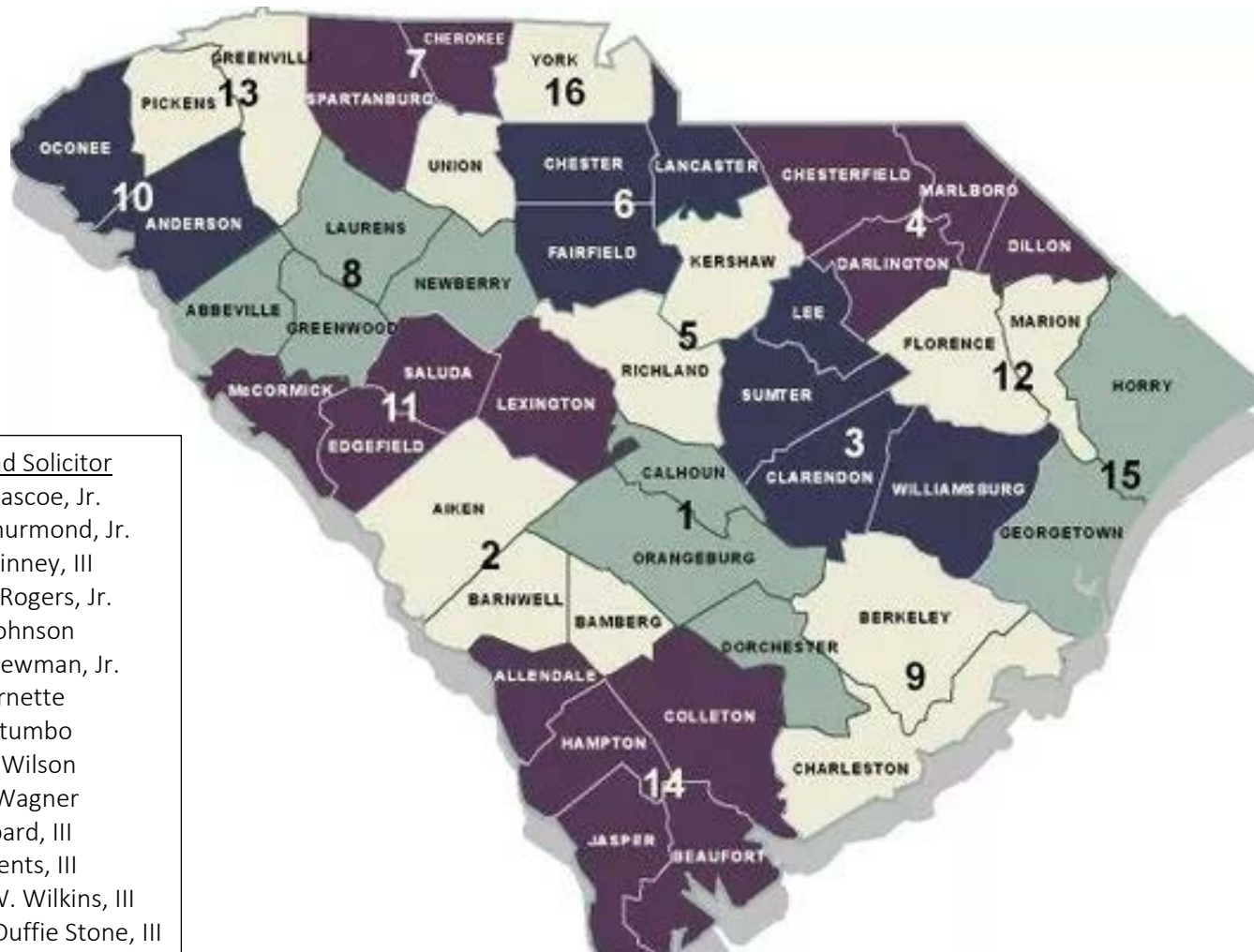
#### **CHALLENGES**

- Addressing whether defendants are being adequately screened to assess their financial status for appointed counsel.
- Representing individuals in an efficiently functioning criminal justice system with a disparity in funding at the county level between prosecution and defense.
- Finding enough contract attorneys qualified to handle specific types of cases in the rural areas of the state where a county may have a very limited number of attorneys.

Figure 2. Snapshot of the agency's major organizational units, fiscal year 2017-18 resources (employees and funding), successes, and challenges.<sup>1</sup>



# S.C. JUDICIAL CIRCUITS



## Circuit and Solicitor

- 1 - David M. Pascoe, Jr.
- 2 - J. Strom Thurmond, Jr.
- 3 - Ernest A. Finney, III
- 4 - William B. Rogers, Jr.
- 5 - Daniel E. Johnson
- 6 - Randy E. Newman, Jr.
- 7 - Barry J. Barnette
- 8 - David M. Stumbo
- 9 - Scarlett A. Wilson
- 10 - David R. Wagner
- 11 - S.R. Hubbard, III
- 12 - E.L. Clements, III
- 13 - William W. Wilkins, III
- 14 - Isaac McDuffie Stone, III
- 15 - Jimmy A. Richardson
- 16 - Kevin S. Brackett

## Circuit and Public Defender

- 1 - Mark Leiendecker
- 2 - De Grant Gibbons
- 3 - Jack D. Howle, Jr.
- 4 - Matt Rivers
- 5 - Fielding Pringle
- 6 - Mike Lifsey
- 7 - Clay T. Allen
- 8 - Janna A. Nelson
- 9 - D. Ashley Pennington
- 10 - Jennifer L. Johnson
- 11 - Robert M. Madsen
- 12 - Scott Floyd
- 13 - Christopher D. Scalzo
- 14 - Stephanie Smart-Gittings
- 15 - Orrie E. West
- 16 - Harry A. Dest

Figure 3. Map of S.C. judicial circuits with counties and list of circuit solicitors and public defenders as of August 2018.<sup>2</sup>

# AGENCY OVERVIEW

## *Legal Directives*

The importance of guaranteeing a citizen the right to trial and providing equal protection under the law are outlined in the following sections of the United States Constitution:

### Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

### Amendment XIV Section 1.

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

The South Carolina Commission on Indigent Defense, through S.C. Code Ann. 17-3-310, exists to develop rules, policies, procedures, regulations, and standards it considers necessary to comply with state law, regulations, and the rules of the Supreme Court, as it relates to the nature and scope of services, clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation. Table 1 provides a comparison of the duties of the Commission, which is the governing body of the agency, and the Office of Indigent Defense, which operates under the jurisdiction of the Commission.

Table 1. Legal directives for the Commission compared to directives for the Office of Indigent Defense

Legal directives for the...	
Commission on Indigent Defense Applicable statutes: S.C. Code Ann. 17-3-310 <sup>3</sup> and 17-3-340 <sup>4</sup>	Office of Indigent Defense (OID) Applicable statutes: S.C. Code Ann. 17-3-330 <sup>5</sup> and 17-3-360 <sup>6</sup>
<u>Operations</u>	
<p>Commission shall...</p> <p><u>In General</u></p> <ul style="list-style-type: none"> <li>Establish divisions within the office to administer necessary services and programs.<sup>7</sup></li> <li>Act in the best interest of indigent defendants who are receiving legal representation.<sup>8</sup></li> </ul> <p><u>Meetings/Officers</u></p> <ul style="list-style-type: none"> <li>Meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties.<sup>9</sup></li> <li>Elect such officers, other than the chairperson, from the members of the commission as it deems necessary.<sup>10</sup></li> <li>Adopt rules for the transaction of its business as it desires.<sup>11</sup></li> </ul> <p><u>Clients and Services</u></p> <ul style="list-style-type: none"> <li>Develop rules, policies, procedures, regulations, and standards necessary to comply with state law or regulations and the rules of the Supreme Court including: (1) nature and scope of services to be provided; (2) clientele to be served; (3) establishment of criteria to be used in the determination of indigency; and (4) qualifications for services for indigent legal representation.<sup>12</sup></li> <li>Approve and implement programs, services, rules, policies, procedures, regulations, and standards for determining indigence and for assessing and collecting the costs of legal representation and related services.<sup>13</sup></li> </ul>	<p>OID shall...</p> <p><u>Office Operations</u></p> <ul style="list-style-type: none"> <li>Administer and coordinate the operations of the office and all divisions within the office.<sup>14</sup></li> <li>Maintain proper records of all financial transactions related to the operation of the office.<sup>15</sup></li> </ul> <p><u>Commission Operations</u></p> <ul style="list-style-type: none"> <li>Coordinate in the development and implementation of rules, policies, procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards.<sup>16</sup></li> <li>Executive Director will attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director.<sup>17</sup></li> <li>Maintain proper records of all financial transactions related to the operation of the commission.<sup>18</sup></li> <li>Ensure the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources.<sup>19</sup></li> </ul> <p><u>Statewide Indigent Defense Services</u></p> <ul style="list-style-type: none"> <li>Prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require.<sup>20</sup></li> <li>Distribute all funds appropriated by the General Assembly for the defense of indigents.<sup>21</sup></li> <li>Apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests.<sup>22</sup></li> </ul> <p>Implement and perform other duties the commission may direct or assign.<sup>23</sup></p>

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Ann. 17-3-310<sup>3</sup> and 17-3-340<sup>4</sup>

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Ann. 17-3-330<sup>5</sup> and 17-3-360<sup>6</sup>

Circuit Public Defender Division

(operates under jurisdiction of the Commission)

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for maintaining and operating circuit public defender offices.<sup>24</sup>
- Establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels.<sup>25</sup>
- Establish the rules and procedures under which the selection panels shall operate.<sup>26</sup>
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel.<sup>27</sup>
- Assist the public defenders throughout the state in their efforts to provide adequate legal defense to the indigent.<sup>28</sup>
- Negotiate and enter into contracts(not required to, but may), as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable.<sup>29</sup>

OID shall...

- Supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission.<sup>30</sup>
- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.<sup>31</sup>

Contract/Appointed Counsel and Conflicts of Interest

Commission shall...

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for compensation of attorneys appointed to represent indigent persons pursuant to this chapter.<sup>32</sup>
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for accepting contractual indigent defense representation.<sup>33</sup>
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person.<sup>34</sup>

OID shall...

- Provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter.<sup>35</sup>

Legal directives for the...

Commission on Indigent Defense

Applicable statutes: S.C. Code Ann. 17-3-310<sup>3</sup> and 17-3-340<sup>4</sup>

Office of Indigent Defense (OID)

Applicable statutes: S.C. Code Ann. 17-3-330<sup>5</sup> and 17-3-360<sup>6</sup>

Specialty Work

Commission shall...

Experts and Investigators

- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons.<sup>36</sup>

Juveniles

- Approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.<sup>37</sup>

OID shall...

Appeals

- Provide defense to indigents who desire to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility.<sup>38</sup>

Death Penalty

- Provide defense to indigents in death penalty cases.<sup>39</sup>

Statistics/Performance

Commission shall...

- Cooperate and consult with state agencies, professional associations, and other groups concerning<sup>40</sup>
  - Causes of criminal conduct,
  - Rehabilitation and correction of persons charged with and convicted of crimes,
  - Administration of criminal justice, and
  - Improvement and expansion of defender services.
- Collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State.<sup>41</sup>
- Approve and implement programs, services, rules, policies, procedures, regulations, and standards for delivery of indigent services. This includes, but is not limited to, standards for:
  - public defender and appointed counsel caseloads, including a uniform definition of a “case” for purposes of determining caseload statistics;
  - performance of public defenders and appointed counsel representing indigent persons;
  - procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; and
  - removing a circuit public defender for cause.<sup>42</sup>

OID shall...

- Coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services.<sup>43</sup>
- Serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this state.<sup>44</sup>
  - Note: This directive only requires the agency to serve as a resource for others who may be compiling information; it does not require the agency to compile information.<sup>45</sup> Currently, the only law requiring the agency to compile information is a proviso which requires the agency to compile information on revenue streams and expenditures by circuit.<sup>46</sup>
- Report annually to the General Assembly on the indigent defense system.<sup>47</sup>

## *Mission and Vision*

The agency provides Act 164 of 1993 and S.C. Code Ann. 17-3-310, et. seq., as the basis for its mission and vision.

SCCID's mission is as follows:

The Commission on Indigent Defense, through the Office of Indigent Defense and its divisions, and in cooperation and consultation with other state agencies, professional associations and other groups interested in the administration of criminal justice and the improvement and expansion of defender services, **establishes and monitors programs and services for legal representation to indigent defendants charged with criminal offenses in the courts of the state. The agency also manages the Rule 608 Contract program, contracting with attorneys across the state to provide representation in criminal and specific family court cases.** (emphasis added)

SCCID's vision is to

Ensure that individuals, determined to be indigent, are provided the highest quality legal defense representation.

# OFFICE OF CIRCUIT PUBLIC DEFENDERS

## *Overview of the Office of Circuit Public Defenders*

**Office of Circuit Public Defenders** is one of the agency's organizational units. This unit provides a statewide public defender system with standards and accountability for the delivery of legal representation to indigent defendants in state courts.

Circuit public defenders are elected by a selection panel. The selection panel is composed of attorneys from the counties within the circuit. Below is a brief summary of the term, qualifications, and responsibilities of selection panel members and circuit public defenders.

### *Selection Panel Members*

- Rules and procedures for...
  - selection of members: Set by the S.C. Indigent Defense Commission<sup>48</sup>
  - how panel operates: Set by the S.C. Indigent Defense Commission<sup>49</sup>
- Minimum qualifications:
  - Active licensed attorney;<sup>50</sup>
  - Reside in the judicial circuit in which they serve;<sup>51</sup>
  - Cannot have directly or indirectly offered their pledge to an applicant or potential applicant for circuit public defender;<sup>52</sup> and
  - Cannot be a solicitor, assistant solicitor, employee of a solicitor's office, employee of the South Carolina Prosecution Coordination Commission, member of the judiciary or a member of the Commission on Indigent Defense.<sup>53</sup>
- Term: 5 years<sup>54</sup>
- Term limits: None stated in statute
- Removal: No reasons for removal stated in statute
- Responsibilities:
  - Nominate a person to serve as the circuit public defender;<sup>55</sup> and
  - Nominate a replacement circuit public defender within three months of the occurrence of a vacancy.<sup>56</sup>
- Number of members:
  - Circuits with three or less counties = 5 members;<sup>57</sup>
  - Circuits with four counties = 7 members;<sup>58</sup> and
  - Circuits with five counties = 9 members.<sup>59</sup>
- Numbers of members from each county:
  - Each county in the judicial circuit has at least one member;<sup>60</sup> and
  - Remaining members determined by equal weighting of county population AND most recent annual county appropriations to public defender operations according to the following formula:<sup>61</sup>
    - % of distribution of population PLUS % of distribution of appropriations for public defender operations DIVIDED BY two and rounded to the nearest whole number;
    - weighted values of each county MULTIPLIED BY the number of remaining members in each Circuit Public Defender Selection Panel determines the number of additional members each county must have on the panel.



### *CIRCUIT Public Defender*

- Minimum qualifications:<sup>62</sup>
  - 25 years old or older;
  - Admitted and licensed to practice law in all courts of S.C. for at least five years;
  - Member in good standing of the South Carolina Bar, at all times;
  - Competent to counsel and defend a person charged with a capital felony and be certified at all times to defend capital cases in the State; and
  - Cannot engage in the private practice of law or another full-time business for profit while serving in the position.
- Term: Four years<sup>63</sup>
- Term limits: None<sup>64</sup>
- Removal: May be removed for cause by a majority vote of the Commission<sup>65</sup>
- Responsibilities:<sup>66</sup>
  - Day-to-day operations of their respective offices,<sup>67</sup> including establishment of...
    - Administrative management procedures for circuit and county offices;<sup>68</sup>
    - Training and performance evaluation program for attorneys and non-attorney staff and contractors;<sup>69</sup> and
    - Processes to ensure public defenders, office personnel, contract and appointed attorneys and clients are aware of avenues available for bringing a complaint.<sup>70</sup>
  - Keeping and maintaining appropriate records, which includes:<sup>71</sup>
    - Number of persons represented by assistant public defenders;
    - Number of cases assigned to other attorneys because of conflicts of interest;
    - Offenses charged and outcome of each case;
    - Expenditures made in carrying out their duties; and
    - Other information and data as the commission may from time to time require.
  - Preparing and submitting the following information:
    - Annual budget to the executive director of SCCID;<sup>72</sup>
    - Annual report with data on the operation, costs, and needs of the circuit defender office;<sup>73</sup>
    - Circuit plan for the delivery of criminal indigent defense services, for commission approval;<sup>74</sup> and
    - Other information as the commission or executive director may require.<sup>75</sup>
  - Establishing processes and procedures consistent with commission standards for the following:
    - Conflicts of interest, including ensuring contract personnel use caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;<sup>76</sup>
    - Managing caseloads and assigning cases;<sup>77</sup>
    - Assigning counsel for indigent persons in capital cases;<sup>78</sup> and
    - Handling complaints involving indigent defense performance.<sup>79</sup>
  - Establishing juvenile offender division within the circuit to specialize in the criminal defense of juveniles.<sup>80</sup>
  - Actively participating in the representation of clients throughout the judicial circuit.<sup>81</sup>
  - Assisting the commission in establishing standards, policies, and procedures including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation.<sup>82</sup>

### *Chief COUNTY Public Defender*

- Required: No, but each circuit public defender may employ or assign one.<sup>83</sup>
- Responsibilities:<sup>84</sup>
  - Managing, supervising, and providing public defender services within the assigned county or counties;
  - Performing other duties as assigned by the circuit public defender, including duties that may be assigned throughout the circuit; and
  - Keeping a record of public defender and associated services and expenses in the assigned county or counties and submitting the records to the circuit public defender as requested.

Table 2 includes the steps for election of selection panel members and steps for how selection panels elect a circuit public defender.

Appendix A includes additional details regarding for how attorneys are elected to serve on the selection panels. Appendix B includes additional details regarding how the selection panel nominates an individual to serve as a circuit public defender, including an explanation of the complaint procedures.

Table 2. Steps for election of selection panel members and steps for how selection panels elect a circuit public defender.

Election of Selection Panel Members	
Election conducted by president of county's bar association. If county has no bar president or the president is unwilling to conduct the election, SCCID will choose an attorney to conduct the election. Election occurs in one of two ways, individual conducting election chooses which method.	
Meeting	Mail-In
Notice, written or electronic, provided to all active licensed attorneys in the county, seven to thirty days before the meeting	Notice provided to all active licensed attorneys in the county with instructions for how to submit nominations for the selection panel
Meeting convenes Floor opened for nominations Floor closed and all nominees certify they meet eligibility requirements	Attorneys mail in nomination forms -Must be submitted within 10 days of attorneys receiving initial notice.
Secret ballot, no proxy, vote on nominees -May vote for as many candidates as there are seats available for the county	Nominees are listed on a ballot which is sent U.S. Mail to all attorneys in the county eligible to vote. Attorneys have ten to twenty days to return the completed ballot. May vote for as many candidates as there are seats available for the county.
Nominees with the most votes are elected to the available seats on the selection panel	Nominees with the most votes are elected to the available seats on the selection panel
Election of Circuit Public Defender	
Selection Panel holds its first meeting -Elect a chair and secretary -Occurs within ten days of selection panel elections	
SCCID advertises circuit public defender position and posts the job opening on <a href="http://www.scjobs.com">www.scjobs.com</a> -applications are accepted for twenty or more days	
SCCID reviews all applicants to ensure they meet minimum qualifications	
SCCID forwards materials for qualified applicants to the Chair of the Selection Panel	
Selection Panel does the following within thirty days of receiving the application materials -interviews all applicants -seeks references and any other information desired -selects, by majority vote, nominee for circuit public defender and forwards to SCCID	
Indigent Defense Commission, by majority vote, accepts or rejects the nominee -Commission may interview the nominee and consider any materials used in the selection process -Commission notifies nominee and selection panel	
If nominee accepted, Commission oversees an oath taking ceremony	If nominee rejected, SCCID posts job opening again, and process starts over

## Organizational Chart related to the Office of Circuit Public Defenders

Figure 4 includes an organizational chart, current as of March, 2018.

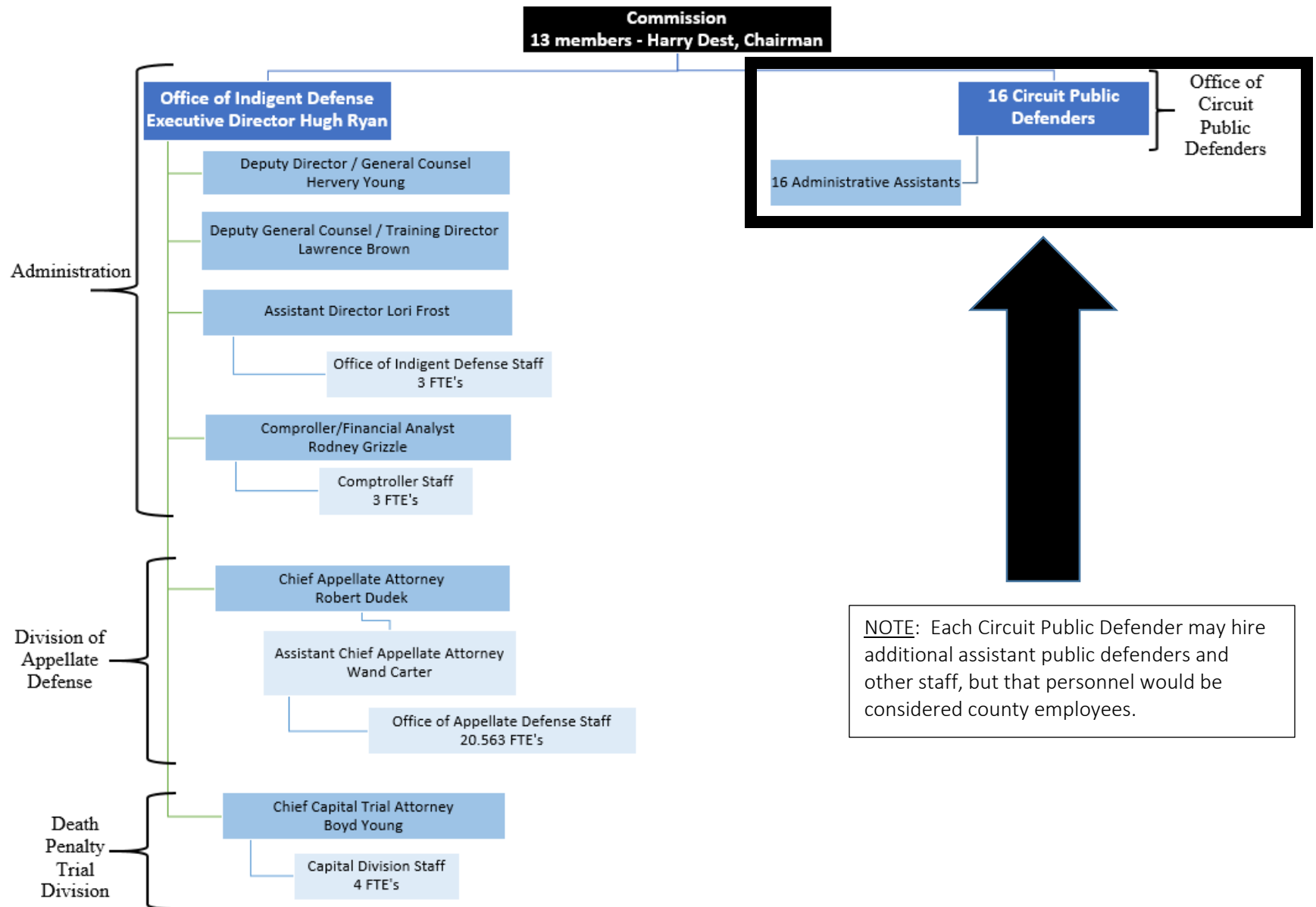


Figure 4. SCCID Organizational chart as of March 2018.<sup>85</sup>

## Products, Services, and Customers related to the Office of Circuit Public Defenders

In the Program Evaluation Report, the Committee asks an agency **to provide a list of its deliverables** (i.e., products and services) as well as additional information related to laws, customers, costs, and potential negatives impacts.

Table 3 includes an overview of the deliverable provided by the Office of Circuit Public Defenders and Table 4 includes additional information about the deliverable. Figure 5 provides a flow chart which summarizes steps in a criminal case, which includes murder cases. Figure 6 provides a flow chart which summarizes steps in the process related to contract attorneys.

Table 3. List of the Office of Circuit Public Defenders' deliverables.

Item # <sup>1</sup>	Deliverable	Customers					Costs	
		Does law require, allow, or not address it?	Does the agency... Evaluate the <b>outcome</b> obtained by customers / individuals who receive the service or product?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the <b>cost</b> it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
1A	Legal representation of indigent S.C. citizens in capital murder cases^  *See Note A for examples of services provided as part of "legal representation."	Require	×	×	✓	×	✓	✓
1B	Legal representation of indigent S.C. citizens in criminal cases*	Require	×	×	✓	×	✓	✓
1C	Legal representation of indigent S.C. citizens in murder cases*	Require	×	×	✓	×	✓	✓

<sup>1</sup> Item numbers are the ones utilized in agency's program evaluation report.

		Customers					Costs	
			Does the agency...					
Item # <sup>1</sup>	Deliverable	Does law require, allow, or not address it?	Evaluate the outcome obtained by customers / individuals who receive the service or product?	Know the annual number of potential customers?	Know the annual number of customers served?	Evaluate customer satisfaction?	Know the cost it incurs, per unit, to provide the product or service?	Does the law allow the agency to charge for it to cover the agency's costs?
3	Collection of court costs and expenses from indigent S.C. citizens*	Require	×	×	✓	×	×	×

*Table Note: An asterisk (\*) indicates the Administration organizational unit is also associated with the deliverable. An ^ indicates the Death Penalty Trial Division is also associated with the deliverable.*

*Note A: Services provided as part of "legal representation," include, but are not limited to:*

- (1) work directly with clients to establish trusting, professional relationships which includes (a) maintaining regular contact through correspondence, phone calls, and in-person meetings; (b) visiting incarcerated clients at correctional facilities on a steady basis to discuss case strategies, fact developments, and trial preparation; (c) ensuring all communications with clients remain private; and (d) upholding ethical duties of loyalty and confidentiality to clients throughout all legal representation;*
- (2) representing the accused during criminal investigative proceedings, such as (a) attending police line-ups; (b) monitoring physical examinations, such as finger-nail scraping and blood, urine, and DNA testing; (c) being present at the time an accused person is arrested; and (d) arranging for the setting of bail and posting of bond, which allows their clients to be conditionally released pending trial.;*
- (3) researching the facts and laws involved in the criminal case, through pre-trial discovery, interviewing key witnesses, and conducting legal research to prepare for court appearances.*
- (4) assisting the accused during critical pre-trial phases, such as pretrial conferences with judges and prosecutors, and suppression motions.*
- (5) engaging in plea negotiations with the prosecutor, to obtain a reduced sentence or to have the charges dropped;*
- (6) actively defending the accused in court during trial by participating in jury selections, raising defenses that may be available and advantageous for the defendant (such as self-defense, defense of property, etc.); making opening statements, examining witnesses on the witness stand, presenting evidence to judges and juries, and making closing arguments at the conclusion of trials.*
- (7) attending post-trial sentencing hearings for clients who negotiate plea bargains, or are found guilty at trial. A public defender also may file an appeal if errors in court proceedings prejudiced his client's rights to a fair trial. Appeal work includes tasks such as ordering trial transcripts and filing appellate briefs and motions. A public defender may request oral arguments before appellate judges, which she must prepare for and attend if her request is granted.*

Table 4. Additional details about the Office of Circuit Public Defenders' deliverable.

Deliverable #1A <sup>86</sup>	Legal representation of indigent S.C. citizens
-------------------------------	--

Product/Service Component: Legal services in capital murder cases and criminal sexual conduct cases

Does law require, allow, or not address it? Require

Applicable law: S.C. Code Ann. 16-3-26, 16-3-655, and 17-3-90

Greatest potential harm to the public if deliverable is not provided:

- The indigent citizens of S.C. would be denied their constitutional rights under the sixth amendment, the right to counsel; and fourteenth amendment, the right to equal protection under the law.

1-3 recommendations to the General Assembly, other than \$, for how the General Assembly can help avoid the greatest potential harm

- Ensure only those citizens who are indigent, receive appointed counsel.
- Ensure indigency screening and appointment of counsel occurs as early as possible.

Other state agencies whose mission the deliverable may fit within: None

Does agency evaluate the <b>outcome obtained by</b> individuals who receive the service or product?	Does agency know the annual number of <b>potential customers</b> ?	Does agency know the annual number of <b>customers served</b> ?	Does the agency evaluate <b>customer satisfaction</b> ?	Does the agency know the <b>cost it incurs, per unit, to provide the product or service</b> ?	Does the law <b>allow the agency to charge for it to cover the agency's costs</b> ?
×	×	✓	×	✓	✓

**Deliverable #1B<sup>87</sup>****Legal representation of indigent S.C. citizens**

Product/Service Component: Legal services in criminal cases.

Does law require, allow, or not address it? Require

Applicable law: S.C. Code Ann. 17-3-10, -80, -90; and S.C. Code Ann. 63-19-830, -1040

Greatest potential harm to the public if deliverable is not provided:

- The indigent citizens of S.C. would be denied their constitutional rights under the sixth amendment, the right to counsel; and fourteenth amendment, the right to equal protection under the law.

1-3 recommendations to the General Assembly, other than \$, for how the General Assembly can help avoid the greatest potential harm

- Ensure only those citizens who are indigent, receive appointed counsel.
- Ensure indigency screening and appointment of counsel occurs as early as possible.

Other state agencies whose mission the deliverable may fit within: None

Does agency evaluate the <b>outcome obtained by</b> individuals who receive the service or product?	Does agency know the annual number of <b>potential customers</b> ?	Does agency know the annual number of <b>customers served</b> ?	Does the agency evaluate <b>customer satisfaction</b> ?	Does the agency know the <b>cost it incurs, per unit, to provide the product or service</b> ?	Does the law <b>allow the agency to charge for it to cover the agency's costs</b> ?
×	×	✓	×	✓	✓



**Deliverable #1C<sup>88</sup>****Legal representation of indigent S.C. citizens**

Product/Service Component: Legal services in murder cases.

Does law require, allow, or not address it? Require

Applicable law: S.C. Code Ann. 17-3-20, -80, -90

Greatest potential harm to the public if deliverable is not provided:

- The indigent citizens of S.C. would be denied their constitutional rights under the sixth amendment, the right to counsel; and fourteenth amendment, the right to equal protection under the law.

1-3 recommendations to the General Assembly, other than \$, for how the General Assembly can help avoid the greatest potential harm

- Ensure only those citizens who are indigent, receive appointed counsel.
- Ensure indigency screening and appointment of counsel occurs as early as possible.

Other state agencies whose mission the deliverable may fit within: None

Does agency evaluate the <b>outcome obtained by</b> individuals who receive the service or product?	Does agency know the annual number of <b>potential customers</b> ?	Does agency know the annual number of <b>customers served</b> ?	Does the agency evaluate <b>customer satisfaction</b> ?	Does the agency know the <b>cost it incurs, per unit, to provide the product or service</b> ?	Does the law <b>allow the agency to charge for it to cover the agency's costs</b> ?
×	×	✓	×	✓	✓

## Deliverable #3<sup>89</sup> Court costs and expenses from indigent S.C. citizens

Product/Service Component: No additional components

Does law require, allow, or not address it? Require

Applicable law: S.C. Code Ann. 17-27-60.

Greatest potential harm to the public if deliverable is not provided:

- The indigent citizens of S.C. would be denied their right to counsel and access to resources to provide a proper defense as established in S.C. Code Ann. Section 17-3-50.

1-3 recommendations to the General Assembly, other than \$, for how the General Assembly can help avoid the greatest potential harm

- Require the Judiciary Branch to follow the existing standards established in S.C. Code Ann. Section 17-3-50.

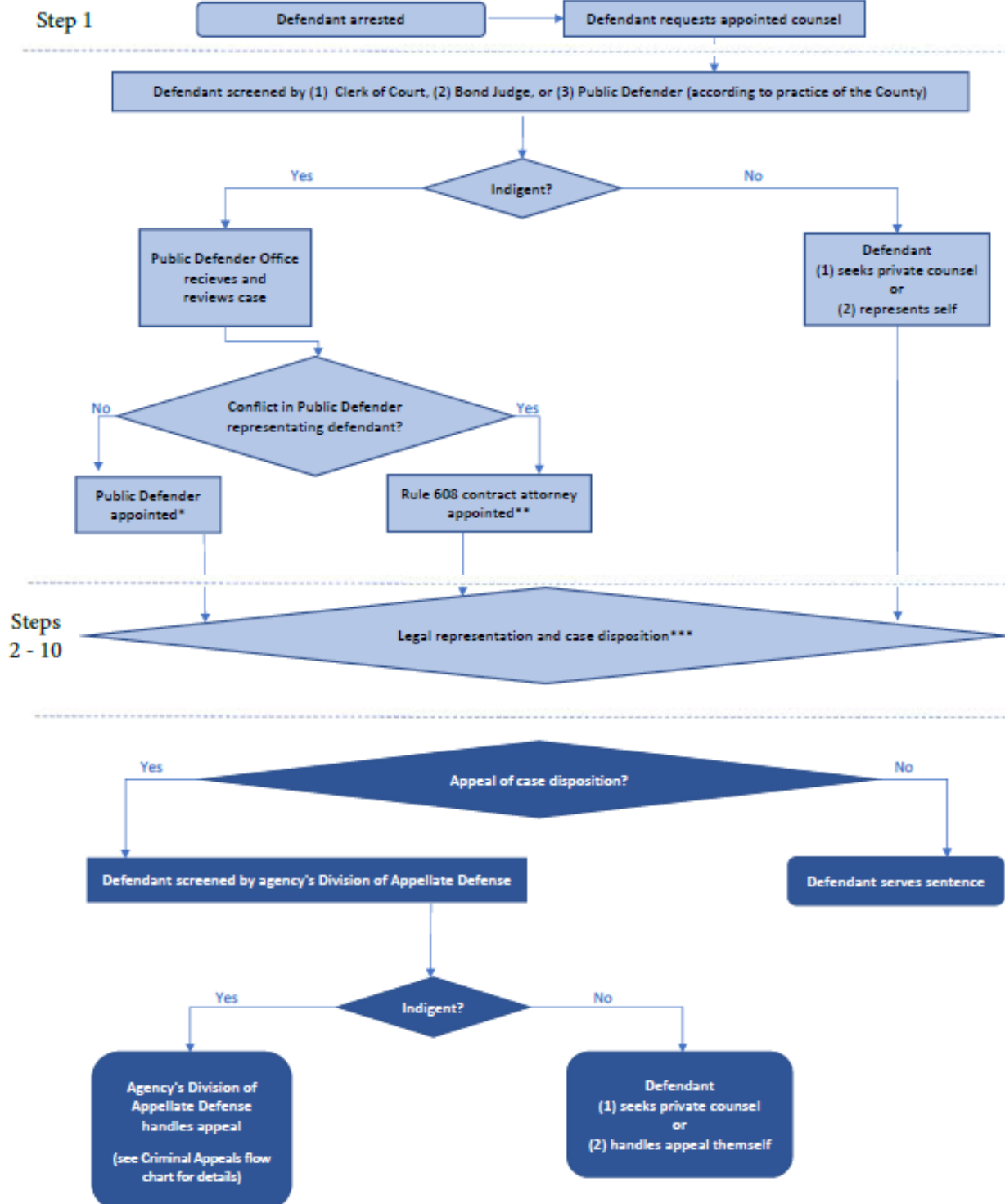
Other state agencies whose mission the deliverable may fit within: None

Does agency evaluate the <b>outcome obtained by</b> individuals who receive the service or product?	Does agency know the annual number of <b>potential customers</b> ?	Does agency know the annual number of <b>customers served</b> ?	Does the agency evaluate <b>customer satisfaction</b> ?	Does the agency know the <b>cost it incurs, per unit, to provide the product or service</b> ?	Does the law <b>allow the agency to charge for it to cover the agency's costs</b> ?
×	×	✓	×	×	×

## Adult Criminal Case, including death penalty - Circuit and Magistrate Court

*Indigent defendants right to counsel in criminal cases is granted in the U.S. Constitution.*

Flow Chart as of June 2018



\*If the case involves the Death Penalty, the Capital Litigation Unit can get involved as second counsel to assist the appointed attorney. §16-3-26

\*\*If the Public Defender office is conflicted, the Capital Litigation Unit will be appointed and the court will appoint a Death Penalty Certified attorney to be second chair. §16-3-26

\*\*\*Case disposition includes: (1) plea or nol proceed (not prosecuting) of some or all charges (i.e., warrants) before trial; (2) plea or nol proceed (not prosecuting) some or all charge (warrants) during trial; (3) judge or jury decision at end of trial.

Figure 5. Flow chart summarizing steps in a death penalty case.<sup>90</sup>

## *Employee, and Contract Attorney, Information related to the Office of Circuit Public Defenders*

In the Program Evaluation Report, the Committee asks the agency to provide information about the employees in each of the agency's organizational units. The Office's state employees include sixteen Circuit Public Defenders and sixteen administrative assistants, one for each judicial circuit. Each Circuit Public Defender may hire additional assistant public defenders and other staff, but these are county employees.<sup>91</sup>

Table 5 includes additional employee information related to the division.

*Table 5. Office of Circuit Public Defenders: Employee Information.*

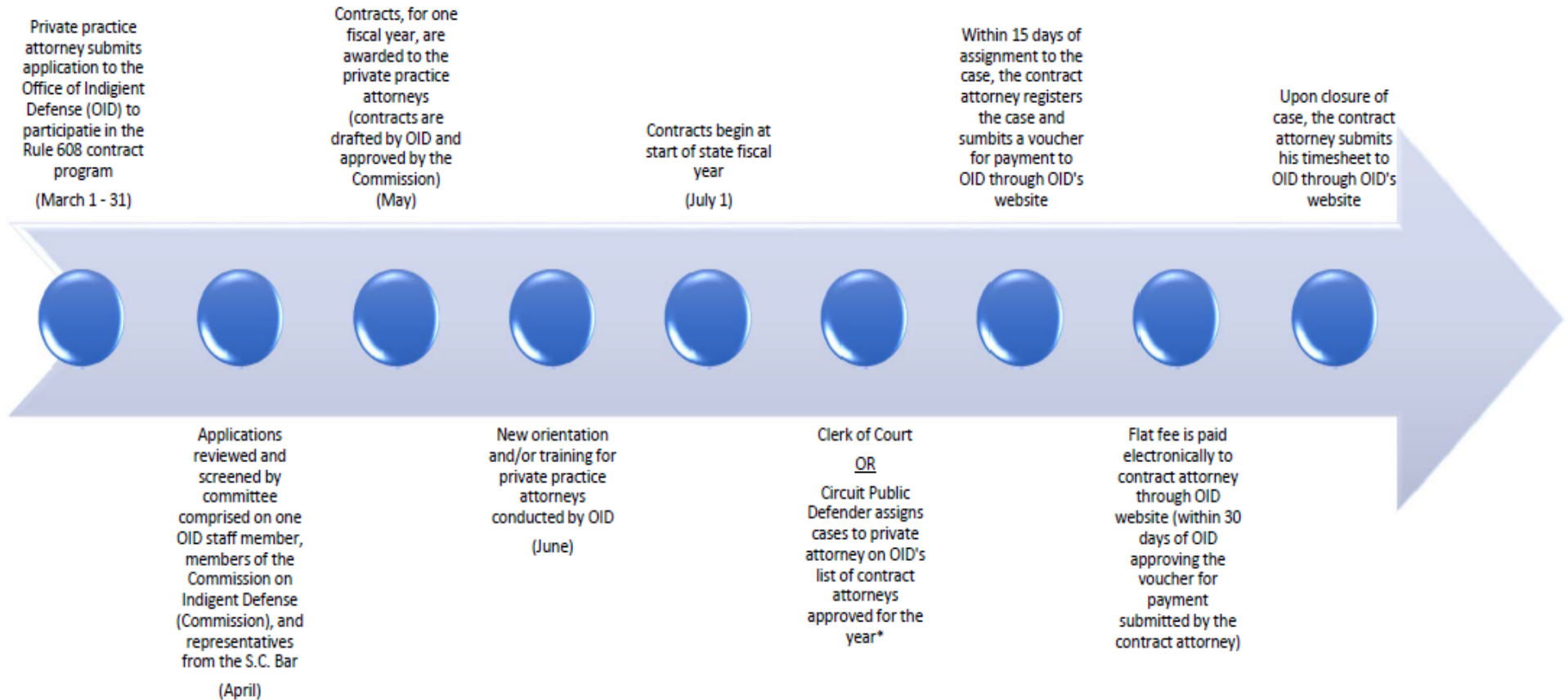
<u>Details</u>	<u>2014-15</u>	<u>2015-16</u>	<u>2016-17</u>
What is the turnover rate?	0.06%	21.88%	28.13%
Is employee satisfaction evaluated?	×	×	×
Is anonymous employee feedback allowed?	×	×	×
Do any positions require a certification (e.g., teaching, medical, accounting, etc.)	✓	✓	✓
Did the agency pay for, or provide classes/instruction needed to maintain all, some, or none of required certifications?	None	None	None

### *Rule 608 Contract Attorneys*

Figure 6 provides a flow chart which summarizes steps in the process related to contract attorneys. Appendix C includes a sample contract for representation in criminal matters. Appendix D includes a sample contract for representation in family court matters.

## Selection and Payment of Rule 608 Contract Attorneys

Flow Chart as of April 2018



**\*NOTE:** Clerk of Court assigns cases in post-conviction relief (PCR), sexually violent predator (SVP), and Family Court Cases if person is indigent. The Circuit Defender assigns cases in criminal matters if (1) the defendant was determined to be indigent, and (2) a Public Defender is appointed AND a conflict of interest exists that prevents the Public Defender from representing the defendant.

Figure 6. Flow chart summarizing steps in the process related to contract attorneys.<sup>92</sup>

## Revenue and Funding Sources of the Office of Circuit Public Defenders

### Revenue/Funding Received or Generated by the Office of Circuit Public Defenders

In the Program Evaluation Report, the Committee asks the agency to provide information about its revenue sources. The agency provides the information below.

The office **receives** funds through the following source<sup>93</sup>:

- General Fund Appropriations 1 - Recurring

The Office of Circuit Public Defenders **generates** funds from the following sources<sup>94</sup>:

- Court Fine 1<sup>2</sup>
- Court Fine 2<sup>3</sup>
- Public Defender Application Fee
- Conviction Surcharge 2<sup>4</sup>

Table 6 includes the total amount generated by the division.

Table 6. Funding generated by the Office of Circuit Public Defenders.<sup>95</sup>

Revenue Source	Recurring or one-time?	State, Federal, or Other?	Does revenue remain with the agency or go to General Fund?	Total revenue received in 2015-16	Total revenue estimated to receive in 2016-17
Court Fine 1	Recurring	Other	Agency	\$630,093	\$637,303
Court Fine 2 <sup>5</sup>	Recurring	Other	Agency	\$7,351,747	\$7,175,473
Public Defender Application Fee <sup>6</sup>	Recurring	Other	Agency	\$611,751	\$620,300
Conviction Surcharge 2 <sup>7</sup>	Recurring	Other	Agency	\$1,627,519	\$1,375,560
<b>TOTAL</b>				<b>\$10,221,110</b>	<b>\$9,808,636</b>

<sup>2</sup> This revenue source includes the \$50 fee on civil action filings of which 14.56% goes to SCCID (See S.C. Code Ann. 14-1-204(B)(1)(b)). Fines are collected by the Clerk of Courts Office and submitted to the State Treasurer's Office on a monthly bases for disbursement to our agency.

<sup>3</sup> This revenue source Includes: (1) Fee for filing complaints or petitions in civil actions described in 8-21-310(11)(a) (See, Section 14-1-204(A)(4)), which is legal aid collection that flows through to SC Legal Services; (2) Court Fine Assessment for those who are convicted of, plead guilty or nolo contendere to, or forfeits bond for a criminal offense in General Sessions, Magistrate, and Municipal Courts (see Sections 14-1-206(C)(4), 14-1-207(C)(6) and 14-1-208(C)(6) and Section 14-1-218(4)); (3) Application fee for public defender services in General Sessions, Magistrate, and Municipal Courts (See, Section 17-3-30(B)). Fines are collected by the Clerk of Courts Office and submitted to the State Treasurer's Office on a monthly bases for disbursement to our agency.

<sup>4</sup> This revenue source includes the \$500 probation fee collected by the Clerks of Court and remitted to SCCID. Fees are collected by the Clerk of Courts Office and submitted to SCCID on a monthly basis.

<sup>5</sup> This revenue source is associated with all agency organizational units.

<sup>6</sup> The following organizational units are also associated with this revenue source: (1) Administration and (2) Death Penalty Trial Division.

<sup>7</sup> The following organizational units are also associated with this revenue source: (1) Administration and (2) Death Penalty Trial Division.

Revenue/Funding Utilized by the Office of Circuit Public Defenders

Table 7 includes information on revenue sources utilized by the Office of Circuit Public Defenders to achieve the agency's comprehensive strategic plan in fiscal years 2016-17 and 2017-18.

*Table 7. Agency revenue sources utilized by the Office of Circuit Public Defenders to achieve the agency's comprehensive strategic plan in FY 2016-17 and 2017-18.<sup>96</sup>*

Revenue Sources utilized	Recurring or one-time?	State, Federal, or Other?	Organizational Units utilizing the funds	Spent to achieve plan in 2016-17	Percent of total spent	Budgeted to achieve plan in 2017-18	Percent of total spent
General Fund Appropriations 1	Recurring	State	Administration, Division of Appellate Defense, Office of Circuit Public Defenders, Death Penalty Trial Division	\$28,974,752	74.53%	\$30,845,217	68.45%
General Fund Appropriations 2	One-Time	State	Administration, Division of Appellate Defense, Office of Circuit Public Defenders, Death Penalty Trial Division	\$0	0.00%	\$100,000	0.22%
Capital Reserve Fund	One-Time	Other	Administration, Division of Appellate Defense, Office of Circuit Public Defenders, Death Penalty Trial Division	\$73,087	0.19%	\$64,819	0.14%
Court Fine 1	Recurring	Other	Administration, Office of Circuit Public Defenders	\$637,303	1.64%	\$900,000	2.00%
Traffic Education Program Fee (Magistrate Court)	Recurring	Other	Administration, Office of Circuit Public Defenders	\$2,248 <sup>8</sup>	0.01%	\$220,000	0.49%
Traffic Education Program Fee (Municipal Court)	Recurring	Other					
Civil Action Application Fee	Recurring	Other	Administration, Office of Circuit Public Defenders	\$0 <sup>9</sup>	0.00%	\$32,000	0.07%
Investment Earnings 1	One-Time	Other					

<sup>8</sup> These amounts are grouped together because that is how they appear in the S.C. Enterprise Information System.

<sup>9</sup> These amounts are grouped together because that is how they appear in the S.C. Enterprise Information System.

Revenue Sources utilized	Recurring or one-time?	State, Federal, or Other?	Organizational Units utilizing the funds	Spent to achieve plan in 2016-17	Percent of total spent	Budgeted to achieve plan in 2017-18	Percent of total spent
Public Defender Application Fee	Recurring	Other	Administration, Division of Appellate Defense, Office of Circuit Public Defenders, Death Penalty Trial Division	\$7,483,424 <sup>10</sup>	19.25%	\$10,717,272	23.78%
Court Fine 2	Recurring	Other					
Conviction Surcharge 2	Recurring	Other					
Investment Earnings 2	One-Time	Other					
Federal Grant	Recurring	Federal	Administration, Office of Circuit Public Defenders	\$130,446	0.34%	\$129,829	0.29%
<b>TOTAL</b>				<b>\$37,301,260</b>	<b>95.94%</b>	<b>\$43,009,137</b>	<b>95.44%</b>

<sup>10</sup> These amounts are grouped together because that is how they appear in the S.C. Enterprise Information System.



## *Agency strategic plan and performance related to the Office of Circuit Public Defenders*

In the Program Evaluation Report, the **Committee asks an agency how it allocates its human and financial resources to accomplish its goals** (i.e., broad expression of a long-term priority) **and objectives** (i.e., specific, measurable and achievable description of an effort the agency is implementing to achieve a goal) in the agency's strategic plan.<sup>97</sup> The Committee also asks the agency to list any funds the agency spent or transferred not toward the agency's comprehensive strategic plan.

### *Funds Spent/Transferred not toward the agency's comprehensive strategic plan*

In regards to revenue sources associated with the administration unit, the agency indicated \$1,317,793 spent in 2016-17, and \$1,700,000 authorized in 2017-18, were spent or transferred not directly toward the agency's strategic plan.<sup>98</sup> These funds came from the Public Defender Application fees. These amounts were transferred to the S.C. Legal Services non-profit organization. S.C. Legal Services provides free legal assistance in a wide variety of civil (non-criminal) legal matters to eligible low income residents of South Carolina.<sup>99</sup> Since the agency does not have control over how the organization utilizes the funds, the amounts were not included in amounts the agency spends toward accomplishment of its strategic plan.

### *Funds Spent toward the agency's comprehensive strategic plan*

Table 8.1-8.3 includes an overview of how the agency allocated its resources to Strategy 1.1, 2.1, and 2.2, the strategies with which the Office of Circuit Public Defenders is associated. Table 8.4 includes detailed information regarding the related performance measures.

## Strategic Plan associated with the Office of Circuit Public Defenders

Table 8.1. Part of agency's strategic plan related to the Office of Circuit Public Defenders, Strategy 1.1: Enhance the circuit public defender system.

### GOAL 1 Ensure the effective legal representation of S.C. citizens eligible for indigent defense services

#### Strategy 1.1 Enhance the circuit public defender system

Objective 1.1.1	Provide effective administration for the circuit public defender offices and for the appointment of counsel for all qualified indigent defendants in S.C. trial courts and family court
Objective 1.1.2	Increase the number of public defenders in each circuit to reduce the number of cases handled by each public defender to ensure efficient representation of indigent defendants in all S.C. trial courts
Objective 1.1.3	Increase the number of investigators in each circuit
Objective 1.1.4	Monitor the Rule 608 contract system to provide effective representation for parents and other parties in family court matters and to control fees and expenses
Objective 1.1.5	Begin analysis of the interface of the circuit public defender offices into the Judicial Department's Case Management System (CMS)

Responsible Employee(s): Mr. Hugh Ryan (responsible for less than three years)  
Employee have input in budget? Yes, Mr. Ryan has input into the budget for Strategy 1.1

External Partner(s): State and local government

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	37.4	\$34,524,212	78.01%	<ul style="list-style-type: none"> <li>Increase the number of full-time public defenders in all 16 judicial circuits</li> <li>Decrease the number of cases handled by each individual public defender</li> </ul>
2017-18	37.4	\$39,551,247	87.77%	

Table 8.2. Part of agency's strategic plan related to the Office of Circuit Public Defenders and the Administration unit, Strategy 2.1: Provide mandatory training program for all new public defenders and contract attorneys.

**GOAL 2 Enhance training and professional development of S.C. public defenders and staff**

**Strategy 2.1 Provide mandatory training program for all new public defenders and contract attorneys**

- Objective 2.1.1 Increase accessibility to PD 101, PD 102 and PD 103 training classes
- Objective 2.1.2 Conduct topic specific training to all public defenders and contract attorneys
- Objective 2.1.3 Implement online training for all public defenders in the indigent defense system

Responsible Employee(s): Mr. Lawrence Brown (responsible for less than three years)  
Employee have input in budget? Yes, Mr. Brown has input into the budget for Strategy 1.1

External Partner(s): Local governments and individuals

	# of FTE equivalents utilized	Amount Spent (including employee salaries/wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	0.55	\$ 104,414	0.24%	<ul style="list-style-type: none"> <li>Increase attendance in the public defender training sessions: PD 101, PD 102 and PD 103</li> <li>Increase the number of continuing education hours provided to public defenders (CLE)</li> </ul>
2017-18	0.55	\$ 378,635	0.84%	

Table 8.3. Part of agency's strategic plan related to the Office of Circuit Public Defenders and the Administration unit, Strategy 2.2: Enhance mentoring programs in circuit public defender offices.

**GOAL 2 Enhance training and professional development of S.C. public defenders and staff**

**Strategy 2.2 Enhance mentoring programs in circuit public defender offices**

**Objective 2.2.1** Expand mentoring programs to all 16 public defender circuits

**Objective 2.2.2** Provide mentoring opportunities to newly hired public defenders in family and summary courts

Responsible Employee(s): Mr. Lawrence Brown (responsible for less than three years)

Employee have input in budget? Yes, Mr. Brown has input into the budget for Strategy 1.1

External Partner(s): Local governments

	# of FTE equivalents utilized	Amount Spent (including employee salaries / wages and benefits)	% of Total Available to Spend	Associated Performance Measures
2016-17	0.05	\$ 2,685	0.01%	<ul style="list-style-type: none"> <li>Increase the number of judicial circuits that have mentoring programs for new public defenders in family and summary courts</li> </ul>
2017-18	0.05	\$ 2,685	0.01%	

## *Performance measures associated with the Office of Circuit Public Defenders*

The agency provided its performance measures in its Program Evaluation Report (PER). The agency was asked to categorize each measure based on the definitions below:<sup>100</sup>

### Types of Performance Measures:

**Outcome Measure** - A quantifiable indicator of the public and customer benefits from an agency's actions. Outcome measures are used to assess an agency's effectiveness in serving its key customers and in achieving its mission, goals and objectives. They are also used to direct resources to strategies with the greatest effect on the most valued outcomes. Outcome measures should be the first priority. Example - % of licensees with no violations.

**Efficiency Measure** - A quantifiable indicator of productivity expressed in unit costs, units of time, or other ratio-based units. Efficiency measures are used to assess the cost-efficiency, productivity, and timeliness of agency operations. Efficiency measures measure the efficient use of available resources and should be the second priority. Example - cost per inspection

**Output Measure** - A quantifiable indicator of the number of goods or services an agency produces. Output measures are used to assess workload and the agency's efforts to address demands. Output measures measure workload and efforts and should be the third priority. Example - # of business license applications processed.

**Input/Activity Measure** - Resources that contribute to the production and delivery of a service. Inputs are "what we use to do the work." They measure the factors or requests received that explain performance (i.e. explanatory). These measures should be the last priority. Example - # of license applications received.

Table 8.4 includes details about the performance measures associated with the Office of Circuit Public Defenders.

Appendix E includes performance standards for public defenders and assigned counsel (non-capital) that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. Appendix F includes performance standards for public defenders and assigned counsel in juvenile cases that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013.

Table 8.4. Performance measure associated with the Office of Circuit Public Defenders.

Performance Measure	Type of Measure		2013-14	2014-15	2015-16	2016-17	2017-18
<b>Increase the number of Full-Time Public Defenders (PD) in all 16 Judicial Circuits</b>  <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	291.50	291.50	291.50
		<u>Actual:</u>	DNE	DNE	236.50	272.50	<u>Trend Line</u> Not applicable, because only two data points are available.
<b>Decrease the number of cases (Warrants) handled by each individual Public Defender</b>  <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	376	376	376
		<u>Actual:</u>	DNE	DNE	464	426	<u>Trend Line</u> Not applicable, because only two data points are available.
<b>Increase attendance in the Public Defender Training Sessions; PD 101, PD 102 and PD 103</b>  <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	165	165	165
		<u>Actual:</u>	DNE	DNE	79	182	<u>Trend Line</u> Not applicable, because only two data points are available.
<b>Increase the number of Continuing Education Hours provided to PD's (Continuing Legal Education)</b>  <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	60	60	60
		<u>Actual:</u>	DNE	DNE	48.50	59	<u>Trend Line</u> Not applicable, because only two data points are available.
<b>Increase number of Judicial Circuits the have mentoring programs for new PD's in the Family and Summary Courts</b>  <u>Required by:</u> Agency selected (not required by state or federal government)	Output	<u>Target:</u>	DNE	DNE	16	16	16
		<u>Actual:</u>	DNE	DNE	2	7	<u>Trend Line</u> Not applicable, because only two data points are available.

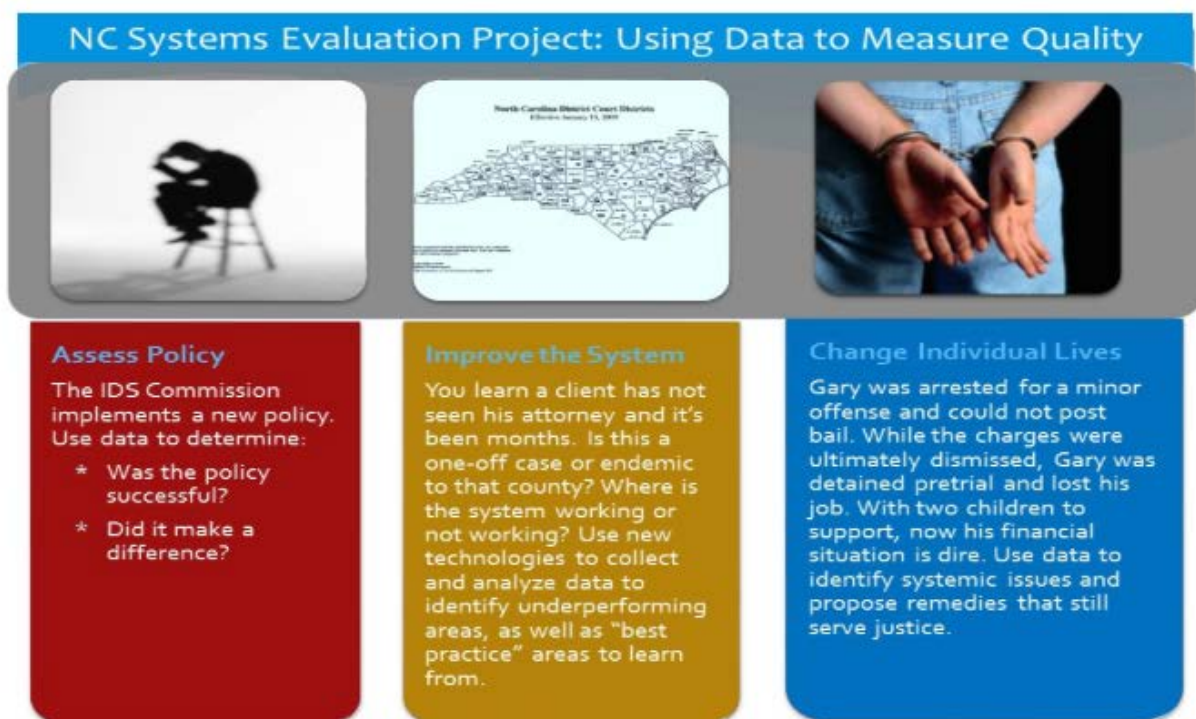
\*Table Note: "DNE" means did not exist.

# N.C. SYSTEMS EVALUATION PROJECT (NCSEP)

## Overview

The following explanation is an excerpt from the North Carolina Office of Indigent Defense Services (NCIDS) website.<sup>101</sup>

Across the country, indigent defense programs lack effective data collection and program evaluation, which hampers our ability to improve our systems and advocate for fair criminal justice policies. We need what other large scale systems have: the ability to collect and analyze indicators that measure system performance. What are our outcomes? How well do we meet the needs of our clients? If an agency initiates a new practice or policy, was the policy successful? These are questions every indigent defense agency should have the tools to answer. In a world where big data is everywhere, empirical evidence is one of the most valuable tools available to advocates of indigent defense.



The NCIDS created the North Carolina Systems Evaluation Project (NCSEP) to develop performance measures that would evaluate system outcomes and enable defense agencies to assess, with empirical data, how well the indigent defense system meets the needs of our clients, the criminal justice system, and the community. With empirical data NCIDS will be able to improve the quality of legal representation for the poor, increase system efficiency, and quantify the social and economic benefits that quality indigent defense services generate.

NCSEP's task has proven to be an extremely challenging undertaking because, until now, no indigent defense system in the country has measured system outcomes objectively. Now NCSEP is poised to accomplish what has not been done before and develop uniform Key Performance Indicators (KPIs) for the defense community. For the first time, the goals and objectives of a high-quality indigent defense system have been defined and KPIs that measure system outcomes have been operationalized to work across indigent defense jurisdictions. Using these metrics, agencies can track their performance over time;



evaluate the impact of policy changes; compare results across defense delivery methods, including retained attorneys, public defenders, assigned counsel, and contract counsel, as well as pro se clients of attorney; and so much more.

Finally, NCSEP will help NCIDS fulfill its statutory obligation, under N.C. Gen. Stat. §§ 7A-498.1(4) and 7A-498.5(a), to evaluate the services we provide and to identify ways to improve the quality of indigent defense services, increase efficiency, and reduce costs to taxpayers.

## *Materials Available*

Below are some materials on the NCIDS website to help indigent defense agencies build their capacity to perform evidence-based evaluations. Appendix G includes the North Carolina Systems Evaluation Project final grant report.

- **Final Report**
  - [NCSEP Open Society Foundations Final Grant Report](#) (October 2014)
- **Evaluating Indigent Defense**
  - [NCSEP Performance Measures Guide](#): The *North Carolina Systems Evaluation Project Performance Measures Guide* presents a blueprint for evaluating indigent defense system performance. The Guide delineates the goals, objectives, and potential indicators for measuring indigent defense system performance.
  - [NCSEP Performance Measures Guide Companion Video](#): NCSEP has prepared a companion video that provides an overview of NCSEP and the methodology to be used in evaluating indigent defense systems.
- **Indigent Defense Key Performance Indicators (KPIs)**
  - [NCSEP Key Performance Indicators \(KPIs\) Table](#)
  - [Case Outcome Data and KPI Toolkit](#): The NCSEP Pilot Project has created this toolkit to assist jurisdictions in developing comparable case outcome data and KPIs. The KPIs measure the outcomes received by defendants, including dismissals, reductions from a felony to a misdemeanor charge, alternatives to incarceration, and sentence severity. Using these metrics, indigent defense agencies can track their performance over time, evaluate the impact of policy changes, and compare results across defense delivery methods, including retained attorneys, public defenders, assigned counsel, and contract counsel, as well as pro se clients.
  - [Access to Attorney Data and KPI Toolkit](#): The NCSEP Pilot Project has created this toolkit to assist jurisdictions in developing comparable access to attorney data and KPIs. The KPIs measure how well an indigent defense system protects the right to counsel and ensures that access to counsel is timely enough to preserve constitutional rights.

- **Building Data Infrastructure**

- [Building In-House Research Capacity Toolkit](#): This toolkit, developed by the NLADA and NCSEP, provides defenders with the tools to advocate for and to set up in-house research positions.
- [Building a Data Warehouse Toolkit](#): This toolkit provides information to build a data depository to enable defense agencies to house, access, and analyze large quantities of data. In addition, the actual NCSEP data warehouse program is available upon request for non-commercial use.
- [North Carolina Systems Evaluation Project \(NCSEP\) Pilot Site Project](#): The NCSEP Pilot Site Project is a multi-state project dedicated to developing uniform data and key performance indicators (KPIs) from the NCSEP Performance Measures Guide. The pilot sites include the Connecticut Division of Public Defender Services, the Knox County Public Defender's Community Law Office (TN), and the Travis County Court Administration (TX).
- [Justice Standards, Evaluation and Research Initiative \(JSERI\) and the National Research & Data Analysis \(RDA\) Committee](#): The National Legal Aid & Defender Association (NLADA) established a new initiative, JSERI, to help expand the research capacity of the indigent defense community. As part of JSERI, the NLADA has established the RDA Committee to facilitate and inform the work of this initiative. The RDA consists of defenders, researchers, policy experts and others who support the creation of a strong foundation for indigent defense research.

# APPENDICES

*Appendix A. Guidelines for Selection of Circuit Public Defender Selection Panels*

**Uniform Guidelines for the Selection of  
Circuit Public Defender Selection Panels**  
(Revised and Republished 4-25-2008)

Section 17-3-510, of the 2007 Indigent Defense Act provides that each county must elect its representative(s) from the active licensed attorneys who reside within each county to serve on its Circuit Public Defender Selection Panel, for a term of five years and Section 17-3-310(G)(7) provides, “The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.” In order to assure a fair, impartial and objective process for the selection of each circuit public defender, the following procedures have been adopted by the Commission on Indigent Defense for the Election of the Circuit Public Defender Selection Panels and the Nomination of Circuit Public Defenders.

**Who Conducts the Election**

The election will be conducted by the President of the county’s Bar Association, who must be an active licensed attorney residing in the county. If a county does not have a bar president, or if the bar president is unable or unwilling to conduct an election, then the election shall be conducted by an active licensed attorney residing in the county designated for such a purpose by the Executive Director of the Commission.

**Methods for Conducting Election**

Elections shall be conducted in one of two ways, at the discretion of the individual authorized to conduct the election. The two ways are either the “Meeting” method or the “Mail-In” method. Each method, with required certifications, is detailed below.

**Pledging Prohibitions**

No applicant or potential applicant for circuit public defender may seek directly or indirectly the pledge of a member or potential member of a Circuit Public Defender Selection Panel or directly or indirectly contact a Commissioner of the South Carolina Commission on Indigent Defense regarding his or her candidacy for circuit public defender.

No member of the Bar may offer directly or indirectly his or her pledge to an applicant or potential applicant at any time.

No member of a selection panel or the Commission may pledge his or her commitment to an applicant or potential applicant at anytime.

The prohibitions stated above do not prevent Bar members or the general public from communicating with panel members or the Commission in support of or opposition to an applicant once the panel has been selected and has commenced its consideration of applicants.

For purposes of these guidelines indirectly seeking a pledge means the applicant or potential applicant or someone acting on his or her behalf and/or at the request of the applicant or potential applicant; and indirectly offering a pledge means anyone acting in his or her own behalf and/or at the request of another person or persons.

If an applicant or potential applicant or any other person becomes aware of any solicitation or offering of pledges such person has an affirmative duty to inform the Commission on Indigent Defense of that activity, following the Complaint Procedures set forth in these guidelines.

Violations of these policies shall be reported immediately to the General Counsel for SCCID, following the Complaint procedures outlined below. The Commission will address any violations and/or complaints regarding the selection process in accordance with the complaint procedures therein outlined.

### **Complaint Procedures concerning Circuit Public Defender Selection Panels**

1. Complaints regarding alleged improper acts or omissions in the election of members to a Circuit Public Defender Selection Panel and in the selection of a nominee Circuit Public Defender by a selection panel must be made in writing and provided to the General Counsel for the Commission on Indigent Defense within 10 days of discovery of any alleged improper activity. Complaints will remain confidential between complainant, SCCID General Counsel and the SCCID Executive Director pending presentment to the Commission.
2. The complaint shall list specific facts supporting each and every claim of impropriety.
3. The complaint shall list the name, address and telephone number of each and every witness complainant is aware of that has information concerning the facts of the matter.
4. The Commission has the authority to request that the general counsel interview all material witnesses. Witnesses may be asked to appear before the Commission; however witnesses who are not also the complainant cannot be compelled to appear.
5. The Commission will take such action as it deems appropriate or take no further action after review of complaint.
6. If requested, complainant (this includes any witness acting as complainant) will appear before the Commission and be prepared to answer questions concerning any allegations.
7. The complainant will not address or have any third party address the issues with individual members of the Commission. Any correspondence, communication, etc., shall be to the General Counsel of the agency, Hugh Ryan. (P.O. Box 11433, Columbia, SC 29211) (803)734-1338. hryan@sccid.sc.gov

## Election Methods

1. **Meeting.** If the individual authorized to conduct the election decides to hold a meeting, the meeting must be held at a reasonable time and place. Written or electronic notice, reasonably calculated to reach all the active licensed attorneys residing within the county, must be made at least seven (7) days and no more thirty (30) days prior to the meeting. The individual authorized to conduct the election has the responsibility to ensure adequate notice to all attorneys entitled to vote and the discretion to choose the method of notice that is most appropriate. At the appointed time and place, the floor shall be opened for nominations and all those qualified to vote shall have an opportunity to nominate candidates. Upon the close of the nomination period, a secret ballot shall be conducted. No proxies shall be allowed; voters must be present to cast a ballot. All nominees, nominators and voters must certify in writing that he or she meets the eligibility requirements: (1) actually residing in the county, and (2) being an active licensed attorney in South Carolina and that they understand and have complied with the procedures concerning pledges as established in the selection guidelines. See [www.sccid.sc.gov](http://www.sccid.sc.gov), **Uniform Guidelines for the Selection of Circuit Public Defender Selection Panels.** All nominees must further certify that they are not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. The certification form (attached) shall be exchanged for a secret ballot (attached). Each voter shall be entitled to vote for as many candidates as there are seats available to that county. Those candidates receiving the most votes shall be elected to the available seats on the selection panel. In the event of a tie, a run-off shall be immediately conducted in the same manner, but only between those nominees receiving the most votes (plurality), in a number twice that of the remaining seats available. All ballots shall be counted in an open and public procedure, and the result shall be certified, on the attached form, by the individual authorized to conduct the election and forwarded to the executive director of SCCID, P.O. Box 11433 Columbia, SC 29211 within five (5) days after the election has been completed. At all times the designee shall conduct the meeting in accordance with Robert's Rules of Order.

**Notice of Meeting to Nominate and Elect  
Circuit Public Defender Selection Panel Members**

The South Carolina Legislature has passed South Carolina Code § 17-3-5 which creates a statewide Circuit Public Defender system. The Circuit Public Defender will be selected by a Circuit Public Defender Selection Panel, composed of attorneys residing in the county in the circuit. Our county bar must nominate and elect \_\_\_\_\_ members for that panel. The South Carolina Bar and the South Carolina Commission on Indigent Defense have notified me that you are an attorney residing in \_\_\_\_\_ County and therefore eligible to vote for and nominate members to the Circuit Public Defender Selection Panel.

All nominees, nominators and voters must certify in writing that they meet all eligibility requirements including: actually residing in the county, being an active licensed attorney in South Carolina and that they have complied with the prohibitions concerning pledges. See [www.sccid.sc.gov](http://www.sccid.sc.gov), **Uniform Guidelines for the Selection of Circuit Public Defender Selection Panels**. All nominees must further certify that they are not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. Each voter shall be entitled to vote for as many candidates as there are seats available to that county.

**Nominations and elections will take place on \_\_\_\_\_, 20\_ at \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_, M. Election will be by secret ballot and  
the counting of the ballots will occur immediately after election.**

\_\_\_\_\_  
Signature, County Bar President  
or SCCID Designee



**Certification of Eligibility to Vote and/ or be Nominated for the  
Circuit Public Defender Selection Panel Members**  
(to be exchanged for a secret ballot)

I, \_\_\_\_\_, hereby swear and affirm that, I am an active licensed attorney residing in \_\_\_\_\_ County and am eligible to vote for my county's Circuit Public Defender Selection Panel Members. I understand that if I am a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense I am not eligible for nomination to the Circuit Public Defender Selection Panel. I understand and have complied with the prohibitions concerning pledges as established in the selection guidelines.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bar Number

SWORN TO BEFORE me this      day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:

## **Secret Ballot for Circuit Public Defender Selection Panel Members**

The South Carolina Legislature has passed South Carolina Code § 17-3-5 which creates a statewide Circuit Public Defender system. The Circuit Public Defender will be selected by a Circuit Public Defender Selection Panel, composed of members of the county bars in the circuit.

All nominees, nominators and voters must certify in writing that they meet all eligibility requirements including: actually residing in the county, and being an active licensed attorney in South Carolina and that they understand and have complied with the procedures concerning pledges as established in the selection guidelines. All nominees must further certify that they are not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. Each voter shall be entitled to vote for as many candidates as there are seats available to that county.

The nominees will be announced by the individual authorized to conduct the election at the close of nominations and prior to the receipt of these ballots. You may vote for \_\_\_\_ individuals, which is the number of members our county will have on the panel. Please write the name(s) of your choice(s):

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**Certification of Proper Election of Circuit Public Defender  
Selection Panel Members**

I, \_\_\_\_\_, hereby swear and affirm that the election of panel members for \_\_\_\_\_ County's seats on the \_\_\_\_\_ Circuit's Public Defender Selection Panel were conducted in accordance with the Uniform Guidelines for the Selection of Circuit Public Defenders. I further swear and affirm that all votes were counted in an open and public process and that those elected to the panel had the proscribed plurality of votes, and that all voters and nominees were in fact eligible to vote and had certified in writing their eligibility

\_\_\_\_\_  
Signature of the Individual  
Authorized to Conduct the Election

\_\_\_\_\_  
Bar Number

SWORN TO BEFORE me this      day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:

2. **Mail-in.** If the individual authorized to conduct the election decides to conduct a mail-in election, written notice, reasonably calculated to reach all the active licensed attorneys residing within the county, must be sent by U.S. mail at least seven (7) days and no more thirty (30) days prior to the close of nominations. It shall be the responsibility of the individual authorized to conduct the election to determine the list of attorneys who should receive the notice. Nominations shall be received according to a procedure described in the attached notice. Nominators must certify in writing that he or she meets the eligibility requirements: (1) actually residing in the county, and (2) being an active licensed attorney in South Carolina and that they understand and have complied with the procedures concerning pledges as established in the selection guidelines. See [www.sccid.sc.gov](http://www.sccid.sc.gov), **Uniform Guidelines for the Selection of Circuit Public Defender Selection Panels** In order for a nominee to be placed on the ballot, the nominee must certify in writing that he or she meets all eligibility requirements and must further certify that he or she is not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. All nominees shall be listed on a ballot and the attached ballot shall be sent by U.S. Mail to all attorneys eligible to vote and shall state the directions and timeframe not to be shorter than ten (10) days or longer than twenty (20) days for return. Each voter shall be entitled to vote for as many candidates as there are seats available to that county. Those candidates receiving the most votes (plurality) shall be elected to the available seats on the selection panel. In the event of a tie a run-off shall be conducted in the same manner, but the run-off ballot shall only list those nominees receiving the most votes, in a number twice that of the remaining seats available. All ballots shall contain a certification of eligibility that all voters must sign. All ballots shall be counted in a transparent procedure and the result certified, on the attached form, by the individual authorized to conduct the election and forwarded to the Executive Director of SCCID, P.O. Box 11433 Columbia, SC 29211 within five (5) days after the election has been completed.

## Nomination of Circuit Public Defender Selection Panel Members

This nomination form may be returned by U.S. Mail to the address shown below or faxed to the telephone number shown below.

The South Carolina Legislature has passed South Carolina Code § 17-3-5 which creates a statewide Circuit Public Defender system. The Circuit Public Defender will be selected by a Circuit Public Defender Selection Panel, composed of members of the county bars in the circuit. Our county bar must nominate and elect \_\_\_\_\_ members for that panel. The South Carolina Bar and the South Carolina Commission on Indigent Defense have notified me that you are an attorney residing in \_\_\_\_\_ County and therefore eligible to nominate and vote for members to the Circuit Public Defender Selection Panel for this county.

All nominees, nominators and voters must certify in writing that they meet the eligibility requirements which are: (1) actually residing in the county and (2) being an active licensed attorney in South Carolina and that they understand and have complied with the procedures concerning pledges as established in the selection guidelines. **See [www.sccid.sc.gov](http://www.sccid.sc.gov), Uniform Guidelines for the Selection of Circuit Public Defender Selection Panels**. All nominees must further certify that they are not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. All nominees shall be listed on a ballot and after the nomination period has closed the ballot will be sent to all those eligible to vote. Each voter shall be entitled to vote for as many candidates as there are seats available to this county.

In order to nominate individuals for election, please return this form to me, as shown below, with the name of the individual/s you wish to nominate, not to exceed the number of members that this county can elect to the Panel, within ten (10) days of receiving this form. The nomination period will close and the nominations will be opened on \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ at \_\_\_\_\_, M. Anyone eligible to vote can view the opening of the nominations, I and at least one other attorney who is eligible to vote will be present to record the nominations.

I nominate: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that I am eligible to nominate the above individual(s) based on the requirements above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bar Number

If you wish to return this nomination form  
by U.S. Mail, please address it as follows:

by fax, send it to the following:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**Certification of Eligibility to be Nominated to the Circuit  
Public Defender Selection Panel**

I, \_\_\_\_\_, hereby swear and affirm that, I am an active licensed attorney residing in \_\_\_\_\_ County and that I am eligible to be nominated for my county's Circuit Public Defender Selection Panel. I further swear and affirm that I am not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. . I understand and have complied with the prohibitions concerning pledges as established in the selection guidelines.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bar Number

SWORN TO BEFORE me this      day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:

## Mail-In Ballot for Circuit Public Defender Selection Panel Members

The South Carolina Legislature has passed South Carolina Code § 17-3-5 which creates a statewide Circuit Public Defender system. The Circuit Public Defender will be selected by a Circuit Public Defender Selection Panel, composed of members of the county bars in the circuit. The South Carolina Bar and the South Carolina Commission on Indigent Defense have notified me that you are an attorney residing in this county and therefore are eligible to vote for members to the Circuit Public Defender Selection Panel.

All nominees, nominators and voters must certify in writing that they meet all eligibility requirements including: actually residing in the county, and being an active licensed attorney in South Carolina and that they understand and have complied with the procedures concerning pledges as established in the selection guidelines. All nominees must further certify that they are not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, or a member of the judiciary or a member of the Commission on Indigent Defense. Each voter shall be entitled to vote for as many candidates as there are seats available to that county.

The following individuals have been nominated to serve as members on the Circuit Public Defender Selection Panel. You may vote for \_\_\_\_ individuals, which is the number of members our county will have on the panel. Please circle the name(s) of your choice(s):

[Insert the names of all nominees here.]

### Certification of Eligibility to Vote

I, \_\_\_\_\_, hereby swear and affirm that, I am an active licensed attorney residing in \_\_\_\_\_ County and am eligible to vote for my county's Circuit Public Defender Selection Panel Members. I further swear and affirm that if I am nominee, I am not a solicitor, assistant solicitor, an employee of a solicitor's office, an employee of the South Carolina Prosecution Coordination Commission, a member of the judiciary or a member of the Commission on Indigent Defense. I understand and have complied with the prohibitions concerning pledges as established in the selection guidelines.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bar Number

SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:

**Certification of Proper Election of Circuit Public Defender  
Selection Panel Members**

I, \_\_\_\_\_, hereby swear and affirm that the election of panel members for \_\_\_\_\_ County's seats on the \_\_\_\_\_ Circuit's Public Defender Selection Panel were conducted in accordance with the Uniform Guidelines for the Selection of Circuit Public Defenders. I further swear and affirm that all votes were counted in an open and public process and that those elected to the panel had the proscribed plurality of votes, and that all voters and nominees were in fact eligible to vote and had certified in writing their eligibility.

\_\_\_\_\_  
Signature of the Individual  
Authorized to Conduct the Election

\_\_\_\_\_  
Bar Number

SWORN TO BEFORE me this      day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:



*Appendix B. Guidelines for Nomination of a Circuit Public Defender by a Selection Panel*

## **Uniform Guidelines for Nomination of a Circuit Public Defender by a Selection Panel**

(Revised and republished 4-25-2008)

### **I. Responsibilities of the Circuit Public Defender Selection Panel**

Pursuant to SC Code Section 17-3-510, each Circuit Public Defender Selection Panel is responsible for nominating a person to serve as the Circuit Public Defender for their circuit. Each selection panel shall:

1. Convene the first meeting at a convenient time and place, designated by the executive director of SCCID in consultation with all panel members, within ten (10) days of all panel members being elected.
2. Each member of a Selection Panel, before assuming his or her duties thereon, shall execute the following Oath and immediately return it by regular mail to SCCID to the attention of Hugh Ryan, General Counsel (P.O. Box 11433, Columbia, SC 29211):

As a member of the        Judicial Circuit Public Defender Selection Panel, I acknowledge that I am not pledged to vote for any applicant or potential applicant, and that I will not do so throughout my term as a panel member; that I will comply with the Uniform Guidelines and Procedures for nominating a Circuit Public Defender; and that in all deliberations I will execute my duties fairly, impartially and objectively to insure the nomination of the most qualified applicant.

(Form of this Oath for members to sign is included in these Guidelines)

3. Elect a chairman and a secretary of the Selection Panel and transmit by regular mail or fax these names along with mailing and email addresses to SCCID General Counsel.
4. Follow Robert's Rules of Order in conducting all meetings and in the selection of the panel's nominee.
5. Upon receipt of the applications from SCCID the Panel shall interview all applicants. The Panel may also seek references and take such steps as they feel are necessary to insure the most qualified candidate is elected to the position of Circuit Public Defender.
6. The Panel shall make the selection of Circuit Public Defender within 30 days of receiving the applications from SCCID. Any extension of time may be granted only by the Executive Director of SCCID for good cause.

7. By a majority vote of its membership, select and forward to SCCID the circuit nominee for Circuit Public Defender. The Selection Panel shall also forward to the Commission all relevant materials used in the selection and a certification signed by all members of the panel (see attached form) that the nomination process was properly conducted in a fair, impartial and objective manner.

II. Responsibilities of the Office of the South Carolina Commission on Indigent Defense

1. SCCID will draft a standardized job description to be used in all advertisements for the Circuit Public Defender position.
2. SCCID will post the position through the Office of Human Resources (www.scjobs.com) and will advertise the position in a manner reasonably calculated to alert interested candidates, as soon as practical after the first (organizational) meeting of the Selection Panel.
3. Notify the SC Employment Security Commission and the State Career Center of the Office of Human Resources of the available position and comply with all relevant laws and regulations including SC Code section 8-11-120, 8-11-230 and State HR Regulations 19-703.
4. Provide in the position advertisement that applications may be submitted online or mailed to the Office of SCCID on the standard state application form (available online or through SCCID) along with any additional information the applicant wishes to provide.
5. Provide that the time period for receiving applications will not be less than twenty (20) days from the date of the initial posting on the state's human resources site.
6. SCCID will review the applications to insure all applicants meet the statutory qualifications for the position and provide to the Selection Panel a SLED criminal background check for each applicant.
7. Upon completion of the review process all applications and supporting material will be forwarded by SCCID to the Chairman of the Selection panel.
8. If a nominee is rejected by the Commission, SCCID will repost and advertise the position as outlined above.

III. Responsibilities of the Commission on Indigent Defense

1. At the next scheduled commission meeting after receipt of a nomination or at a time established by the Chairman, the Commission shall by majority vote accept

or reject the nomination but may not substitute the name of another person.(17-3-510(C)) The Commission may interview any nominee and consider any materials used in the selection process by the Selection Panel, in its discretion.

2. The Commission shall notify the nominee and the chairman of the Selection Panel of the Commission's vote on the nomination.
3. If the nominee is accepted the Commission shall oversee an oath taking ceremony for each Public Defender, to be held at a convenient time, at a courthouse in the nominee's circuit.

#### IV. Complaint procedures concerning Circuit Public Defender elections.

1. Complaints regarding alleged improper acts or omissions in the election of members to a Circuit Public Defender Selection Panel and in the selection of a nominee Circuit Public Defender by a selection panel must be made in writing and provided to the General Counsel for the Commission on Indigent Defense within 10 days of discovery of any alleged improper activity. Complaints will remain confidential between complainant, SCCID General Counsel and the SCCID Executive Director pending presentment to the Commission.
2. The complaint shall list specific facts supporting each and every claim of impropriety.
3. The complaint shall list the name, address and telephone number of each and every witness complainant is aware of that has information concerning the facts of the matter.
4. The Commission has the authority to request that the general counsel interview all material witnesses. Witnesses may be asked to appear before the Commission however witnesses who are not also the complainant cannot be compelled to appear.
5. The Commission will take such action as it deems appropriate or take no further action after review of complaint.
6. If requested complainant (this includes any witness acting as complainant) will appear before the Commission and be prepared to answer questions concerning any allegations.
7. The complainant will not address or have any third party address the issues with individual members of the Commission. Any correspondence, communication, etc., shall be to the General Counsel of the agency, Hugh Ryan. (P.O. Box 11433, Columbia, SC 29211) (803)734-1338. hryan@sccid.sc.gov

### Oath of Public Defender Selection Panel Members

As a member of the \_\_\_\_ Judicial Circuit Public Defender Selection Panel, I acknowledge that I am not pledged to vote for any applicant or potential applicant, and that I will not do so throughout my term as a panel member; that I will comply with the Uniform Guidelines and Procedures for nominating a Circuit Public Defender; and that in all deliberations I will execute my duties fairly, impartially and objectively to insure the nomination of the most qualified applicant.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Bar Number

SWORN TO BEFORE me this      day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:

**Each member of a Selection Panel, before assuming his or her duties thereon, shall execute the above Oath and immediately return it by regular mail to SCCID to the attention of Hugh Ryan, General Counsel (P.O. Box 11433, Columbia, SC 29211)**

*Appendix C. Sample Contract for Criminal Representation (Rule 608  
Contract Attorney)*

**AGREEMENT FOR  
ATTORNEY SERVICES  
(Criminal Conflicts)**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and  
between the South Carolina Commission on Indigent Defense (SCCID)  
and \_\_\_\_\_ (Attorney).

In consideration of the mutual covenants and promises contained herein, SCCID  
and Attorney agree as follows:

**I. TERM**

a. Subject to the provisions for termination set forth below and in Section XI this  
agreement will begin on the date this Agreement is signed by both parties and expires on  
\_\_\_\_\_. SCCID reserves the right and authority in its sole discretion to terminate  
this Agreement for any reason and at any time upon thirty (30) days notice to Attorney.  
Upon thirty (30) days notice this Agreement shall be null and void and have no further  
effect whatsoever. However any egregious conduct shall be grounds for immediate  
termination of this Agreement. (See Termination Clause, Section XI)

**II. SERVICES**

a. SCCID contracts with Attorney for the representation of indigent clients in the  
category or categories of cases and in the counties as set forth in Attachment A of this  
Agreement (See Attachment A). If Attorney is excused by a Court from an appointment  
for good cause shown Attorney does not relinquish the right to continue to receive  
appointments as provided by Attachment A.

b. In performing the legal services described in this Agreement, Attorney at all times  
shall comply with the requirements of the Rules of Professional Conduct, the South  
Carolina Rules of Court (to include the Appellate Court Rules, Rules of Civil Procedure,  
Rules of Criminal Procedure, Rules of Evidence, Family Court Rules, Rules of Probate  
Court, Alternative Dispute Resolution Rules, Rules for the Administrative Law Court  
Rules), orders or directives of the Courts of this State, applicable South Carolina statutes  
and all of the uniform policies, guidelines and standards promulgated by SCCID, all of  
which are hereby expressly incorporated in, merged and made a part of this contract in  
each and every particular.

c. Attorney shall render to, and on behalf of the indigent clients he or she represents all  
professional legal services reasonably required from the time of appointment to and  
including a final adjudication or disposition. When appropriate Attorney agrees to timely  
file and serve a notice of appeal or petition for review and to take such other actions as  
may be required to protect the indigent client's interests in accordance with the South  
Carolina Rules of Appellate Procedure and applicable statutory law. The Division of  
Appellate Defense or such other counsel as the Court may appoint may prosecute the

appeal as appropriate. Attorney shall notify the Chief Attorney of the Division of Appellate Defense as soon as an appeal or petition for review has been filed and served, and promptly provide all pleadings and other necessary documents to the Division of Appellate Defense or other such counsel appointed by the Court.

d. In performing any work under this Agreement, Attorney shall provide competent representation to the indigent client. Competent representation requires the legal knowledge, skill, thoroughness and preparedness reasonably necessary for that representation. Attorney's business relationships outside of this agreement shall not interfere with the performance of the services specified herein.

e. Notification of Appointment: Within fifteen (15) days of being appointed to a case, Attorney must register the case on the SCCID website as required by the South Carolina Supreme Court (Order dated September 29, 2006) and in accordance with the policies and guidelines of SCCID. Failure to timely and fully register each assigned case as required, including any updates of required data may be grounds for termination of this Agreement, in the discretion of SCCID.

f. If appointment of Attorney is terminated due to the indigent client subsequently obtaining private counsel; or if the indigent client does not continue to qualify as indigent, Attorney shall still be entitled to compensation for fees and expenses properly and reasonably incurred.

g. If for any reason the Court permits Attorney to withdraw or if Attorney is otherwise removed from a case prior to full performance of the duties for reasons other than breach of duty or the provisions of Section XI, Attorney may receive compensation for Attorney's fees for work already satisfactorily performed and reasonably incurred. Subject to the attorney-client and the work-product privilege, if Attorney withdraws or is removed from the case Attorney shall deliver all files, notes, documents and research related to the representation of the client to the successor attorney within 15 days after receiving notice from the successor attorney.

h. Attorney agrees to maintain and to operate continuously throughout the term of this Agreement with at least the minimum number of staff required to deliver the legal services outlined herein.

### **III. COMPENSATION / EXPENSES/ EXPERT AND OTHER SERVICES**

a. For services rendered SCCID agrees to pay a flat fee of \$900 (Nine Hundred Dollars) per case paid upon appointment and the attorney's subsequent registration of the case as described in II(c) followed by processing of payment through the Comptroller General's Office.

b. A case is defined as an action in which an Attorney has been appointed to represent a client under the terms of this Agreement. A newly assigned case is each new unique



client, including a former client with new charges, petitions, or other cause of action but excluding a client with new charges, petitions, or other causes of action that are appointed to Attorney pursuant to this Agreement.

c. Attorney understands and agrees that case related expenses are included in the \$900 flat fee. Attorney agrees to pay all expenses incidental to the performance of this Agreement including but not limited to all salaries, overhead, and all routine and necessary cost and expenses incurred in providing contract services, including routine travel expenses.

d. Outside costs and expenses such as expenses for expert witnesses, investigators, scientific tests and other reasonable and necessary expenses Attorney reasonably believes are necessary for a proper representation of client shall be applied for and reimbursed in accordance with laws of the State of South Carolina and the policies of SCCID. Attorney expressly understands that such expenses must be approved by the court prior to being incurred.

e. In the event Contractor is assigned to an extraordinary case, where the issues presented requires extraordinary time and effort for proper representation of the Client, Contractor may apply in writing to SCCID for additional compensation. Contractor shall immediately make this application to SCCID, in writing, once contractor identifies case may require extraordinary time and effort. A jury trial or contested adjudication in and of itself shall not be deemed extraordinary. However, at SCCID's sole discretion, extensive pretrial litigation, an extended jury trial or extended contested adjudication may be deemed extraordinary. In determining whether to approve a request for additional compensation in an extraordinary case SCCID shall consider the complexity of the case and other equitable factors including the availability and status of SCCID funds. To be considered an extraordinary case the offense charged/indicted must be a violent crime as identified in S.C. Code Section 16-1-60. The amount and timing of an additional compensation that is approved beyond the standard \$900 flat fee is at SCCID's sole discretion. However total compensation shall not exceed the statutory cap of \$3500 as established in S.C. Code Section 17-3-50(A).

#### **IV. QUALIFICATIONS OF ATTORNEY**

Attorney represents that he or she:

a. Is a member in good standing of the South Carolina Bar and will immediately notify SCCID in writing of any change in this status.

b. Possesses all municipal, county and state licenses which may be required in order to conduct business as an attorney in the counties and Judicial Circuits described in Attachment A; and that the same shall be kept current in all respects during the term of this Agreement and while any representation of a client is pending hereunder.

- c. Is qualified to provide effective and adequate legal representation to indigent persons he or she may represent and meets at least the minimum experience and continuing education requirements identified in the rules, regulations and guidelines promulgated by SCCID and the South Carolina Supreme Court. Attorney will also comply with any CLE requirements mandated by SCCID.
- d. Will immediately notify SCCID in writing of any disciplinary action(s) taken or any investigations commenced by the Office of Disciplinary Counsel.
- e. Will notify SCCID of all appointed cases handled by Attorney in which there is a judicial finding that the Attorney provided ineffective assistance of counsel.
- f. Attorney agrees to immediately notify SCCID if at any time during the period of this contract any claim, lawsuit or any other action (civil or criminal) becomes pending against attorney.

## **V. INDEPENDENT CONTRACTOR**

- a. The parties agree that this Agreement does not create the relationship of employer and employee. This Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between SCCID and Attorney. Attorney is, and shall at all times be, deemed an independent contractor and shall be wholly responsible for the manner in which Attorney performs the services required by the terms of this Agreement. Attorney exclusively assumes responsibility for the acts of Attorney's employees, agents, subcontractors, and all others acting at the direction of or on behalf of Attorney, as they relate to the services to be provided under this Agreement. Attorney and Attorney's agents and employees shall not be entitled to any rights or privileges as if employees of SCCID or the State of South Carolina, including but not limited to, compensation, insurance and unemployment insurance. It shall be the sole responsibility of Attorney to comply with all applicable federal, state, county, and municipal statutes, ordinances, rules, and regulations in the performance of Attorney's obligations under this Agreement.

## **VI. NO ASSIGNMENT**

- a. Attorney shall not delegate or assign his or her obligations under this Agreement, whether in whole or in part, without the prior written consent of SCCID. Attorney shall not assign any monies due or to become due to Attorney under this Agreement without the prior written consent of SCCID.

## **VII. NO PROHIBITION ON PRIVATE PRACTICE**

- a. Nothing in this Agreement shall preclude Attorney from representing privately retained clients, including clients involved in cases of a similar nature who are not indigent. Attorney shall not be prohibited from engaging in the private practice of

law, provided that no private case shall be accepted that may cause a conflict of interest with a case appointed to Attorney under this Agreement.

### **VIII. EXTERNAL COMPENSATION**

a. Attorney agrees that compensation for matters directly assigned to Attorney and covered under this Agreement shall be the sole compensation received by Attorney for the particular matters. Attorney shall not be precluded from accepting representation of indigents for matters for which he or she is not directly appointed (i.e., on behalf of other counsel) and for matters not covered by this Agreement.

### **IX. INDEMNIFICATION/ LEGAL MALPRACTICE INSURANCE**

a. Attorney shall indemnify, defend, save, and hold harmless SCCID and the State of South Carolina, their officials, officers, agents, and employees from and against any and all claims, liabilities, losses, and/or causes of action including court costs and attorney's fees that may hereafter at any time be made or brought by anyone for the purpose of enforcing any claim on account of any injury or damage allegedly caused or occurring to any person or property which may arise, in whole or in part, whether intentional or unintentional, from any willful misconduct, or negligent act or omission of Attorney, Attorney's associates, law partners, agents, or employees during performance under this Agreement.

For each attorney furnishing services under this Agreement, prior to the commencement of any representation of a client hereunder, Attorney shall furnish evidence of legal malpractice insurance coverage that is current and in effect of at least \$300,000 per claim/\$500,000 aggregate and Attorney shall retain such insurance for any liability arising out of the services provided even after the attorney is no longer under contract with SCCID.

### **X. RECORD RETENTION/AUDIT**

a. Attorney shall keep detailed records to enable SCCID or its agents to verify all costs, expenses and Attorney's time expended representing all indigent clients in cases appointed under this Agreement and shall make such records available to SCCID and its agents at any reasonable time. The records include supporting documentation necessary to adequately evaluate and substantiate payments made under this Agreement. SCCID and/ or its agents may, at its discretion, audit or inspect Attorney's books and financial records relating to services under this Agreement at any and all reasonable times. Attorney agrees to retain and to make available for inspections, upon reasonable notice, all books, statements, ledgers and other financial records relating to services under this Agreement for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later. All financial records shall be made available to SCCID and/ or its agents at Attorney's place of business. The recordkeeping duties under this Agreement are separate and apart from recordkeeping requirements under Rule 407,

SCACR (the Rules of Professional Conduct) and Rule 417, SCACR (Financial Recordkeeping).

## **XI. TERMINATION/ CONTRACT EXPIRATION**

This Agreement may be terminated as follows:

- a. In addition to any other remedy authorized by law, SCCID shall have the right to terminate this Agreement upon thirty (30) days notice to Attorney if in its sole opinion Attorney or Attorney's agents or employees fail to comply with any of the terms of this Agreement to include those terms expressly incorporated and merged into this Agreement. Such failure shall constitute a material breach of this Agreement by Attorney. In the event of breach of duty in a case by Attorney, Attorney shall not be entitled to payment of Attorney's fees and shall reimburse SCCID for fees already received as an initial flat fee except as may be provided by court order. Any egregious conduct shall be grounds for immediate termination.
- b. In the event Attorney is unable to perform this Agreement due to permanent or temporary disability, injury, continuing disabling sickness, or for other similar causes beyond the control of Attorney, then this Agreement may be terminated. In such event Attorney shall take appropriate steps to withdraw from all appointed cases, including filing motions to withdraw as required by South Carolina law. If Attorney is permitted to withdraw or is terminated in accordance with Section XI(a) from an appointed case, work materials that are not protected by the attorney/client privilege and the work-product privilege shall be turned over to such attorneys as may be subsequently appointed by the Court.
- c. SCCID may, in its sole and absolute discretion, terminate this Agreement for any reason upon thirty (30) days notice to Attorney. Attorney may, in Attorney's absolute discretion, terminate this Agreement without cause upon thirty (30) days notice to SCCID provided that Attorney shall be responsible for all existing obligations to clients already appointed to pursuant to this Agreement.
- d. Attorney understands that because the flat fee compensation is intended to cover the entire case any termination in accordance with Section XI(c) or by expiration of this Agreement does not affect the existing obligations to clients already assigned pursuant to this Agreement and attorneys continuing duty shall continue until final adjudication or disposition as described in Section II(c).
- e. Notice of termination of this Agreement must be given to the other party in writing, sent by certified or registered United States mail, with return receipt requested, addressed to the party for whom it is intended, delivery restricted to the addressee, at the place last specified for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following for giving written notice:

**FOR SCCID**

South Carolina Commission on Indigent Defense  
Attn: J. Hugh Ryan (General Counsel)  
PO BOX 11433  
Columbia, SC 29211-1433

**FOR ATTORNEY**

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Address

**XII. NO WAIVER/GOVERNING LAW**

a. All rights hereunder are cumulative, not alternative, and are in addition to any other rights given by law. The validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of South Carolina and the South Carolina Constitution. Venue for all actions arising from or related to this Agreement shall be in Richland County, South Carolina.

**XIII. SEVERABILITY**

a. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this Agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Agreement shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect.

**XIV. AMENDMENT OR RENEWAL OF AGREEMENT**

a. This Agreement expresses the entirety of the understandings of the parties concerning all matters covered. No renewal of this Agreement, or addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless in the form of a written amendment to this Agreement and formally approved by the parties.

**XV. MISCELLANEOUS PROVISIONS**

a. SCCID's and Attorney's performance under this Agreement are contingent upon appropriation by the Legislature, county funding and any other funding sources necessary to fund the performance of this contract.

b. SCCID's performance under this Agreement is contingent upon written approval of the South Carolina Attorney General in accordance with applicable South Carolina law.

c. The headings used in this Agreement are for illustrative purposes and are not a limitation of any of the rights and obligations of the parties.

d. Attorney shall affix Attorney's name, and Bar number on all communications addressed to SCCID. Attorney shall keep SCCID informed at all times of Attorney's current name and address, telephone and facsimile numbers, e-mail address and tax identification number.

## **XVI. ENTIRE AGREEMENT**

a. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms thereof shall be predicated upon any prior representations or agreements whether oral or written. This is the entire agreement of the parties. It may be changed only by an agreement in writing signed by both parties.

STATE OF SOUTH CAROLINA  
COMMISSION ON INDIGENT DEFENSE BY:

\_\_\_\_\_  
J. Hugh Ryan III, General Counsel

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_.

ATTORNEY

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

South Carolina Bar No.: \_\_\_\_\_

Attorney's Tax ID No.: \_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_.

Fax number \_\_\_\_\_

Cell number \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_.

**Attachment A**

**(to agreement between SCCID and contracting attorney, dated the \_\_\_\_\_ day of  
\_\_\_\_\_).**

Contracting Attorney \_\_\_\_\_

SC Bar number: \_\_\_\_\_

Counties covered \_\_\_\_\_

*Appendix D. Sample Contract for Family Court Representation (Rule 608  
Contract Attorney)*



## **AGREEMENT FOR ATTORNEY SERVICES**

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_ by and between the South Carolina Commission on Indigent Defense (SCCID) and \_\_\_\_\_ (Attorney).

In consideration of the mutual covenants and promises contained herein, SCCID and Attorney agree as follows:

### **I. TERM**

a. Subject to the provisions for termination set forth below and in Section XI this agreement will begin on the date this Agreement is signed by both parties and expires on \_\_\_\_\_. SCCID reserves the right and authority in its sole discretion to terminate this Agreement for any reason and at any time upon thirty (30) days notice to Attorney. Upon thirty (30) days notice this Agreement shall be null and void and have no further effect whatsoever. However any egregious conduct shall be grounds for immediate termination of this Agreement. (See Termination Clause, Section XI)

### **II. SERVICES**

a. SCCID contracts with Attorney for the representation of indigent clients in the category or categories of cases and in the counties as set forth in Attachment A of this Agreement (See Attachment A). If Attorney is excused by a Court from an appointment for good cause shown Attorney does not relinquish the right to continue to receive appointments as provided by Attachment A.

b. In performing the legal services described in this Agreement, Attorney at all times shall comply with the requirements of the Rules of Professional Conduct, the South Carolina Rules of Court (to include the Appellate Court Rules, Rules of Civil Procedure, Rules of Criminal Procedure, Rules of Evidence, Family Court Rules, Rules of Probate Court, Alternative Dispute Resolution Rules, Rules for the Administrative Law Court Rules), orders or directives of the Courts of this State, applicable South Carolina statutes and all of the uniform policies, guidelines and standards promulgated by SCCID, all of which are hereby expressly incorporated in, merged and made a part of this contract in each and every particular.

c. Attorney shall render to, and on behalf of the indigent clients he or she represents all professional legal services reasonably required from the time of appointment to and including a final adjudication or disposition. When appropriate Attorney agrees to timely file and serve a notice of appeal or petition for review and to take such other actions as may be required to protect the indigent client's interests in accordance with the South Carolina Rules of Appellate Procedure and applicable statutory law. The Division of Appellate Defense or such other counsel as the Court may appoint may prosecute the appeal as appropriate. Attorney shall notify the Chief Attorney of the Division of

Appellate Defense as soon as an appeal or petition for review has been filed and served, and promptly provide all pleadings and other necessary documents to the Division of Appellate Defense or other such counsel appointed by the Court.

d. In performing any work under this Agreement, Attorney shall provide competent representation to the indigent client. Competent representation requires the legal knowledge, skill, thoroughness and preparedness reasonably necessary for that representation. Attorney's business relationships outside of this agreement shall not interfere with the performance of the services specified herein.

e. Notification of Appointment: Within fifteen (15) days of being appointed to a case, Attorney must register the case on the SCCID website as required by the South Carolina Supreme Court (Order dated September 29, 2006) and in accordance with the policies and guidelines of SCCID. Failure to timely and fully register each assigned case as required, including any updates of required data may be grounds for termination of this Agreement, in the discretion of SCCID.

f. If appointment of Attorney is terminated due to the indigent client subsequently obtaining private counsel; or if the indigent client does not qualify or continue to qualify as indigent, Attorney shall still be entitled only to compensation for fees and expenses properly and reasonably incurred.

g. If for any reason the Court permits Attorney to withdraw or if Attorney is otherwise removed from a case prior to full performance of the duties for reasons other than breach of duty or the provisions of Section XI, Attorney may receive compensation for Attorney's fees, costs and expenses for work already satisfactorily performed and reasonably incurred. Subject to the attorney-client and the work-product privilege, if Attorney withdraws or is removed from the case Attorney shall deliver all files, notes, documents and research related to the representation of the client to the successor attorney within 15 days after receiving notice from the successor attorney. The successor attorney shall bear the cost of transmitting all files, notes, documents and research; however such costs may be reimbursable if in accordance with SCCID policy.

h. Attorney agrees to maintain and to operate continuously throughout the term of this Agreement with at least the minimum number of staff required to deliver the legal services outlined herein.

i. Attorney shall report within 5 days to SCCID the continuance of any proceedings and the reason for that continuance.

### **III. COMPENSATION / EXPENSES/ EXPERT AND OTHER SERVICES**

a. For services rendered SCCID agrees to pay a flat fee of \$800 (Eight Hundred Dollars) per case paid upon appointment and the attorney's subsequent registration of the case as described in II(c) followed by processing of payment through the Comptroller General's Office.

b. A case is defined as an action in which an Attorney has been appointed to represent a client under the terms of this Agreement. A newly assigned case is each new unique client, including a former client with new charges, petitions, or other cause of action but excluding an existing client with new charges, petitions, or other causes of action that are appointed to Attorney pursuant to this Agreement.

c. Attorney understands and agrees that case related expenses are included in the \$800 flat fee. Attorney agrees to pay all expenses incidental to the performance of this Agreement including but not limited to all salaries, overhead, and all routine and necessary cost and expenses incurred in providing contract services, including routine travel expenses.

d. Outside costs and expenses such as expenses for expert witnesses, investigators, scientific tests and other reasonable and necessary expenses Attorney reasonably believes are necessary for a proper representation of client shall be applied for and reimbursed in accordance with laws of the State of South Carolina and the policies of SCCID. Attorney expressly understands that such expenses must be approved by the court prior to being incurred.

#### **IV. QUALIFICATIONS OF ATTORNEY**

Attorney represents that he or she:

a. Is a member in good standing of the South Carolina Bar and will immediately notify SCCID in writing of any change in this status.

b. Possesses all municipal, county and state licenses which may be required in order to conduct business as an attorney in the counties and Judicial Circuits described in Attachment A; and that the same shall be kept current in all respects during the term of this Agreement and while any representation of a client is pending hereunder.

c. Is qualified to provide effective and adequate legal representation to indigent persons he or she may represent and meets at least the minimum experience and continuing education requirements identified in the rules, regulations and guidelines promulgated by SCCID and the South Carolina Supreme Court. Attorney will also comply with any CLE requirements mandated by SCCID.

d. Will immediately notify SCCID in writing of any disciplinary action(s) taken or any investigations commenced by the Office of Disciplinary Counsel.

e. Will notify SCCID of all appointed cases handled by Attorney in which there is a judicial finding that the Attorney provided ineffective assistance of counsel.

f. Attorney agrees to immediately notify SCCID if at any time during the period of this contract any claim, lawsuit or any other action (civil or criminal) becomes pending against attorney.

## **V. INDEPENDENT CONTRACTOR**

a. The parties agree that this Agreement does not create the relationship of employer and employee. This Agreement is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association between SCCID and Attorney. Attorney is, and shall at all times be, deemed an independent contractor and shall be wholly responsible for the manner in which Attorney performs the services required by the terms of this Agreement. Attorney exclusively assumes responsibility for the acts of Attorney's employees, agents, subcontractors, and all others acting at the direction of or on behalf of Attorney, as they relate to the services to be provided under this Agreement. Attorney and Attorney's agents and employees shall not be entitled to any rights or privileges as if employees of SCCID or the State of South Carolina, including but not limited to, compensation, insurance and unemployment insurance. It shall be the sole responsibility of Attorney to comply with all applicable federal, state, county, and municipal statutes, ordinances, rules, and regulations in the performance of Attorney's obligations under this Agreement.

## **VI. NO ASSIGNMENT**

a. Attorney shall not delegate or assign his or her obligations under this Agreement, whether in whole or in part, without the prior written consent of SCCID. Attorney shall not assign any monies due or to become due to Attorney under this Agreement without the prior written consent of SCCID.

## **VII. NO PROHIBITION ON PRIVATE PRACTICE**

a. Nothing in this Agreement shall preclude Attorney from representing privately retained clients, including clients involved in cases of a similar nature who are not indigent. Attorney shall not be prohibited from engaging in the private practice of law, provided that no private case shall be accepted that may cause a conflict of interest with a case appointed to Attorney under this Agreement.

## **VIII. EXTERNAL COMPENSATION**

a. Attorney agrees that compensation for matters directly assigned to Attorney and covered under this Agreement shall be the sole compensation received by Attorney for the particular matters. Attorney shall not be precluded from accepting representation of indigents for matters for which he or she is not directly appointed (i.e., on behalf of other counsel) and for matters not covered by this Agreement.

## **IX. INDEMNIFICATION/ LEGAL MALPRACTICE INSURANCE**

a. Attorney shall indemnify, defend, save, and hold harmless SCCID and the State of South Carolina, their officials, officers, agents, and employees from and against any and all claims, liabilities, losses, and/or causes of action including court costs and attorney's fees that may hereafter at any time be made or brought by anyone for the purpose of enforcing any claim on account of any injury or damage allegedly caused or occurring to any person or property which may arise, in whole or in part, whether intentional or unintentional, from any willful misconduct, or negligent act or omission of Attorney, Attorney's associates, law partners, agents, or employees during performance under this Agreement.

For each attorney furnishing services under this Agreement, prior to the commencement of any representation of a client hereunder, Attorney shall furnish evidence of legal malpractice insurance coverage that is current and in effect of at least \$300,000 per claim/\$500,000 aggregate and Attorney shall retain such insurance for any liability arising out of the services provided even after the attorney is no longer under contract with SCCID.

## **X. RECORD RETENTION/AUDIT**

a. Attorney shall keep detailed records to enable SCCID or its agents to verify all costs, expenses and Attorney's time expended representing all indigent clients in cases appointed under this Agreement and shall make such records available to SCCID and its agents at any reasonable time. The records include supporting documentation necessary to adequately evaluate and substantiate payments made under this Agreement. SCCID and/ or its agents may, at its discretion, audit or inspect Attorney's books and financial records relating to services under this Agreement at any and all reasonable times.

Attorney agrees to retain and to make available for inspections, upon reasonable notice, all books, statements, ledgers and other financial records relating to services under this Agreement for a period of five (5) years from the date of each payment, or until all Federal or State audits that may relate to each payment are complete for the applicable fiscal year, whichever is later. All financial records shall be made available to SCCID and/ or its agents at Attorney's place of business. The recordkeeping duties under this Agreement are separate and apart from recordkeeping requirements under Rule 407, SCACR (the Rules of Professional Conduct) and Rule 417, SCACR (Financial Recordkeeping).

## **XI. TERMINATION/ CONTRACT EXPIRATION**

This Agreement may be terminated as follows:

a. In addition to any other remedy authorized by law, SCCID shall have the right to terminate this Agreement upon thirty (30) days notice to Attorney if in its sole opinion Attorney or Attorney's agents or employees fail to comply with any of the terms of this Agreement to include those terms expressly incorporated and merged into this Agreement. Such failure shall constitute a material breach of this Agreement by Attorney.

In the event of breach of duty in a case by Attorney, Attorney shall not be entitled to payment of Attorney's fees and shall reimburse SCCID for fees already received as an initial flat fee except as may be provided by court order. Any egregious conduct shall be grounds for immediate termination.

b. In the event Attorney is unable to perform this Agreement due to permanent or temporary disability, injury, continuing disabling sickness, or for other similar causes beyond the control of Attorney, then this Agreement may be terminated. In such event Attorney shall take appropriate steps to withdraw from all appointed cases, including filing motions to withdraw as required by South Carolina law. If Attorney is permitted to withdraw or is terminated in accordance with Section XI(a) from an appointed case, work materials that are not protected by the attorney/client privilege and the work-product privilege shall be turned over to such attorneys as may be subsequently appointed by the Court.

c. SCCID may, in its sole and absolute discretion, terminate this Agreement upon thirty (30) days notice to Attorney. Attorney may, in Attorney's absolute discretion, terminate this Agreement without cause upon thirty (30) days notice to SCCID provided that Attorney shall be responsible for all existing obligations to clients already appointed to pursuant to this Agreement.

d. Attorney understands that because the flat fee compensation is intended to cover the entire case any termination in accordance with Section XI(c) or by expiration of this Agreement does not affect the existing obligations to clients already assigned pursuant to this Agreement and attorneys continuing duty shall continue until final adjudication or disposition as described in Section II(c).

e. Notice of termination of this Agreement must be given to the other party in writing, sent by certified or registered United States mail, with return receipt requested, addressed to the party for whom it is intended, delivery restricted to the addressee, at the place last specified for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following for giving written notice:

FOR SCCID

South Carolina Commission on Indigent Defense  
Attn: J. Hugh Ryan (General Counsel)  
PO BOX 11433  
Columbia, SC 29211-1433

FOR ATTORNEY

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Address

## **XII. NO WAIVER/GOVERNING LAW**

a. All rights hereunder are cumulative, not alternative, and are in addition to any other rights given by law. The validity, construction, and interpretation of this Agreement shall be governed by the laws of the State of South Carolina and the South Carolina Constitution. Venue for all actions arising from or related to this Agreement shall be in Richland County, South Carolina.

## **XIII. SEVERABILITY**

a. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this Agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this Agreement shall not affect any other part of this Agreement, and the remainder of this Agreement shall continue to be of full force and effect.

## **XIV. AMENDMENT OR RENEWAL OF AGREEMENT**

a. This Agreement expresses the entirety of the understandings of the parties concerning all matters covered. No renewal of this Agreement, or addition to, or alteration of, the terms of this Agreement, whether by written or verbal understanding of the parties, their officers, agents, or employees shall be valid unless in the form of a written amendment to this Agreement and formally approved by the parties.

## **XV. MISCELLANEOUS PROVISIONS**

a. SCCID's and Attorney's performance under this Agreement are contingent upon appropriation by the Legislature, county funding and any other funding sources necessary to fund the performance of this contract.

b. SCCID's performance under this Agreement is contingent upon written approval of the South Carolina Attorney General in accordance with applicable South Carolina law.

c. The headings used in this Agreement are for illustrative purposes and are not a limitation of any of the rights and obligations of the parties.

d. Attorney shall affix Attorney's name, and Bar number on all communications addressed to SCCID. Attorney shall keep SCCID informed at all times of Attorney's current name and address, telephone and facsimile numbers, e-mail address and tax identification number.

## **XVI. ENTIRE AGREEMENT**

a. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms thereof shall be predicated upon any prior representations or agreements whether oral or written. This is the entire agreement of the parties. It may be changed only by an agreement in writing signed by both parties.

STATE OF SOUTH CAROLINA  
COMMISSION ON INDIGENT DEFENSE BY:

\_\_\_\_\_  
J. Hugh Ryan III, General Counsel

DATE: \_\_\_\_\_

ATTEST:\_\_\_\_\_.

ATTORNEY

Signature: \_\_\_\_\_

Print name: \_\_\_\_\_

South Carolina Bar No.: \_\_\_\_\_

Attorney's Tax ID No.: \_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_

Mailing Address:\_\_\_\_\_.

Fax number \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:\_\_\_\_\_.



**Attachment A**

**(to agreement between SCCID and contracting attorney, dated the \_\_\_\_\_ day of  
\_\_\_\_\_).**

Contracting Attorney \_\_\_\_\_

SC Bar number: \_\_\_\_\_

Counties covered \_\_\_\_\_

Categories of Cases:

Family Court (TPR, Abuse and Neglect)

## *Appendix E. Performance Standards for Public Defenders and Assigned Counsel (Non-Capital)*

Appendix E includes performance standards for public defenders and assigned counsel (non-capital) that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013.

**South Carolina Commission on Indigent Defense**  
**Performance Standards for Public Defenders and Assigned Counsel**  
**(Non-Capital)**  
**Effective Date July 1, 2013**

**The following Performance Standards for Public Defenders and Assigned Counsel (non-Capital) were formally adopted by the SC Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. An additional set of Performance Standards for Indigent Defense in Juvenile Cases was adopted by the Commission on June 7, 2013, effective July 1, 2013, which are intended to supplement the within standards.**

**These performance standards are not intended to provide a new basis for a claim of ineffective assistance of counsel. They are benchmarks taken from existing national standards, and do not and cannot redefine the existing precedents that set forth the basis for determining when reversible error has occurred.**

**Guideline 1.1 Role of Defense Counsel**

(a) The paramount obligation of criminal defense counsel is to provide zealous and quality representation to their clients at all stages of the criminal process. Attorneys also have an obligation to abide by ethical norms and act in accordance with the rules of the court. Once representation has been undertaken, the functions and duties of defense counsel are the same whether defense counsel is assigned, privately retained, or serving in a legal aid or defender program.

(b) Counsel for the accused is an essential component of the administration of criminal justice. A court properly constituted to hear a criminal case must be viewed as a tripartite entity consisting of the judge (and jury, where appropriate), counsel for the prosecution, and counsel for the accused.

(c) Defense counsel should seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to defense counsel's attention, he or she should stimulate efforts for remedial action.

**Comment**

The lawyer should be familiar with the Rule 402, SCACR.

**Guideline 1.2 Education, Training and Experience of Defense Counsel**

(a) To provide quality representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure, including but not limited to Federal Constitutional Law, South Carolina Constitutional Law, the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Evidence, Administrative Orders of the Supreme Court, and the

Administrative Case Management Order applicable in the jurisdiction where the case is pending. Counsel has a continuing obligation to stay abreast of changes and developments in the law, attend trial advocacy training, and participate in bar sponsored and office mentoring programs. Where appropriate, counsel should also be informed of the practices of the specific judge before whom a case is pending.

(b) Prior to handling a criminal matter, counsel should have sufficient experience or training to provide quality representation.

(c) Counsel should be familiar with rules of error preservation for purposes of perfecting the record for effective appellate review.

### **Comment**

This obligation is consistent with Rule 402, Rule 1.1, RPC (Competence).

### **Guideline 1.3 General Duties of Defense Counsel**

(a) Before agreeing to act as counsel or accepting appointment by a court, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations.

(b) Counsel has an affirmative duty to seek out and identify all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Where appropriate, counsel is obliged to seek resolution on any potential conflicts.

(c) Defense counsel should act with reasonable diligence and promptness in representing a client.

(d) Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance in court and in the submission of all motions, briefs, and other papers. Defense counsel should emphasize to the client and all witnesses the importance of punctuality in attendance in court.

(e) Defense counsel should not intentionally misrepresent facts or otherwise mislead the court.

(f) Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.

(g) Counsel has the obligation to keep the client informed of the progress of the case.

## Comment

Paragraph (a) concerns the lawyer's workload. Comment 2 to Rule 402, Rule 1.3 (diligence) provides, "A lawyer's work load must be controlled so that each matter can be handled competently." A lawyer is not relieved of this obligation by virtue of his/her status as a public defender. *McKnight v. State* 378 S.C. 33, 661 S.E.2d 354 (2008) (held ineffective assistance of counsel when public defender's excessive caseload prevented counsel from retaining necessary expert); and *In re Sturkey* 376 S.C. 286, 657 S.E.2d 465 (2008) (public defender's excessive caseload does not relieve counsel of the obligations of representation). See S.C. Bar Ethics Advisory Opinion 2004-12 (interpreting Rule 407, SCACR, Rules 1.1, 1.3, 1.4, 1.13(b), 1.16, and 5.1, SCRPC).

### Guideline 2.1 General Obligations of Counsel Regarding Pretrial Release

The attorney has an obligation to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client.

### Guideline 2.2 Client Interview(s)

(a) *Preparation:* Prior to conducting the initial interview the attorney, should, where possible:

(1) be familiar with the elements of the offense and the potential punishment, where the charges against the client are already known;

(2) obtain copies of any relevant documents which are available, including copies of any charging documents, bail issues concerning pretrial release, and law enforcement reports that might be available;

(3) be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

(4) be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release;

(5) be familiar with any procedures available for reviewing the trial judge's setting of bail.

(b) *The Interview:*

(1) The purpose of the client interview is both to acquire information from the client concerning pretrial release and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, be overcome.

(2) Information that should be acquired includes, but is not limited to:

(A) the client's ties to the community, including the length of time he or she has lived at the current and former addresses, family relationships, immigration status (if applicable), employment record and history;

(B) the client's physical and mental health, educational and armed services records;

(C) the client's immediate medical needs;

(D) the client's past criminal record, if any, including arrests and convictions for adult

and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges and also whether he or she is on probation or parole and the client's past or present performance under supervision;

(E) the ability of the client to meet any financial conditions of release;

(F) the names of individuals or other sources that counsel can contact to verify the information provided by the client.

(3) Information to be provided the client includes, but is not limited to:

(A) an explanation of the procedures and conditions of pretrial release;

(B) an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with the attorney; client should be informed of the dangers of conversing with cellmates, family, friends, jail personnel or any other third person, as well as telephone conversations, written correspondence, and the use of electronic communications;

(C) the charges and the potential penalties;

(D) a general procedural overview of the progression of the case, where possible;

(c) *Supplemental Information:*

Whenever possible, counsel should use the client interview to gather additional information relevant to preparation of the defense. Such information may include, but is not limited to:

(1) the facts surrounding the charges against the client;

(2) any evidence of improper police investigative practices or prosecutorial conduct which affects the client's rights;

(3) any possible witnesses who should be located;

(4) any evidence that should be preserved;

(5) where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense;

(6) potential direct and collateral consequences of the charges.

### **Guideline 2.3 Pretrial Release Proceedings**

(a) Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.

(b) Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

(c) If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

### **Guideline 3.1 Presentment and Arraignment (Space Reserved)**

### **Guideline 3.2 Preliminary Hearing**

(a) Where the client is entitled to a preliminary hearing, the attorney should take steps to see

that the hearing is timely requested and conducted unless there are strategic reasons for not doing so.

- (b) In preparing for the preliminary hearing, the attorney should become familiar with:
  - (1) the elements of each of the offenses alleged;
  - (2) legal standards for establishing probable cause;
  - (3) factual information which is available concerning probable cause.

### **Guideline 3.3 Prosecution Requests for Non-Testimonial Evidence**

The attorney should be familiar with the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars and physical specimens), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the record of the proceedings required to be maintained.

#### **Comment**

Counsel should be familiar with relevant legal precedent, including but not limited to *Schmerber v. California*, 384 U.S. 757 (1966); *State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006); and S.C. Code Ann. §17-13-140.

### **Guideline 4.1 Investigation**

(a) Counsel has a duty to conduct an independent investigation regardless of the accused's admissions or statements to the lawyer of facts constituting guilt. The investigation should be conducted as promptly as possible.

(b) Sources of investigative information may include the following:

#### *(1) Charging documents*

Copies of all charging documents in the case should be obtained and examined to determine the specific charges that have been brought against the accused. The relevant statutes and precedents should be examined to identify:

- (A) the elements of the offense(s) with which the accused is charged;
- (B) the defenses, ordinary and affirmative, that may be available;
- (C) any defects in the charging documents, constitutional or otherwise.

#### *(2) the accused*

An in-depth interview of the client should be conducted as soon as possible and appropriate. The interview with the client should be used to:

- (A) seek information concerning the incident or events giving rise to the charge(s) and improper police investigative practices or prosecutorial conduct which affect the client's rights;
- (B) explore the existence of other potential sources of information relating to the offense;

(C) collect information relevant to sentencing.

(3) *potential witnesses*

Counsel should consider the interview of potential witnesses, including any complaining witnesses and others adverse to the accused. If the attorney conducts such interviews of potential witnesses, he or she should attempt to do so in the presence of a third person who will be available, if necessary, to testify as a defense witness at trial. Alternatively, counsel should have an investigator conduct such interviews.

(4) *evidence favorable to the client*

Counsel should obtain and secure all evidence favorable to the client, whether it pertains to innocence, reduction in charges, or mitigation for sentencing.

(5) *the police and prosecution*

Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless a sound tactical reason exists for not doing so.

(6) *physical evidence*

Where appropriate, counsel should make a prompt request to the police or investigative agency for access to physical evidence or expert reports relevant to the offense or sentencing.

(7) *the scene*

Where appropriate, counsel should attempt to view the scene of the alleged offense. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions).

(8) *expert and investigative assistance*

Counsel should secure the assistance of experts and investigators where it is necessary or appropriate to:

- (A) the preparation of the defense;
- (B) adequate understanding of the prosecution's case;
- (C) rebut the prosecution's case.

## **Guideline 4.2 Formal and Informal Discovery**

Counsel has a duty to pursue as soon as practicable discovery procedures provided by The South Carolina Rules of Criminal Procedure, *Brady v. Maryland*, and the Administrative Case Management Order of the jurisdiction where the charge is pending and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case. In considering discovery requests, counsel should take into account that such requests will trigger reciprocal discovery obligations.

## **Guideline 4.3 Theory of the Case**

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case.

## **Guideline 5.1 The Decision to File Pretrial Motions**

(a) Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief. The decision to file



pretrial motions should be made after thorough investigation, and after considering the applicable law in light of the circumstances of each case. Among the issues that counsel should consider addressing in a pretrial motion are:

- (1) the pretrial custody of the accused;
- (2) the constitutionality of the implicated statute or statutes;
- (3) the potential defects in the charging process;
- (4) the sufficiency of the charging document;
- (5) the propriety and prejudice of any joinder of charges or defendants in the charging document;
- (6) the discovery obligations of the prosecution and the reciprocal discovery obligations of the defense;
- (7) the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding or additional state constitutional provisions, including:
  - (A) the fruits of illegal searches or seizures;
  - (B) involuntary statements or confessions;
  - (C) statements or confessions obtained in violation of the accused's right to counsel, or privilege against self-incrimination;
  - (D) unreliable identification evidence which would give rise to a substantial likelihood of irreparable misidentification.
- (8) suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
- (9) access to resources which or experts who may be denied to an accused because of his or her indigence;
- (10) the defendant's right to a speedy trial;
- (11) the defendant's right to a continuance in order to adequately prepare his or her case;
- (12) matters of trial evidence which may be appropriately litigated by means of a pretrial motion *in limine*;
- (13) matters of trial or courtroom procedure.

(b) Counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the defendant's rights against later claims of waiver or procedural default. In making this decision, counsel should remember that a motion may have many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

- (1) the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;
- (2) changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted;
- (3) later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

### **Guideline 5.2 Filing and Arguing Pretrial Motions**

(a) Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy

trial rights.

(b) When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

- (1) investigation, discovery and research relevant to the claim advanced;
- (2) the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
- (3) full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and costs of having the client testify.

(c) Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

### **Guideline 6.1 The Plea Negotiation Process and the Duties of Counsel**

(a) Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and in doing so should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

(b) Counsel should keep the client fully informed of any continued plea discussion and negotiations and convey to the accused any offers made by the prosecution for a negotiated settlement.

(c) Counsel should not accept any plea agreement without the client's express authorization.

(d) The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to prepare and preserve a defense.

### **Guideline 6.2 The Contents of the Negotiations**

(a) During the plea negotiation process, counsel should be fully aware, and make sure the client is fully aware of:

- (1) the maximum term of imprisonment and fine or restitution that may be ordered, and any mandatory punishment or sentencing guideline system;
- (2) the possibility of forfeiture of assets;
- (3) other consequences of conviction such as deportation, and civil disabilities;
- (4) any possible and likely sentence enhancements or parole consequences;
- (5) the possible and likely place and manner of confinement;
- (6) the effect of South Carolina Department of Corrections policies and procedures, relevant statutes governing sentencing calculation on the potential sentence of the client, and the general range of sentences for similar offenses committed by defendants with similar backgrounds.

(b) In developing a negotiation strategy, counsel should be completely familiar with:

- (1) concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to:
  - (A) not to proceed to trial on the merits of the charges;
  - (B) to decline from asserting or litigating any particular pretrial motions;
  - (C) an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs.
  - (D) providing the prosecution with assistance in prosecuting or investigating the

present case or other alleged criminal activity.

(2) benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

(A) that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

(B) to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

(C) that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;

(D) that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

(E) that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of any official presentence report, a specified position with respect to the sanction to be imposed on the client by the court.

(F) that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of any official presentence report, certain information.

(G) that the defendant will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration.

(c) In conducting plea negotiations, counsel should be familiar with:

(1) the various types of pleas that may be agreed to, including a plea of guilty, a plea of nolo contendere and a plea in which the defendant is not required to personally acknowledge his or her guilt (Alford plea);

(2) the advantages and disadvantages of each available plea according to the circumstances of the case;

(3) whether the plea agreement is binding on the court, prison and parole authorities.

(d) In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority which may affect the content and likely results of negotiated plea bargains.

### **Guideline 6.3 The Decision to Enter a Plea of Guilty**

(a) Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement, and the advantages and disadvantages and the potential consequences of the agreement.

(b) The decision to enter a plea of guilty rests solely with the client, and counsel should not attempt to unduly influence that decision.

### **Guideline 6.4 Entry of the Plea before the Court**

(a) Prior to the entry of the plea, counsel should:

(1) make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

(2) make certain that the client fully and completely understands the conditions and limits of the plea agreement and the maximum punishment, sanctions and other consequences the accused will be exposed to by entering a plea;

(3) explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense.

(b) When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

(c) After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

### **Guideline 7.1 General Trial Preparation**

(a) The decision to proceed to trial with or without a jury rests solely with the client. Counsel should discuss the relevant strategic considerations of this decision with the client.

(b) Where appropriate, counsel should have the following materials available at the time of trial:

- (1) copies of all relevant documents filed in the case;
- (2) relevant documents prepared by investigators;
- (3) voir dire questions;
- (4) outline or draft of opening statement;
- (5) cross-examination plans for all possible prosecution witnesses;
- (6) direct examination plans for all prospective defense witnesses;
- (7) copies of defense subpoenas;
- (8) prior statements of all prosecution witnesses (e.g., transcripts, police reports);
- (9) prior statements of all defense witnesses;
- (10) reports from defense experts;
- (11) a list of all defense exhibits, and the witnesses through whom they will be introduced;
- (12) originals and copies of all documentary exhibits;
- (13) proposed jury instructions with supporting case citations;
- (14) copies of all relevant statutes and cases;
- (15) outline or draft of closing argument.

(c) Counsel should be fully informed as to the rules of evidence, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

(d) Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

(e) Throughout the trial process counsel should endeavor to establish a proper record for appellate review. As part of this effort, counsel should request, whenever necessary, that all trial proceedings be recorded.

(f) Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should be alert to the possible prejudicial effects of the client appearing before the jury in jail or other inappropriate clothing.

(g) Counsel should plan with the client the most convenient system for conferring throughout

the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

(h) Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

## **Guideline 7.2 Voir Dire and Jury Selection**

### **(a) Preparation**

(1) Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

(2) Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

(3) Prior to jury selection, counsel should seek to obtain a prospective juror list.

(4) Where appropriate, counsel should develop voir dire questions in advance of trial. Counsel should tailor voir dire questions to the specific case. Among the purposes voir dire questions should be designed to serve are the following:

(A) to elicit information about the attitudes of individual jurors, which will inform about peremptory strikes and challenges for cause;

(B) to convey to the panel certain legal principles which are critical to the defense case;

(C) to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

(D) to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor.

(E) to establish a relationship with the jury, when the voir dire is conducted by an attorney.

(5) Counsel should be familiar with the law concerning mandatory and discretionary voir dire inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

(6) Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of rules concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

(7) Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

### **(b) Examining the Prospective Jurors**

(1) Counsel should consider seeking permission to personally voir dire the panel. If the court conducts voir dire, counsel should consider submitting proposed questions to be incorporated into the court's voir dire.

(2) Counsel should take all steps necessary to protect the voir dire record for appeal, including, where appropriate, making a copy of the proposed voir dire questions a court exhibit or reading proposed questions into the record.

(3) If the voir dire questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the remaining jurors and that

the court, rather than counsel, conduct the voir dire as to those sensitive questions.

(4) In a group voir dire, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

(c) *Challenges*

(1) Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

(2) Counsel should be familiar with legal authorities as to the proper exercise of preemptory challenges.

**Guideline 7.3 Opening Statement**

(a) Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

(b) Counsel should be familiar with the law of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

(c) Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case.

(d) Counsel's objective in making an opening statement may include the following:

(1) to provide an overview of the defense case;

(2) to identify the weaknesses of the prosecution's case;

(3) to emphasize the prosecution's burden of proof;

(4) to summarize the testimony of witnesses, and the role of each in relationship to the entire case;

(5) to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

(6) to clarify the jurors' responsibilities;

(7) to state the ultimate inferences which counsel wishes the jury to draw.

(e) Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

(f) Whenever the prosecutor oversteps the bounds of a proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations weigh against any such objections or requests. Such tactical considerations may include, but are not limited to:

(1) the significance of the prosecutor's error;

(2) the possibility that an objection might enhance the significance of the information in the jury's mind;

(3) the contemporaneous objection requirement.

**Guideline 7.4 Confronting the Prosecution's Case**

(a) Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions.

(b) Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

(c) In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to

develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

(d) In preparing for cross-examination, counsel should include but not be limited to:

(1) consider the need to integrate cross-examination, the theory of the defense and closing argument;

(2) consider whether cross-examination of each individual witness is likely to generate helpful information;

(3) anticipate those witnesses the prosecution might call in its case-in-chief or in rebuttal;

(4) consider a cross-examination plan for each of the anticipated witnesses;

(5) be alert to inconsistencies in a witness' testimony;

(6) be alert to possible variations in witnesses' testimony;

(7) review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

(8) where appropriate, review relevant statutes and local police regulations for possible use in cross-examining police witnesses;

(9) be alert to issues relating to witness credibility, including bias and motive for testifying.

(e) Counsel should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

(f) Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should request adequate time to review these documents before commencing cross-examination.

(g) Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for directed verdict on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion, in order that counsel may make an informed decision about whether to present a defense case.

(h) Counsel should be familiar with the rules of error preservation and make the necessary objections to perfect the record for effective appellate review.

### **Guideline 7.5 Presenting the Defense Case**

(a) Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt.

(b) Counsel should discuss with the client all of the considerations relevant to the client's decision to testify.

(c) Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

- (d) In preparing for presentation of a defense case, counsel should, where appropriate:
  - (1) develop a plan for direct examination of each potential defense witness;
  - (2) determine the implications that the order of witnesses may have on the defense case;
  - (3) consider the possible use of character witnesses;
  - (4) consider the need for expert witnesses.
- (e) In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.
- (f) Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.
- (g) Counsel should conduct redirect examination as appropriate.
- (h) At the close of the defense case, counsel must renew the motion for directed verdict on each charged count.

### **Guideline 7.6 Closing Argument**

- (a) Counsel should be familiar with the substantive limits on both prosecution and defense summation.
- (b) Counsel should be familiar with the local rules and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.
- (c) In developing closing argument, counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:
  - (1) highlighting weaknesses in the prosecution's case;
  - (2) describing favorable inferences to be drawn from the evidence;
  - (3) incorporating into the argument:
    - (A) helpful testimony from direct and cross-examinations;
    - (B) verbatim instructions drawn from the jury charge;
    - (C) responses to anticipated prosecution arguments;
  - (4) the effects of the defense argument on the prosecutor's rebuttal argument.
- (d) Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:
  - (1) whether counsel believes that the case will result in a favorable verdict for the client;
  - (2) the need to preserve the objection;
  - (3) the possibility that an objection might enhance the significance of the information in the jury's mind.

### **Guideline 7.7 Jury Instructions**

- (a) Counsel should be familiar with the rules and the individual judges's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.
- (b) Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Where possible, counsel should provide caselaw in support of the



proposed instructions.

(c) Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

(d) If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including, where appropriate, making a copy of proposed instructions a court exhibit or reading proposed instructions into the record.

(e) During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.

(f) If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury and to make appropriate motions and objections on the record.

### **Guideline 8.1 Obligations of Counsel in Sentencing**

(a) Among counsel's obligations in the sentencing process are:

(1) where a defendant chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, and financial implications;

(2) to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;

(3) to ensure all reasonably available mitigating and favorable information likely to benefit the client is presented to the court;

(4) to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client, and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;

(5) to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful or is otherwise improper is stricken from the text of any presentence investigation report before distribution of the report.

(6) to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever possible and warranted.

### **Guideline 8.2 Sentencing Options, Consequences and Procedures**

(a) Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

(1) any sentencing guideline structure;

(2) deferred sentence and diversionary programs;

(3) expungement and sealing of records;

(4) probation or suspension of sentence and permissible conditions of probation;

(5) restitution;

(6) fines;

(7) court costs;

(8) imprisonment including any mandatory minimum requirements;

(9) confinement in mental institution;

(10) forfeiture.

(b) Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

(1) credit for pre-trial detention;  
(2) parole eligibility and applicable parole release ranges;  
(3) effect of good-time credits on the client's release date and how those credits are earned and calculated;

(4) place of confinement and level of security and classification;  
(5) self-surrender to place of custody;  
(6) any status consequence, including but not limited to sex offender status;  
(7) available drug rehabilitation programs, psychiatric treatment, and health care;  
(8) deportation;  
(9) use of the conviction for sentence enhancement in future proceedings;  
(10) loss of civil rights;  
(11) impact of a fine or restitution and any resulting civil liability;  
(12) restrictions on or loss of license.

(c) Counsel should be familiar with the sentencing procedures, including:

(1) the effect that plea negotiations may have upon the sentencing discretion of the court;  
(2) the procedural operation of any relevant sentencing guideline system;  
  
(3) the practices of the officials who prepare any presentence report and the defendant's rights in that process;  
(4) the access to any presentence report by counsel and the defendant;  
(5) the prosecution's practice in preparing a memorandum on punishment;  
(6) the use of a sentencing memorandum by the defense;  
(7) the opportunity to challenge information presented to the court for sentencing purposes;  
(8) the availability of an evidentiary hearing to challenge information and the applicable rules of evidence and burdens of proof at such a hearing;  
(9) the participation that victims and prosecution or defense witnesses may have in the sentencing proceedings.

### **Guideline 8.3 Preparation for Sentencing**

(a) In preparing for sentencing, counsel should consider the need to:

(1) inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;  
(2) maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;  
(3) obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, and financial status, and obtain from the client sources through which the information provided can be corroborated;  
(4) ensure the client has adequate time to examine any presentence report;  
(5) inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible

consequences that any admission of guilt may have upon an appeal, subsequent retrial or trial on other offenses;

(6) prepare the client to be interviewed by the official preparing any presentence report;

(7) inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, treatment programs of probation or parole, or other judicial proceedings, such as forfeiture or restitution proceedings;

(8) inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;

(9) collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence.

#### **Guideline 8.4 The Official Presentence Report (Space Reserved)**

#### **Guideline 8.5 The Prosecution's Sentencing Position**

(a) Counsel should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of sentence be imposed.

(b) If a written sentencing memorandum is submitted by the prosecution, counsel should request to see the memorandum and verify that the information presented is accurate; if the memorandum contains erroneous or misleading information, counsel should take appropriate steps to correct the information unless there is a sound strategic reason for not doing so.

#### **Guideline 8.6 The Defense Sentencing Presentation**

(a) Counsel should prepare and present to the court a defense sentencing presentation where there is a strategic reason for doing so. Among the topics counsel may wish to include in the memorandum are:

(1) challenges to incorrect or incomplete information in the official presentence report and any prosecution sentencing memorandum;

(2) challenges to improperly drawn inferences and inappropriate characterizations in the official presentence report and any prosecution sentencing memorandum;

(3) information contrary to that before the court which is supported by affidavits, letters, and public records;

(4) information favorable to the defendant concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background, and family and financial status;

(5) information which would support a sentencing disposition other than incarceration, such as the potential for rehabilitation or the nonviolent nature of the crime;

(6) information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities;

(7) presentation of a sentencing proposal;

(8) presentation of a written defense sentencing memorandum when appropriate.

### **Guideline 8.7 The Sentencing Process**

(a) Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

(b) Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

(c) In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the defendant, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

(d) Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

(e) Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning parole eligibility, psychiatric treatment or drug rehabilitation, and permission for the client to surrender directly to the place of confinement..

(f) Where appropriate, counsel should prepare the client to personally address the court.

### **Guideline 9.1 Motion for a New Trial**

(a) Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

(b) When a judgment of guilty has been entered against the defendant after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

(1) The likelihood of success of the motion, given the nature of the error or errors that can be raised;

(2) the effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

### **Guideline 9.2 Right to Appeal**

(a) Counsel should inform the defendant of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. In circumstances where the defendant wants to file an appeal, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

(b) Counsel's advice to the defendant should include an explanation of the right to appeal the judgment of guilty and the sentence imposed by the court.

(c) Where the defendant takes an appeal, trial counsel should cooperate in providing information to appellate counsel concerning the proceedings in the trial court.

### **Guideline 9.3 Bail Pending Appeal**

(a) Where a client indicates a desire to appeal the judgment and/or sentence of the court,

counsel should inform the client of any right that may exist to be released on bail pending the disposition of the appeal.

(b) Where an appeal is taken and the client requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.

#### **Guideline 9.4 Self-Surrender**

Where a custodial sentence has been imposed, counsel should consider requesting a stay of execution of the judgment to permit the client to report directly to the place of confinement.

#### **Guideline 9.5 Sentence Reduction**

Counsel should be aware of procedures to seek a reduction of sentence imposed by the trial court including any time limitations that apply to such a request.

#### **Guideline 9.6 Expungement or Sealing of Record**

Counsel should inform the client of any procedures available for requesting that the record of conviction be expunged or sealed.

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## *Appendix F. Performance Standards for Indigent Defense in Juvenile Cases*

Appendix F includes performance standards for public defenders and assigned counsel in juvenile cases that were formally adopted by the S.C. Commission on Indigent Defense on June 7, 2013, effective July 1, 2013.

# **South Carolina Commission on Indigent Defense**

## **Performance Standards for Indigent Defense in Juvenile Cases**

Effective July 1, 2013

The following Performance Standards for Indigent Defense (Public Defenders and Assigned Counsel) were formally adopted by the SC Commission on Indigent Defense on June 7, 2013, effective July 1, 2013. Counsel in juvenile cases should also refer to the general Performance Standards for Public Defenders and Assigned Counsel as adopted by the Commission on June 7, 2013, effective July 1, 2013.

These performance standards are not intended to provide a new basis for a claim of ineffective assistance of counsel. They are benchmarks taken from existing national standards, and do not and cannot redefine the existing precedents that set forth the basis for determining when reversible error has occurred.

### **Section 1. Purpose of Standards**

Juvenile delinquency proceedings in the South Carolina Family Court are fundamentally different than adult criminal cases. Judges are charged by the South Carolina Code of Laws with acting in the “best interests of the child,” this emphasis on the rehabilitation of the child contrasts with the more punitive model used by the adult criminal justice system. These standards aim to provide guidance to appointed counsel in juvenile matters with particular emphasis on the distinctive requirements of the South Carolina juvenile justice system.

### **Section 2. Attorney Role**

Guideline 2.1 *Function of Defense Counsel.* The participation of counsel for juveniles subject to delinquency proceedings in Family Court is essential to the administration of justice and to the fair and accurate resolution of issues at all stages of these proceedings.

Guideline 2.2 *Role of Counsel.* Counsel’s role is to insure that the interests and rights of the juvenile client are fully protected and to insure that the juvenile is afforded due process. Additionally, counsel in juvenile cases should be familiar with dispositional alternatives and services, should investigate the client’s social, educational, and psychological history, and should advocate a plan approved by the client generally proposing the least restrictive alternative.

Guideline 2.3 *Attorney Qualification and Training.*

a. In order to provide competent representation, counsel should know the South Carolina Code of Laws, the South Carolina Rules of Evidence, the South Carolina Rules of Family Court, and the South Carolina Rules of Criminal Procedure.

b. Counsel should be cognizant of the roles of the Department of Juvenile Justice (DJJ), the Department of Social Services (DSS), the Department of Disabilities

and Special Needs (DDSN), and the Department of Mental Health (DMH). Counsel should be aware of the various service delivery systems and placement processes for these agencies.

c. Counsel should be encouraged to attend continuing legal education seminars devoted specifically to the function and procedures of representing juveniles subject to Family Court proceedings.

d. Counsel should review and follow the Performance Standards for non-capital representation as they apply to qualification and training.

*Guideline 2.4 Independence of Counsel.* It is essential that the professional independence of counsel and the integrity of the attorney-client relationship be maintained at all times.

### **Section 3. Attorney Responsibilities**

*Guideline 3.1 Acting Diligently and Promptly.* Counsel is bound by Rule 1.3 of the Rules of Professional Conduct to act with reasonable diligence and promptness in representing the client. Counsel should be prompt in all dealings with the court, including attendance, submissions of motions, briefs and proposed orders, and in dealing with clients and other interested parties.

*Guideline 3.2 Acting Ethically.* Counsel in a juvenile case must know and follow the standards of professional conduct set forth in the Rules of Professional Conduct and decisions of the South Carolina Supreme Court.

### **Section 4 Lawyer-Client Relationship**

*Guideline 4.1 Client Meetings.* A lawyer should meet with the client as soon as practicable and as often as necessary to ascertain all relevant facts and matters related to the defense known to the client.

*Guideline 4.2 Keeping Client Informed.* The lawyer has a duty to keep the client informed on all developments in the case and of the lawyer's efforts and progress with respect to all phases of the representation. This duty may extend also to a parent or guardian whose interests are not adverse to the juvenile, subject to the confidentiality requirements of the South Carolina Rules of Professional Conduct.

*Guideline 4. Confidentiality.* Counsel should seek to establish a relationship of trust and confidence with the client. The lawyer should explain to the client that full disclosure to counsel of all facts known to the client is necessary for effective representation and, at the same time, explain that the lawyer's obligation of confidentiality makes the client's disclosures to counsel privileged.

*Guideline 4.4 Client Duty and Responsibility.* A lawyer has a duty to his juvenile client to protect confidentiality and to consult with his client just as in an adult case. This duty to determine how to best approach the case and



any plea negotiations must be undertaken with the client being fully informed. In juvenile cases this must be done with the client's best possible legal resolution of the case in mind and not the best interest of the parent or guardian, which may at times conflict with the client's interest.

Guideline 4.5 *Resolving Conflicts of Interest*. The lawyer's principal duty is always first and foremost the representation of the client's legitimate interest and not personal or professional advantage or convenience. Conflicts of Interest rules should always be followed. The potential for conflict of interest between a juvenile and his or her parents should be clearly recognized and acknowledged. All parties should be informed that counsel represents the juvenile and that in the event of a disagreement between a parent or guardian and the juvenile, the attorney is required to serve the interests of the juvenile.

Guideline 4.6 *Advice to Give Client*. A lawyer should advise the juvenile client with complete candor concerning all aspects of the case. This includes a frank estimate of the probable outcome.

Guideline 4.7 *Testimony by Juvenile*. It is the duty of the attorney to protect the juvenile defendant's privilege against self-incrimination. If the client elects not to testify then the attorney should insist on the recognition of this right.

Guideline 4.8 *Decision Making*. Certain decisions related to the conduct of the case are to be made by the lawyer and others by the client. The client is ordinarily responsible, after being fully advised and consulting with Counsel for determining:

- i. The plea to be entered at adjudication;
- ii. Whether to cooperate in diversion program;
- iii. Whether to be tried as a juvenile or an adult, where the client has the choice;
- iv. Whether to testify on his or her own behalf.

Decisions concerning what witnesses to call, whether and how to conduct cross-examination, what motions should be made, and similar strategic and tactical decisions are the exclusive province of the lawyer after full consultation with the client.

## **Section 5 Attorneys' Initial Duties**

Guideline 5.1 *Early Release*. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of diversion from the formal juvenile court process.

If the client is detained, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody. At detention hearings the lawyer should be present and prepared, where circumstances warrant, to present facts and arguments relating to the jurisdictional sufficiency of the

allegations, the appropriateness of the place and criteria used for detention, and any non-compliance with procedures for referral to court or for detention. The attorney should also be prepared to present evidence with regard to the necessity for detention and a plan for pretrial release of the juvenile. Counsel must be familiar with and able to use the DJJ guidelines for release in preparation for and presentation at detention hearings.

Guideline 5.2 *Visiting Detention Facility*. Whenever the juvenile is detained, the attorney should regularly and periodically visit the juvenile. The attorney should keep records of these visits.

## **Section 6 Pretrial Duties**

Counsel should be held to the same standards set forth in the non-capital representation regarding Pretrial Duties.

## **Section 7 Transfer Hearings**

Counsel is responsible for being familiar with the provisions of SC Code of Laws Section 63-19-1210 and its application to the client. Counsel should be ready to argue for or against transfer of jurisdiction to or from the Family Court based on the best interests of the client. Counsel must prepare for Transfer Hearings and consider the need for expert witnesses or other witnesses necessary to support the position of the client regarding the transfer of jurisdiction.

## **Section 8 Plea Negotiations**

Guideline 8.1 The client should be made aware of any plea negotiations. Clients should be aware of any plea negotiations as soon as practical to inform them. Counsel is responsible for explaining and making sure the juvenile understands the concept of plea bargaining in general as well as the details of any specific plea offer made to the client. Counsel must advise the client on all possible consequences of an adjudication, including collateral consequences. Where it appears that the client's participation in a psychiatric, medical, social, or other diagnostic or treatment regime would be significant in obtaining a desired result, the lawyer should so advise the client and seek the client's consent to participation in such a program.

## **Section 9 Trial/Adjudication**

Guideline 9.1 *Trial/Adjudication Standards*. The trial of a case in Juvenile Court requires much if not all the same skills and preparation as required in any non-capital trial handled by an attorney. Therefore, close attention should be paid to the

provisions for handling a trial set forth in these Performance Standards for non-capital cases by indigent defense attorneys.

Guideline 9.2 *Disposition without Trial*. Counsel must be aware of any alternative programs, along with inquiring if the minor would qualify for such diversion program, which may be available and allow the case to be disposed of without trial. This would include, but not be limited to, negotiated guilty pleas, alternative dispositions, deferrals and diversion programs. As noted above, this requires counsel to be informed about all these possible resolutions and to have fully investigated them in the context of the client's case.

The client must also be fully informed regarding the alternatives to trial and the advantages and possible disadvantages of a trial versus a negotiated plea or diversion program or other disposition.

If the client elects to enter into any plea or any of the other dispositions available to him or her it is the attorney's responsibility to be sure the client is properly informed and prepared for the Court hearing that will impose this resolution short of trial, including the Court procedures and format, his or her expected conduct and the possible outcomes/sentences.

Guideline 9.3 *Trial of the case*. Counsel must prepare for the trial just as described in the Performance Standards for non-capital cases except for matters relating to juries since a jury is not available in juvenile adjudications.

## **Section 10 Disposition/Sentencing**

Guideline 10.1 *Counsel's Role at Disposition Hearings*. The active participation of counsel at disposition is often essential to the protection of clients' rights and to furtherance of their legitimate interest. Counsel must know and be ready to address the DJJ Guidelines for disposition as they relate to the client's case. Counsel must prepare for the disposition just as described in the sentencing provisions of the Performance Standards for non-capital cases while being aware of all the various options available for disposition in the juvenile's case. This can be the most valuable service to a client by an attorney.

Guideline 10.2 *Duty to Investigate*. Counsel should promptly investigate all sources of evidence including any reports or other information that will be brought to the court's attention, including all witnesses who are material to the disposition decision. Whether or not social and other dispositional reports are readily available, the lawyer has a duty independently to investigate the client's circumstances, including such factors as previous history, family relations, economic condition and any other information relevant to disposition. The lawyer should look to secure the assistance of expert personnel needed for purposes of evaluation, consultation, or testimony with respect to formation of a dispositional plan.

Guideline 10.3 *Client Counseling*. Prior to disposition counsel should explain to the client the nature of the disposition hearing, the issues involved, and the alternatives open to the court. When psychological or psychiatric evaluations are ordered by the State or used by defense counsel, Counsel should fully discuss and explain the process of these procedures to the client.

Guideline 10.4 *Hearing Duties*. It is Counsel's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence. Counsel may seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

Guideline 10.5 *Counseling After Disposition*. At disposition counsel should urge the Court to apply dispositional requirements that fit the client and avoid placing a counterproductive burden on the client and his or her parent or guardian. Counsel has a duty to obtain the Court's Final Order and review it carefully. Counsel should file objections to any errors or irregularities in the order and seek a hearing. If the Court refuses to correct its order after the hearing, Counsel should consider filing an appeal on behalf of the client seeking appropriate relief. When a dispositional decision has been reached, it is Counsel's duty to explain the nature, obligations and consequences of the disposition to the client and his or her parent or guardian and to urge upon the client the need for accepting and cooperating with the dispositional order. If appeal from either the adjudicative or dispositional decree is contemplated, the client should be advised of that possibility, but the attorney must counsel compliance with the court's decision during the interim.

Guideline 10.6 *Continuing Duty to Client*. The lawyer's responsibility to the client does not necessarily end with dismissal of the charges or entry of a final dispositional order. The attorney should be prepared to counsel and render assistance to the juvenile in securing appropriate legal services for the client in matters arising from the original proceeding. No matter the outcome, if Counsel feels that counseling services are necessary for the juvenile and/or the parent or guardian, Counsel should do everything in his/her power to assist them in receiving this assistance. Counsel should embrace a holistic approach to the client that not only addresses the immediate legal needs of the client but also seeks to place the client in the best position possible to succeed after the Court matters are resolved.

## **Section 11 Post-Dispositional Hearing Duties**

Guideline 11.1 *Post-Trial Matters*. Counsel must be informed about and be able to handle contempt proceedings and probation violation matters. The Performance Standards for non-capital representation apply to Counsel in these matters as well.

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## *Appendix G. North Carolina Systems Evaluation Project Final Grant Report*

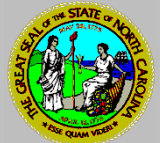
# **N.C. Office of Indigent Defense Services**

## **North Carolina Systems Evaluation Project (NCSEP)**

## **Open Society Foundations Final Grant Report**

**October 2014**

Office of Indigent Defense Services  
123 West Main Street, Suite 400  
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919-354-7200  
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## North Carolina Systems Evaluation Project (NCSEP) Open Society Foundations Final Grant Report

### The Need for Performance Measures

How well do we defend those without the resources to defend themselves? Across the country, indigent defense programs lack effective data collection and program evaluation, which hampers our ability to improve defense systems and advocate for fair criminal justice policies. We need what other large scale systems have: the ability to collect and analyze indicators that measure system performance. What are our outcomes? How well do we meet the needs of our clients? If an agency initiates a new practice or policy, was the policy successful? These are questions every indigent defense agency should have the tools to answer. In a world where big data is everywhere, empirical evidence is one of the most valuable tools available to advocates of indigent defense. NCSEP is dedicated to developing this empirical data.

### Introduction

In May 2012, the National Legal Aid and Defender Association (NLADA) and the North Carolina Office of Indigent Defense Services (NCIDS) received a \$725,000 grant from the Open Society Foundations (OSF) to expand the research capacity of the indigent defense community. As part of this grant, NCIDS was awarded \$225,000 to support the work of NCSEP to: 1) develop indigent defense system performance measures, and 2) assist NLADA in efforts to expand indigent defense research capacity nationally. At the conclusion of the grant, NCSEP wanted to accomplish the following:

1. *NCSEP Pilot Site Project*: Recruit indigent defense agencies from other states to work on a multi-state project and develop national system performance indicators in three areas: case outcomes, access to attorneys, and pretrial release.
2. *Research Toolkits*: Develop toolkits that will provide information and instructions to help indigent defense agencies replicate NCSEP research and products.
3. *Data Warehouse*: Build the technological infrastructure to house, integrate, and facilitate data mining of more than 15 million data records, with an annual growth of more than 2 million records, to sustain NCSEP's program evaluation work into the future.
4. *NLADA Research & Data Analysis Advisory Committee*: Facilitate the work of NLADA's efforts to expand the research capacity of the defense community, including serving on the NLADA Research & Data Analysis Advisory Committee (RDA) and assisting NLADA in developing training programs on indigent defense research.

NCIDS is grateful to the Open Society Foundations for their support. The following is a report of the accomplishments this grant funded.



## NCSEP Pilot Site Project

With the assistance of the RDA Committee, NCSEP recruited three indigent defense agencies from other states and established the NCSEP Pilot Site Project. Together, the project's mission was to develop Key Performance Indicators (KPIs) to measure indigent defense system performance in three areas: case outcomes, access to attorneys, and pretrial release. The project sought to:

- *Develop Universal Methodology*: Develop universal methodology that bridges differences across criminal justice systems.
- *Develop Comparable Data*: Develop standardized data protocols and operational definitions so that indigent defense outcomes can be compared across jurisdictions.
- *Institutionalize Research Capacity*: Assist the indigent defense community in transitioning away from the purchase of one-time consultant services toward building permanent, institutionalized in-house research capacity.
- *National Replication*: Develop the tools that would allow other indigent defense agencies across the country to replicate NCSEP pilot project efforts and thereby begin to build a national depository of indigent defense research, without having to reinvent the wheel again and again.

The NCSEP pilot sites included:

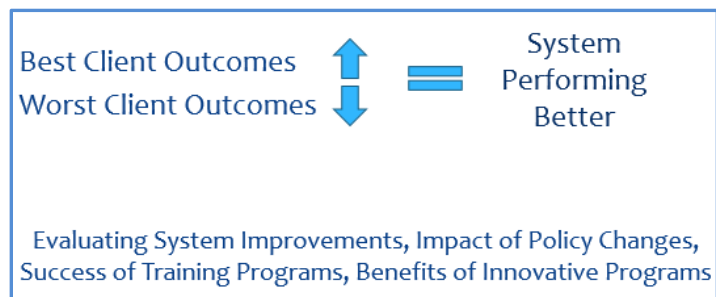
- ❖ Connecticut Division of Public Defender Services, CT (statewide agency)
- ❖ Knox County Public Defender's Community Law Office, TN (county PD Office)
- ❖ North Carolina Office of Indigent Defense Services (statewide agency)
- ❖ Travis County Court Administration, Texas (county oversight agency)

For a list of NCSEP Pilot Site Project participants see Appendix A.

## Key Performance Indicators (KPIs)

The NCSEP pilot sites developed eighteen KPIs that track system performance in client case outcomes and access to counsel and are currently working to develop KPIs for pretrial release. The adult criminal system KPIs quantify how often the system produces the "best client outcomes" and how often it produces the "worst client outcomes."

After a policy change, or over time, if the number of "best client outcomes" goes up and the number of "worst client outcomes" goes down, the KPIs indicate the system is performing better because it has improved client case outcomes. The eighteen KPIs and the rationale for each are presented in the following table.



## Indigent Defense Key Performance Indicators (KPIs)

Area	Outcome	Key Indicator	Rationale
Client Case Outcomes	Best	I. The percent of cases that ended in non-conviction, disaggregated by dismissal without leave, non-criminal responsible, and deferred prosecution	Measures how often the best outcome occurs: <ul style="list-style-type: none"> <li>No conviction on any charge in the case</li> <li>No criminal record or a chance for no criminal record</li> </ul> Non-convictions are disaggregated by type of non-conviction to increase the indicator's functionality.
	Best	II. The percent of convictions that ended in an alternative to incarceration**	Measures how often indigent defense is able to achieve avoiding a jail or prison sentence, which is a highly desirable outcome to a defendant and his or her family. Benefits may also include not losing a job, retained ability to care for children and dependents, and, in the community's interest, fewer social services, such as foster care, food stamps, etc. being triggered at the loss of a major source of family income.
	Best	III. The percent of felony cases that ended in a conviction where the conviction was a non-felony*	Measures how often indigent defense was able to successfully reduce a felony to a non-felony, which indicates a serious reduction in penalties and fewer collateral consequences.
	Best	IV. The average percent of sentence avoided for cases that ended in a conviction and the average jail or prison sentence received (months)*	Measures the relational difference between the maximum sentence faced by the defendant and the sentence received by the defendant. The maximum sentence faced corresponds to that of the lengthiest possible sentence of any one charge in the case, regardless of additional charges. Cases that ended in non-conviction are 100% sentence avoided. Cases with convictions of multiple charges where sentences are consecutive would receive a negative percent sentence avoided. For example, a defendant who faced three charges, where the highest charge carried a two-year sentence, who is convicted of two charges to be served consecutively for a total of 2.5 years, the percent of sentence avoided would be -25%. Analysis of pilot site data revealed that the overwhelming majority of cases resulted in concurrent sentences, so the occurrence of consecutive sentences is important to capture. The DWI category group is excluded from this indicator because DWI case outcomes are not comparable across jurisdictions. Additionally, the First Degree Murder category group also is excluded because "Death" and "LWOP" sentences would be controversial to quantify.

Area	Outcome	Key Indicator	Rationale
Client Case Outcomes	Worst	V. The percent of cases defendant is convicted of the highest charge and all charges and convicted of the highest charge and some, but not all, charges*	Measures how often the worst outcome occurs. When defendants are convicted of multiple charges, the vast majority of the time the sentences are concurrent sentences. Consequently, being convicted of the highest charge has serious consequences for defendants, regardless of whether the defendant is convicted of all charges or only some charges.
	Worst	VI. The percent of alternative to incarceration convictions that ended in supervised probation**	Measures how often sentences that do not end in incarceration result in sentences of probation where the defendant is to be supervised by a probation officer. Supervised probation is significantly more onerous, costly, and disruptive to a defendant's life than unsupervised probation. Moreover, studies confirm that defendants are more likely to violate probation when it is supervised.
	Worst	VII. The percent of convictions and jail sentences that were time served*	Measures how often defendants are sentenced merely to the time they spent in jail prior to sentencing. Being convicted of a criminal offense should trigger punishment, not end it. Time-served sentences indicate the defendant was not enough of a public threat that the court system wanted to impose a jail sentence upon conviction, which raises the question of whether the defendant should have been incarcerated pretrial and was perhaps incarcerated only because the defendant was too poor to make bail.
	Both	VIII. Average case cost (per-case attorney fees only)	Measures the cost of defending an adult criminal case. One cannot evaluate performance without knowing cost. A system that generates outcomes at \$500 per case would be evaluated differently from one that operated at \$1,000 per case. Equally, a 10% improvement in outcomes at a 10% increase in cost would be viewed differently from a 10% improvement in outcomes at a 50% increase in cost. The indicator measures just attorney costs because attorney costs are unequivocal across all states and jurisdictions. The amount of available resources for investigators and experts introduces a complexity of factors that would make data results uninformative.
	Both	IX. Average cost of court fees and fines (excludes restitution, attorney fees)	Measures the cost to defendants of resolving their cases. One goal of a robust indigent defense system is to disentangle clients from the criminal justice system, but significant court debt signifies that clients remain entangled. Moreover, studies show that unpaid court fees and fines can often result in re-arrest, even though defendants have not committed new criminal acts.

Area	Outcome	Key Indicator	Rationale
Access to Attorney	Best	X. The percent of all cases handled by the indigent defense system	Measures the percentage of cases handled by the indigent defense system. Every jurisdiction should be capable of reporting the percent of adult criminal court cases that were handled by the indigent defense system. An inability to do so indicates the indigent defense system cannot adequately assess whether the right to access to counsel is being protected in their jurisdiction. In addition, this KPI provides context for the other Access to Attorney KPIs.
	Best	XI. The percent of cases where the number of days between arrest and appointment of counsel occurred within three days	Measures how often defendants were provided with appointed counsel within three days of arrest. Having timely access to counsel is an important protection because defendants who have counsel are protected from questioning without the presence of their attorney.
	Best	XII. The percent of cases where the defendant was incarcerated pretrial and met with a member of the defense team within seven days of arrest	Measures how often appointed counsel met with incarcerated clients in a timeframe that is considered quality representation. When defendants are incarcerated pretrial, counsel have an obligation to meet with their clients as quickly as possible.
	Best	XIII. Environmental scan of the proportion of initial bail determinations where the indigent defense system provided access to counsel in adult criminal cases	Measures how often defendants have access to legal counsel at bail determinations. Research shows client outcomes are significantly better when defendants have access to an attorney at every critical stage of the process, including bail and first appearance. The bail setting is the point at which the state is in one sense at its most powerful in that it can incarcerate individuals even before they have been convicted of any wrong-doing. In this stage it is most likely that individuals will have no access to counsel; leaving them at the mercy of a court system actor who may be simply following a court formula to determine amount and type of bond. The defendant may have little knowledge of what information he/she could provide the court to influence this determination, nor the time or resources to collect the information.
	Best	XIV. Environmental scan of the proportion of first appearance court sessions before a judge where the indigent defense system provided access to counsel to qualified defendants in adult criminal cases	Measures how often defendants have access to legal counsel at their first appearance before a judge; the stage in a case where attorney appointments are most likely to occur for most indigent defense systems.

Area	Outcome	Key Indicator	Rationale
Access to Attorneys	Worst	XV. The percent of cases that ended in conviction or deferral where the defendant waived counsel and pled guilty	Measures how often the worst outcome for a defendant, a conviction or the possibility of a conviction, occurred and the defendant had no counsel. Quality indigent defense systems ensure defendants have access to an attorney to assist with their defense and that the consequences of a criminal conviction, both in the short term and the long term, are fully understood.
	Worst	XVI. The percent of cases that ended in time served where the defendant waived counsel	Measures how often defendants who potentially pled guilty in order to be released from pretrial incarceration had no legal counsel before doing so. Guilty pleas made without legal counsel mean the indigent defense system cannot be sure that the defendant truly understood the serious short and long term consequences of a criminal conviction.
	Worst	XVII. The percent of cases where the defendant was incarcerated pretrial and met with a member of the defense team for the first time more than 20 days after arrest	When defendants are incarcerated pretrial, counsel has an obligation to meet with their clients as quickly as possible. The KPI measures how often appointed counsel is egregious in not meeting this obligation.
	Worst	XVIII. The percent of cases that ended in conviction or deferral where at-large defendants met for the first time on the day of disposition with the attorney who disposed the case	Measures how often at-large clients did not meet with appointed counsel in a timely manner. The critical issue for at-large defendants is that they have the opportunity to meet with the attorney responsible for disposing the case at least one day before the disposition of the case. A quality indigent defense system should allow clients time to consider their situation and attorneys the time to consider and investigate the facts of the case, both of which necessitate that clients meet with their attorneys at least one day prior to the disposition of the case.
		Supplemental Metric: The percent of cases where the defendant's request for appointed counsel was denied	Measures how often defendants who request appointed counsel were denied appointed counsel. If the Access to Attorney KPIs indicate defendants lack access to counsel, it would be important to know how many requests for counsel were denied.

\* Convictions include: Flat Time/Straight Sentence, Split Sentence, Time Served, Non-Custodial Sentence, Financial and/or Civil Penalties Only, and Adjudication/Judgment Withheld.  
 \*\* Alternative to incarceration convictions include: Non-Custodial Sentence, Financial and/or Civil Penalties Only, and Adjudication/Judgment Withheld.



## Comparing KPIs Across Jurisdictions

The NCSEP Pilot Sites also created a visual framework for comparing KPIs across jurisdictions. The graphical framework was designed to compare adult criminal system KPI outcomes across jurisdictions at a glance, to lend insight into key trends, and to highlight any important differences. Jurisdictions compare system performance in five ways.

*Graph Set 1: Indigent Defense System Comparison:* The first set of graphs compares the KPI outcomes for each indigent defense system. The graphs also display the average cost per case to show the level of funding each indigent defense system had, thereby providing needed context for reviewing the KPI results.

*Graph Set 2: Comparing Systems by the Nature of the Offense:* The second set of graphs presents KPI outcomes by the nature of the offense, such as person, drugs, or DWI, to compare system performance for specific groups of crimes and to determine if outcomes differ significantly across types of crimes, as well as across jurisdictions.

*Graph Set 3: Comparing Systems by the Nature of the Offense with Retained Cases as an Added Perspective:* The third set of graphs uses the structure described above and adds to it retained attorney KPI outcomes for each jurisdiction. Comparing retained and indigent defense outcomes can add extra insight into performance differences. For example, if Jurisdiction A has a higher dismissal rate than Jurisdiction B, it suggests that attorneys in Jurisdiction A may be doing better for their clients than attorneys in Jurisdiction B. However, the higher dismissal rate could be the result of a different prosecutorial or judicial practice in Jurisdiction A, rather than differences in attorney performance, e.g., the court system in Jurisdiction A routinely dismisses cases at a higher rate than Jurisdiction B. If both retained and indigent case outcomes have higher dismissal rates in Jurisdiction A than Jurisdiction B, it would suggest the difference is due to prosecutorial/judicial practice. Reviewing KPI outcomes of retained cases and comparing them to indigent case outcomes provides a more complete picture. The data present the *differences* in client outcomes between retained attorneys and indigent defense attorneys. What drives those differences; whether it is because indigent clients are poorer or have more significant criminal histories or because indigent defense attorneys have too large a caseload and do not have the time to achieve the same quality, is unknown and further research would need to be done to answer this question.

*Graph Set 4: Indigent Defense System Trend Data:* The fourth set of graphs presents trend data for each indigent defense system. By observing the KPIs over time, a jurisdiction can identify whether indigent defense outcomes are improving. This type of analysis is particularly useful when assessing the effects of programmatic or policy changes within a jurisdiction.

*Graph Set 5: Add Your Jurisdiction to an Interactive Tool Comparing Systems by KPI in a Series of Scatter Plots:* The pilot sites created an interactive tool to allow jurisdictions to add data from their state to pilot site data.

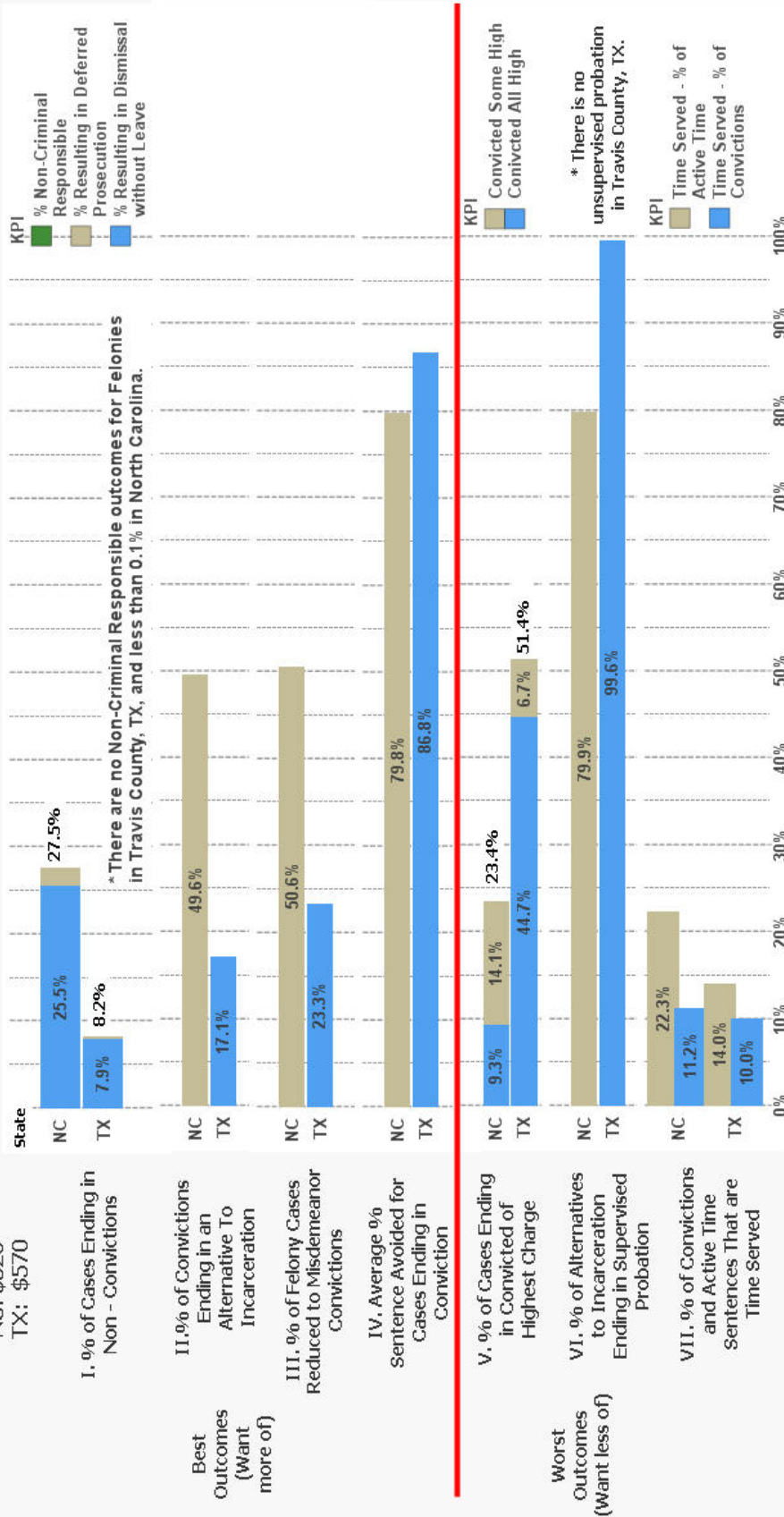
The graphs on the next pages show a selection of the cross-jurisdictional comparisons between North Carolina and Travis County, Texas indigent defense system performance, as well as a screen shot of the

# High Exposure Felony: All Category Groups Indigent Defense FY 2012

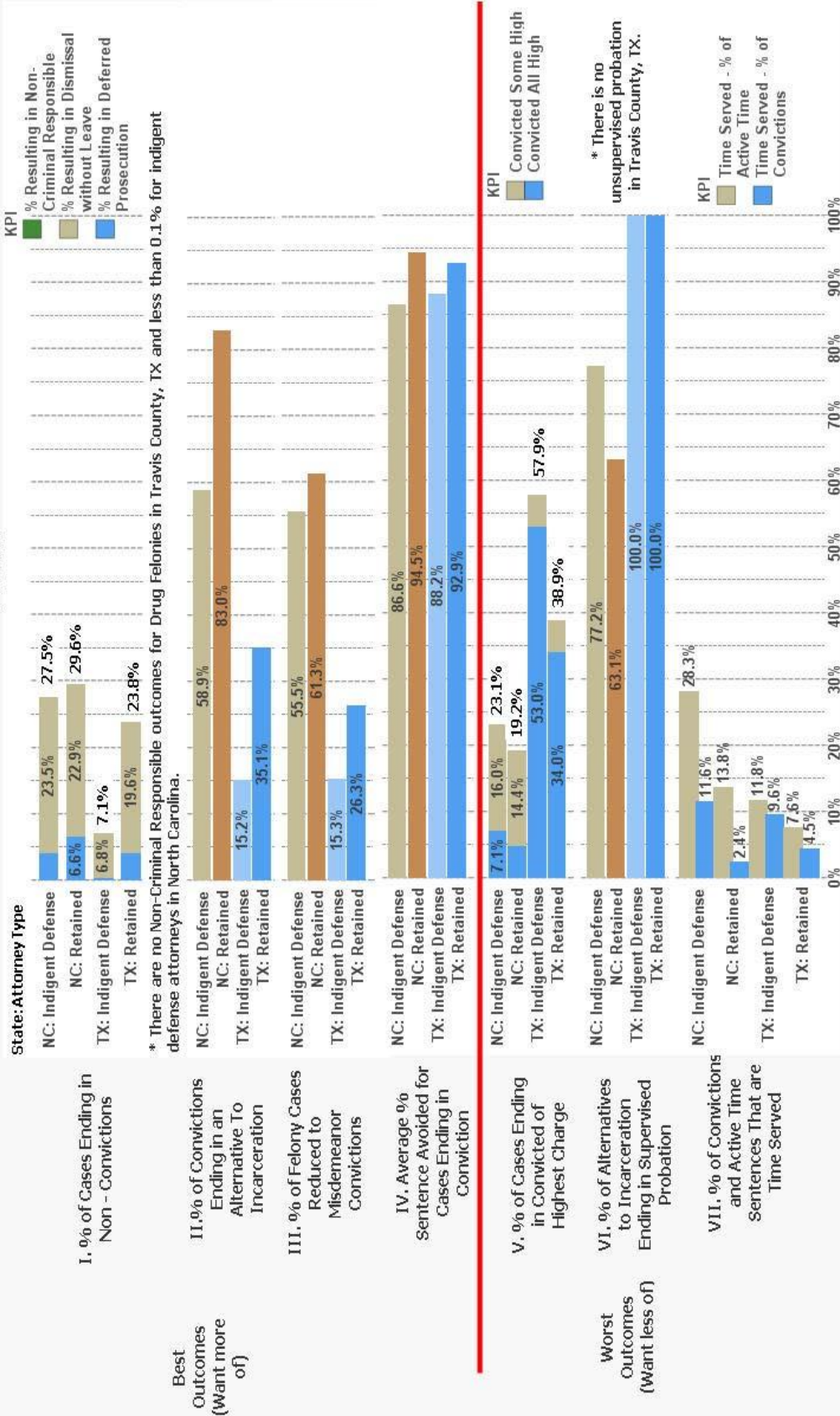
VIII. Average Cost Per Case:

NC: \$520

TX: \$570

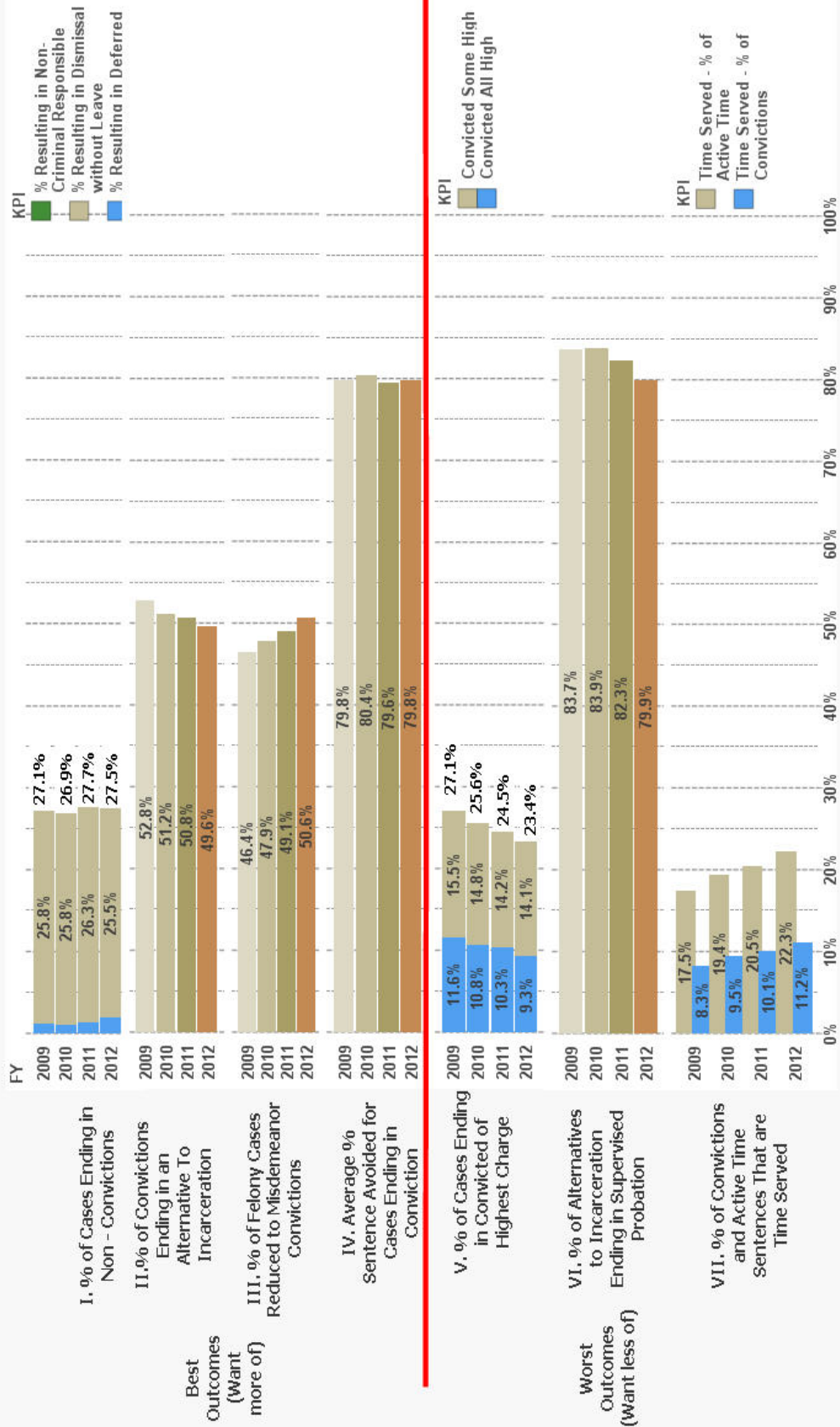


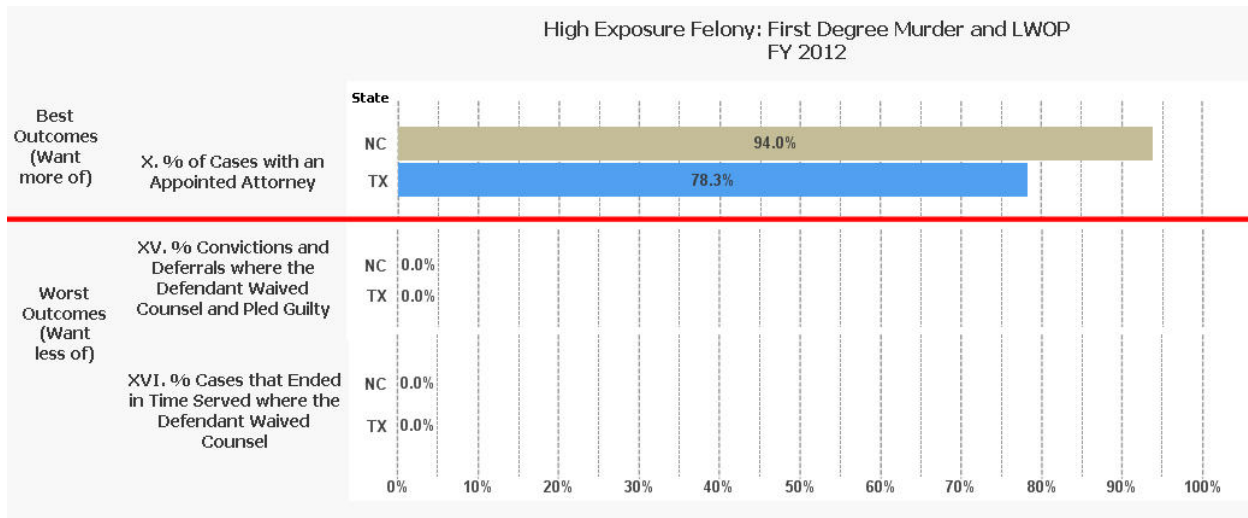
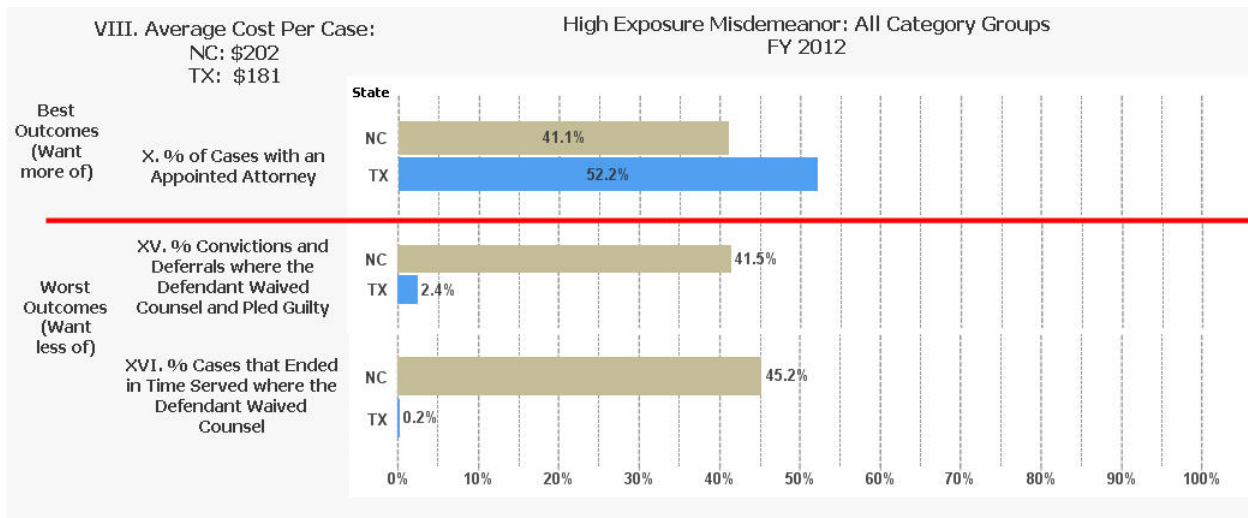
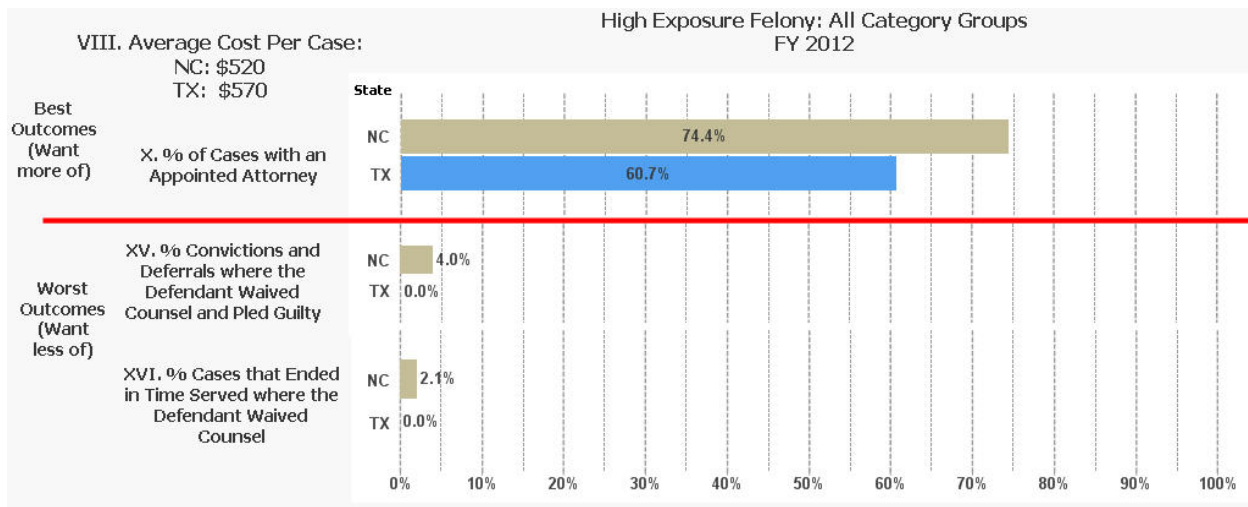
# High Exposure Felony: Drugs Indigent and Retained Counsel FY 2012





# High Exposure Felony: North Carolina Indigent Defense Only FY 2009-2012







## A Milestone in Indigent Defense Research

One of the most important achievements of the grant work to the NCSEP pilot sites, and any jurisdictions who follow in our footsteps, is the transformation each of our agencies underwent as the result of this project. At the start of the project, the indigent defense community had always struggled with measuring the quality of their indigent defense systems. Most defense agencies could not answer even the most basic questions, such as what happened to their clients? How many cases did they handle? There was not even an agreement over the definition of a case, and without such an agreement how could anyone compare data across jurisdictions? The project brought together four jurisdictions from across the country who developed a uniform case definition and a comprehensive system to categorize cases and client outcomes, and the tools to analyze the results. For the first time, we know definitively what happened to our clients. Changes in policy and practice can be examined through this lens and we can know if the changes resulted in real improvements, even to the actual number of individual clients who received different case outcomes. The project has developed a uniform definition of a case and built the core data required for any evaluation of indigent defense systems—client case outcomes—which can be added to over time. The project has already added access to counsel data, is currently working to add pretrial release data, and expects to continue on to new areas after that. Perhaps one of the most important testaments to the success of the project is that the pilot sites want to continue this work past the life of the grant. For a description of how the pilot sites defined a case see Appendix D.

Evidence-based practices are the gold standard in developing criminal justice policy. Practitioners want to know what works. Legislatures want cost-effective programs. The public wants to know that its tax dollars are being used efficiently. In order to prove the effectiveness of policies, we must be able to measure the outcomes of potential programs. Unfortunately, indigent defense has lagged behind other criminal justice programs in implementing empirical tools and evidence-based studies. But as a result of the NCSEP Pilot Site Project the landscape has changed. The project succeeded in undertaking the enormous task of developing easy-to-use and understandable data standards and empirical measures. Equally important, the pilot sites created toolkits for use by indigent defense systems across the country. Prior to NCSEP, policy researchers and indigent defense advocates focused on measuring inputs to compare systems. But neither the statutory requirements nor input-based analysis will answer the most important question: What are the best practices for providing indigent defense? With the development of outcome measures, the indigent defense community now has the tools to begin comparing programs and achievements in a systematic way, leading to reforms that are driven by facts, not anecdotes.

We say the landscape has changed, because having this data heralds the beginning of a new era. With access to this data, indigent defense can begin thinking strategically in new ways. We can begin to identify areas of reform that will have the most impact on the greatest number of lives. We recognize that we are just at the beginning of this new era and it will take time to process the data and understand what it means, but for the first time, the opportunity is there. Below is a list of some of the research that is now within our grasp.



1. *Attorney Type*: Compare client outcomes by the delivery system or attorney type (public defender, private assigned counsel, contract attorney). On average, does one system generate better client outcomes than others?
2. *Impact of Request for Proposals (RFP) Contract System on Client Outcomes (NC)*: Compare client case outcomes before and after RFP contracts were initiated.
3. *Analyze the Impact of Policy Changes*: Analyze before and after outcome data to measure the impact of policy change.
4. *Information to Support Attorneys*: Identify ways we can provide attorneys with case outcome data that will help inform the practice of indigent defense. What information would be most helpful to new and experienced attorneys?
5. *Attorney Hours per Case Analysis*: Analyze client case outcomes by hours per case for private assigned counsel (PAC). What impact does the number of hours worked on a case have on client outcomes?
6. *Client Outcomes by Type of Case*: Where is indigent defense having the greatest impact? Are there types of cases where a particular type of attorney obtains better client outcomes? Are there types of cases where waiving counsel is not, on average, a disadvantage?
7. *Analyze Client Outcomes by Defendant Race and Gender*: Do client outcomes differ significantly when we look at defendants' race or gender?
8. *Time to Resolve Cases*: How does time to resolve cases impact client case outcomes?
9. *Impact of Investigators on Client Outcomes*: Does having an investigator on the case impact client outcomes, especially for misdemeanor cases?
10. *Client Case Outcomes by County and District*: Analyze outcomes by county and district. Are there areas that need assistance or areas that can shed light on best practices?
11. *Quantify Attorney Caseloads*: Investigate the impact of caseloads on client outcomes. What can we learn about optimum caseload levels? What is the average case disposition rate of attorneys? What should it be?
12. *Vertical versus Horizontal Representation*: Does having one attorney through all phases of a case generate better client case outcomes?
13. *Attorney Hourly Rates*: Analyze client outcomes by the hourly rate paid. Do changes in hourly rates impact client outcomes?
14. *Reclassification Study*: Identify statutes that could be reclassified as infractions.
15. *Motions Practice*: Evaluate the effectiveness of motions practice on client case outcomes.
16. *Number of Continuances per Case*: Evaluate the impact of continuances on client case outcomes.
17. *Attorney Experience and Staff Turnover*: How does attorney experience and/or staff turnover impact client case outcomes?
18. *First Client Contact*: Does how quickly attorneys meet with clients impact case outcomes?
19. *Number of Charges per Case*: Does the number of charges impact client outcomes?

## Toolkits

To help expand the research capacity of the defense community, a series of toolkits was created containing the information, step-by-step instructions, and tools (such as programs that code data) to allow other indigent defense agencies to replicate NCSEP and NCSEP Pilot Site work. The NCSEP website is currently being completely revised and should be completed by the end of October 2014. At which point, the toolkits can be accessed at [www.ncids.org](http://www.ncids.org) by selecting *Research & Reports* then *Systems Evaluation Project*.

**Building Research Capacity Toolkit:** A toolkit that provides defenders with the tools to advocate for and to set up in-house research positions.

<http://www.nlada100years.org/sites/default/files/NLADA%20Toolkit%20-%20Research%20Capacity.pdf>

**Case Outcome Data and KPI Toolkit:** A web-based toolkit that instructs jurisdictions how to develop comparable case outcome data and KPIs using uniform data definitions and protocols and how to compare system performance across jurisdictions, including an interactive tool where they can add their data to compare with pilot site data. The KPIs measure the core outcomes of an indigent defense system: what happened to the client at the conclusion of the case. Appendix E includes sample screen shots of the Case Outcome Toolkit to illustrate how the interactive toolkits will work.

**Access to Attorney Data and KPI Toolkit:** A web-based toolkit that instructs jurisdictions how to develop comparable access to attorney data and KPIs. The KPIs measure how well an indigent defense system protects the right to counsel and ensures that access to counsel is timely enough to preserve constitutional rights.

**Pretrial Release Data and KPI Toolkit:** The NCSEP Pilot Site Project is currently working to develop uniform data and KPIs to measure indigent defense system performance during the pretrial release phase. Even though the grant has ended, this work will continue.

**NCSEP Data Warehouse Toolkit:** A web-based toolkit that instructs other jurisdictions how to build a data warehouse or data depository to house, integrate, and analyze the large datasets often accrued during systems evaluation research. The toolkit includes a copy of the NCSEP data warehouse, which is available for non-commercial use upon request.

**NCSEP Performance Measures Guide Companion Video:** The challenge NCSEP faced in recruiting pilot sites for the NCSEP Pilot Site Project was the defense community's general unfamiliarity with and limited knowledge about program evaluations, performance measurement, and how they would apply to indigent defense work. NCSEP created a short video presentation describing performance measurement methodology, its application to indigent defense, and its benefits. Both the *Guide* and companion video are available on the Systems Evaluation Project website described above.

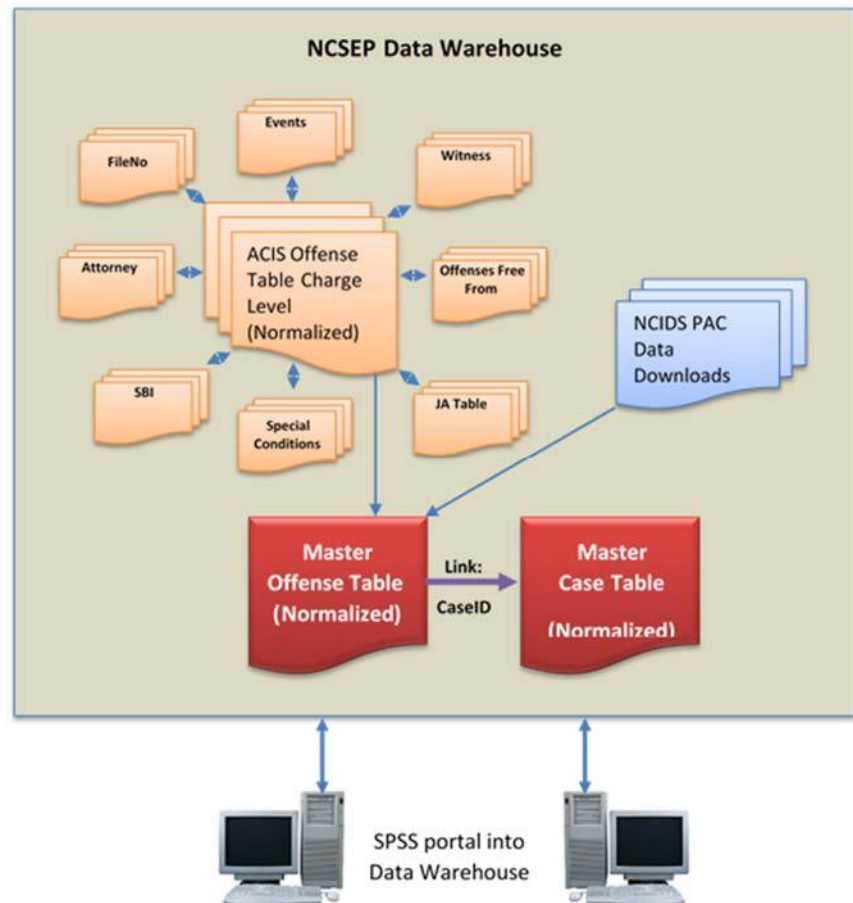
**NCSEP Website:** By November 2014, NCIDS will have finished the NCSEP website, where the indigent defense community can download the NCSEP Performance Measures Guide, companion video, toolkits, and information on the NCSEP Pilot Site Project to provide instant access for other indigent defense agencies to this important, ongoing work.

**Basic Descriptive Statistics for Indigent Defense Agencies:** NCSEP developed a presentation, which was given to the RDA Committee, which identified the basic descriptive statistics indigent defense agencies should provide on an annual basis. The NLADA created the resource guide, *Basic Data Every Defender Program Needs to Track*, which is posted on its website.

(<http://www.nlada100years.org/member-resources/defender-resources/defender-legal-services-0>).

### NCSEP Data Warehouse

To operationalize the performance indicators outlined in the *NCSEP Performance Measures Guide*, NCSEP needed to build the technological infrastructure necessary to house and integrate data from multiple sources, known as a data warehouse or data depository. North Carolina processes more than 1 million adult criminal cases a year, which translates to the court system generating close to 3 million data records on an annual basis. This is a lot of data and only one of the data sources NCSEP used. To store, clean, convert, and integrate data used by NCSEP, grant funds were used to hire an IT programmer who built a data warehouse. NCSEP also created a Data Warehouse Toolkit to help other indigent defense agencies build a data warehouse for themselves and the data warehouse program is available to other indigent defense agencies upon request for non-commercial use.



### NLADA Research and Data Analysis Committee (RDA)

The NLADA established the national Research & Data Analysis Committee (RDA) to facilitate and inform the work of the Justice Standards, Evaluation and Research Initiative (JSERI). Thomas K. Maher, NCIDS Executive Director, and Margaret A. Gressens, NCIDS Research Director, are members of the RDA Committee and have attended and presented at all RDA conferences to date. Moreover, the RDA

Committee provided assistance and feedback to the NCSEP Pilot Site Project. The RDA Committee assisted NCSEP in recruiting NCSEP pilot sites and provided a forum to review and discuss the work of the NCSEP Pilot Site Project, including providing feedback on the KPIs that were developed.

To help advance program evaluation work in the defense community, NCSEP distributed the *North Carolina Systems Evaluation Performance Measures Guide* and companion video to RDA Committee members and NCSEP's listserv, which contains over 300 indigent defense practitioners and researchers who asked to be kept informed of NCSEP progress. NCSEP tracked the results of the *Guide's* distribution and over 33% of listserv recipients opened and read the mailing, more than half of whom then proceeded to download the *Guide*. Since the national average response of listserv recipients to a mailing is 15%, NCSEP's 40% response rate simply confirms the national interest by the defense community in evidence-based research. The *Guide* and companion video are permanently available on NCSEP's website at [www.ncids.org](http://www.ncids.org) by selecting *Research & Reports* and then *Systems Evaluation Project*.

An RDA Committee member, Andrew Davies, Director of Criminal Justice Research at the New York State Office of Indigent Legal Services, has organized an indigent defense research conference for the defense community to be held in November 2014 at the American Society of Criminology Conference. The NCSEP Pilot Sites are excited to share their work with criminal justice professionals from around the nation.

## Lessons Learned

### The Benefits of a Multi-State Project

A multi-state approach was one of the most important keys to the project's success. Court systems are complex and often have their own terminology and language, making comparison across jurisdictions difficult. By collaborating across states, the pilot sites were able to develop uniform coding, categorization, and data definitions that mapped local individual court system outcomes to a standardized set of outcomes comparable to each other. Standardizing our results allowed not only for meaningful comparisons across jurisdictions, but also led to the development of a common language that was more transparent and engendered shared understanding.

Comparing data and developing protocols across states helped identify—and avoid—potential pitfalls that arise from differences between systems. In fact, one of most important elements of our methodology was the classification of cases by *Exposure Level*. Exposure Level refers to the classification of cases as either: 1) High Exposure or cases containing offenses that are typically sentenced to incarceration upon conviction, or 2) Low Exposure or cases containing offenses that typically result in dismissals or fees and fines only. Analyzing outcome data from different states highlighted the fact that jurisdictions have differing proportions of these types of cases. Without the inclusion of *Exposure Level* in the methodology, comparing defense system outcomes across jurisdictions would have been hopelessly misleading, because states with a high proportion of *Low Exposure* cases would have had significantly better case outcomes that had nothing to do with quality of the defense system. This critical difference across criminal justice systems would not have been discovered if a single jurisdiction had



undertaken this project. A complete explanation of exposure level and its impact on cross-jurisdiction comparisons is provided in Appendix F.

Moreover, comparing data across multiple jurisdictions led to innovative strategies. While developing the access to attorney KPIs, the pilot sites encountered severe data limitations. For two important areas that we wanted to measure, access to counsel at bail determinations and at first appearances before a judge, none of the sites had access to this data or the resources to collect it at a case level within the foreseeable future. The lack of data, however, did not lessen the importance of being able to quantify and report with transparency the stages in a case where defendants actually have access to counsel, as is their constitutional right. Brainstorming together, the pilot sites were able to devise the strategy of collecting this information through environmental scan KPIs.

Collecting this data on a state-by-state basis across the country is a feasible project.

Note: An environmental scan KPI refers to a measure based on an organization's survey or "scan" its organizational structure to identify whether, and the extent to which, a service, such as the provision of counsel at initial bail settings, is provided.

NCSEP Access to Attorney Selected Key Performance Indicators (KPIs) U.S. States At-a-Glance: Access to Counsel at Initial Bail Determinations & First Appearances Before a Judge								
FY14 U.S. States	KPI XIII: The Proportion of Initial Bail Determinations Where the Indigent Defense System Provided Access to Counsel in Adult Criminal Cases.*				KPI XIV: The Proportion of First Appearance Court Sessions Before a Judge Where the Indigent Defense System Provided Access to Counsel to Qualified Defendants in Adult Criminal Cases.			
	All	At Least 50%	Less than 50%	None	All	At Least 50%	Less than 50%	None
Alabama								
Alaska								
Arizona								
Arkansas								
California								
Colorado								
Connecticut				●	●			
Delaware								
District of Columbia								
Florida								
Georgia								
Hawaii								
Idaho								
Illinois								
Indiana								
Iowa								
Kansas								
Kentucky								
Louisiana								
Maine								
Maryland								
Massachusetts								
Michigan								
Minnesota								
Mississippi								
Missouri								
Montana								
Nebraska								
Nevada								
New Hampshire								
New Jersey								
New Mexico								
New York								
North Carolina				●			●	
North Dakota								
Ohio								
Oklahoma								
Oregon								
Pennsylvania								
Rhode Island								
South Carolina								
South Dakota								
Tennessee								
Knox County, TN				●		●		
Texas								
Travis County, TX				●	●			
Utah								
Vermont								
Virginia								
Washington								
West Virginia								
Wisconsin								

\* Includes any initial bail determinations where the defendant had the opportunity to consult with an attorney, regardless of whether the defendant actually took advantage of the opportunity.

## Access to Research Skills and Data Is a National Issue

To participate in the NCSEP Pilot Site Project, pilot sites needed to meet three prerequisites: 1) have access to data (or obtain access quickly), 2) have at least 1 FTE research position to work on the project for two years, and 3) have the hardware and software needed to analyze the data. During the recruitment phase of the project, it became clear these prerequisites were in fact unobtainable for most indigent defense agencies. NCSEP received eight serious inquiries from indigent defense agencies wanting to participate in the project. However, the lack of available research staff or funding for research staff rendered them unable to participate. For other defense agencies, the lack of access to existing data prevented their participation. These twin hurdles are of national concern.

### *Funding for Research Positions*

There is a clear need for at least seed money to establish research positions within indigent defense agencies. In this era of underfunded indigent defense agencies, diverting funds to establish research positions is often impossible. However the Travis County, TX model shows a potential way forward. The Travis County Court Administration agency (TX), with the help of Jim Bethke of the Texas Indigent Defense Commission, was able to leverage the project to obtain a two-year grant for a full-time research position to work on the project and meet other agency research needs. Due to the success of the work, the grant was renewed and the agency hopes to convert the position into a permanent position as its value is proven and stakeholders become loathe to lose access to the valuable information the position generates. This model of obtaining outside seed money for research positions that become permanently funded through the organization is very promising.

### *Access to Court System Data*

Collecting data, while imperative, requires infrastructure and labor. Many jurisdictions have court systems that collect much of the data program evaluation efforts need. However, obtaining data extracts from the court system can be a time-consuming challenge for many indigent defense agencies. For example, it was a two-year process for NCSEP to obtain data extracts from the court system. And, one of the NCSEP pilot sites, the Connecticut Division of Public Defender Services, is still undergoing the process of developing a Memorandum of Understanding to obtain court system data two years after they were initially assured a data extract would be provided within months of starting the project. It is in the states' interests for their agencies to work efficiently and effectively. Yet access to data is a challenge for most indigent defense agencies, even when that data is being collected by the court system and it would be a waste of taxpayer dollars to duplicate this data collection. This situation could be potentially ameliorated by federal intervention. Addressing access to data on a national level could significantly ease the struggle to obtain data at a jurisdictional level and perhaps significantly speed up the growth of indigent defense research. After all, there can be no research without access to data.

## **The Need for Adequate Time**

NCSEP realized that we were overly ambitious in our project timeline. Developing uniform data protocols, analyzing cross-jurisdictional data, and identifying the critical KPIs that measure performance was meticulous work and there were no short cuts. Moreover, NCSEP underestimated the amount of work our role as project leader would require. Heavy amounts of documentation, which required a lot of staff labor, were needed to keep the project moving forward, which we had not anticipated. This fact combined with the loss of the IT programmer NCSEP had originally identified to develop the NCSEP data warehouse and the additional time and labor needed to identify and contract with a replacement IT programmer, cost us the ability to get everything done that we had originally hoped to complete as part of the grant. The NCSEP Pilot Site Project was able to begin working on developing pretrial release data and KPIs, but was unable to complete this work. However, this is not a permanent loss. The pilot sites are continuing the project after the life of the grant and expect to complete this task. In addition, NCSEP had hoped to work with NLADA to pilot test a research training conference during the grant period. The original goal was to identify a research topic (such as developing case outcomes data or basic descriptive statistics), and develop and host a training conference to walk through the research steps with various indigent defense agencies across the nation. However, we did not have the time to complete this project.

Despite these few shortcomings, the accomplishments of the NCSEP Pilot Site Project have been, we believe, truly remarkable. We are indebted to the Open Society Foundations for providing the funding needed to establish this project and hope OSF is proud of our accomplishments. Although the grant has ended, this important work will carry on and OSF financial support made it all possible. The communications/coordination framework NCSEP set up to work remotely with the pilot sites remains strong. Travis County, TX has emerged as a leader and will take the project's helm as the pilot sites work through the topic of pretrial release. The project's structure is solid and we hope to recruit additional indigent defense agencies to join us. To date, the project has a new member. Janet Moore, Assistant Professor of Law at the University of Cincinnati College of Law, has joined our ranks and has already made valuable contributions.

## **NCSEP Pilot Site Project Reports**

Appendices F, G, and H include individual project reports from each of the NCSEP pilot sites.

## **Financial Report**

Submitted to NLADA.

# List of Appendices

- A. NCSEP Pilot Site Project Participants
- B. Cross-Jurisdictional KPI Comparison Graphs
- C. NCSEP Pilot Site Definition of a Case
- D. Low Exposure and High Exposure Cases
- E. Case Outcome Toolkit Screenshots
- F. TX report
- G. CT report
- H. TN report
- I. Building Research Capacity Toolkit

# Appendix A

## NCSEP Pilot Site Project Participants

## Case Outcomes Toolkit: Introduction

Below is a list of the dedicated professionals who have committed over two years of their lives on the North Carolina Systems Evaluation Pilot Site Project. Members of the group are committed to developing empirical tools that can be used to validate evidence based practices and improve indigent defense.

### North Carolina Office of Indigent Defense Services (NCIDS)

North Carolina Systems Evaluation Project  
123 West Main Street, Suite 400  
Durham, NC 27701

*Susan Brooks, Public Defender Administrator:* Susan Brooks is the Public Defender Administrator for NCIDS. Ms. Brooks graduated summa cum laude from North Carolina State University in 1990 with a B.A. in English and a minor in Political Science. Upon graduation from Harvard Law School in 1994, Ms. Brooks joined the Office of the Public Defender for the 4th Judicial Circuit in Jacksonville, Florida, where she worked as an assistant public defender for over seven years. She moved back to North Carolina and, after a brief stint in private civil practice, began work as the IDS Contracts and Sentencing Services Administrator in 2003. In 2011, she moved into her current position, in which she works to assure that public defender offices in the state have the resources, training, and support they need to best serve their clients.

*Margaret A. Gressens, IDS Research Director:* Ms. Gressens has served as Research Director for the North Carolina Office of Indigent Defense Services since the office was established in 2001. She is the leader of the NCSEP Pilot Site Project and has over 25 years of experience in social research and program evaluation. She is the author of numerous studies evaluating indigent defense system quality and cost-effectiveness, including the *NCSEP Performance Measures Guide*, a blue-print for developing indicators that measure indigent defense system performance. Ms. Gressens serves on the National Legal Aid & Defender Association (NLADA) Research and Data Analysis Committee and on the *Measures for Justice* Index Data Council. Ms. Gressens received her BA from Brown University in Providence, Rhode Island and a MPA from the University of Alaska in Anchorage, Alaska. From 1996 to 2000, Ms. Gressens served as a Health Planner for the Municipality of Anchorage (MOA) Department of Health and Human Services (DHHS), where she directed a project that measured the health and quality of life of Alaskans. Prior to MOA DHHS, she was the Assistant Director of the Real Security Education Project for the Institute for Policy Studies in Washington, DC, where she co-designed a research and education project on the impact of U.S. foreign policy on the U.S. and the international economy.

*John W. King, IDS Research Associate:* Following a 12-year career in non-profit program management at the Chapel Hill-Carrboro YMCA, Mr. King received his Master of Public Administration degree from the University of North Carolina at Chapel Hill in 2008. Mr. King's primary research interests include performance measurement and program evaluation. Prior to joining the NCIDS in 2010, Mr. King served as Research Assistant for the North Carolina Local Government Performance Measurement Project and as Research Associate and Co-author of an evaluation of the Golden Leaf Foundation's college scholarship program. In addition to this work, he has written on the effects of performance reporting requirements on state appropriations to public universities.

*Thomas K. Maher, Director of North Carolina Office of Indigent Defense Services:* Maher graduated from the University of North Carolina School of Law in 1982, and spent two years clerking for the United States Court of Appeals for the Seventh Circuit. From 1984 until 2006 Maher was engaged in the private practice of law, focusing on criminal defense. Maher represented clients at trial, on appeal and in post-conviction proceedings, both

appointed and retained, including capital trials, appeals and post-conviction proceedings. Maher has appeared on behalf of clients at every level of North Carolina's Court system, including arguing cases before the North Carolina Supreme Court, as well as appearances in federal district courts and the United States Court of Appeals for the Fourth Circuit. In 2006, Maher became the Director for the Center for Death Penalty Litigation, a non-profit law firm that represents inmates on death row, as well as capital defendants at trial and on appeal, and which provides consultation to capital attorneys and other defense team members throughout the state. In 2009 Maher became the Executive Director of the Office of Indigent Defense Services, the agency that is responsible for funding and oversight of local and state-wide public defenders and private assigned counsel in North Carolina.

### Connecticut Division of Public Defender Services

30 Trinity Street, 4th Floor  
Hartford, Connecticut 06106

*Jennie J. Albert, Connecticut DPDS Manager of Information Services and Research:* Ms. Albert, a licensed clinical social worker, is currently a doctoral student at the University of Connecticut School of Social Work. She also holds a Master's Degree in Social Work from the same institution. Ms. Albert's primary research interests include policy and program evaluation of indigent defense systems, survey research and forensic social work. In Ms. Albert's fifteen years with the CT Division of Public Defender Services, she has held the positions of Judicial District Social Worker and Mitigation Specialist in the Capital Defense and Trial Services Unit. In addition, Ms. Albert teaches as an adjunct instructor at both the University of Connecticut School of Social Work and the University of New England in the areas of Trauma, Research Methods, Social Work and the Law and Groupwork.

### Knox County Public Defender's Community Law Office, TN

1101 Liberty Street  
Knoxville, TN 37919

*Issac Merkle, Director of Information Technology:* Issac Merkle has been employed by the Knoxville Community Law Office since 1996, where he is the Director of Information Technology. His responsibilities include the strategic planning, legal case management data collection and analysis, graphic and web design, and implementation and maintenance of networked computer systems and software. He has developed several solutions to aid attorneys in collaboration, large case preparation, and presentation. He has presented his work to the Tennessee Public Defenders Conference, Tennessee Association for Criminal Defense Lawyers, and the Office of Justice Programs. He leads "mad science" workshops as part of the CLO's "The Zone" program for at-risk youth. He provides technical assistance and direction to the National Association for Public Defense (NAPD) and is a member of their IT and Social Media Committees. He currently serves as the Creative Director of Knox Makers, a hackerspace in Oak Ridge, Tennessee.

### Travis County Court Administration, Texas

PO Box 1748  
Austin, TX 78767

*Mark Erwin, Courts Technology Manager:* Mr. Mark Erwin is the Technology Manager for the Travis County Court System. Mark enjoys developing organizational maturity through technical innovation. He is currently committed to using his skills to improve criminal justice and views the NCSEP Pilot Site Project as an opportunity to inspire others to use better technology. Mark's prior experience has been in analytics, healthcare, marketing, social media



and non-profit. Mark graduated from the University of Texas at Austin, is involved in a variety of local community organizations and lives in Austin with his partner of 19 years.

*Margaret Ledyard, Business Analyst III:* Meg Ledyard joined the Travis County (Texas) Criminal Courts in January of 2013 as a policy analyst to participate in the NCSEP Pilot Site Project. Meg has a PhD in economics from the University of Minnesota, and is passionate about using data to inform public policy. Prior to joining Travis County, Meg worked as a Lecturer in Economics at The University of Texas at Austin. Her research has focused largely on using data and theory together to better understand public schools. Meg has an undergraduate degree from Harvard and enjoys keeping Austin weird.

*Tonya Watson, Criminal Courts Program Manager:* Tonya Watson began her career in the criminal justice system 23 years ago upon graduating from the University of Texas at Austin. Tonya's first role in Travis County, Texas was as a probation officer supervising a large caseload of offenders. Since then, Tonya has worked in several facets of the criminal justice system including writing Pre-Sentence Investigation (PSI) reports for the criminal courts, managing the court services probation unit, serving as the program manager for diversion programs, administering the court appointed attorney system, monitoring legally mandated expenditures for the criminal courts, and serving as a business process expert for court technology projects. Tonya has been collaborating with the team working on the NCSEP Pilot Site Project since September 2012.

### National Legal Aid & Defender Association (NLADA)

NLADA Staff: Michelle Bonner, Edwin Burnette, Leah Garabedian, Rosa Peralta, Jo-Ann Wallace, Tiffany Wu  
1901 Pennsylvania Avenue, NW, Suite 500  
Washington, DC 20006  
info@nlada.org

### University of Cincinnati College of Law

Post Office Box 210040  
Cincinnati, Ohio 45221-0040

*Janet Moore, Assistant Professor of Law:* Ms. Moore is an Assistant Professor of Law at the University of Cincinnati College of Law, teaching in the areas of criminal law, criminal procedure, evidence, and capital punishment. In her first year, she received both the College of Law's Goldman Prize for Teaching Excellence and the Junior Scholar Paper Competition Award sponsored by the Criminal Justice Section of the Association of American Law Schools. Professor Moore's scholarship focuses on the legal and political conditions that empower stakeholders to obtain greater transparency and accountability from criminal justice systems. Her work is informed by critical theory and long experience in capital defense and criminal justice reform research and advocacy. In 2007, she was awarded a Senior Justice Advocacy Fellowship by the Open Society Institute. Her project focused on improving indigent defense systems. That work led to her appointment by the Ohio Supreme Court to the state Public Defender Commission, where she served from 2009-2011. Professor Moore received joint J.D./M.A. (Philosophy) degrees from Duke University and an M.A. degree (Divinity) from the University of Chicago. At Duke, she served as Editor-in-Chief of *Law & Contemporary Problems*, the nation's first interdisciplinary law journal. After graduation, she clerked for the Honorable J. Dickson Phillips, Jr., on the United States Court of Appeals for the Fourth Circuit.

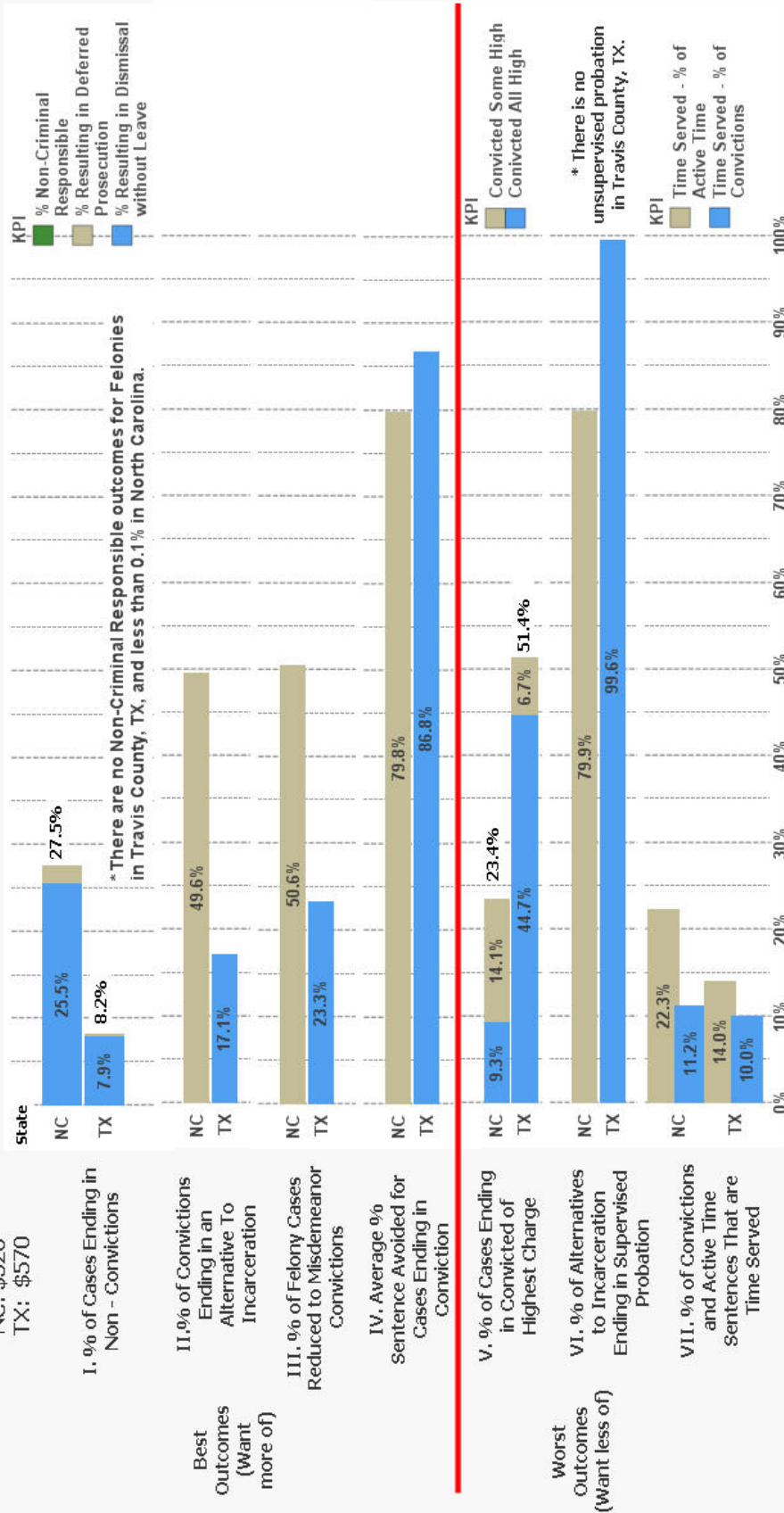


# Appendix B

## Cross-Jurisdiction KPI Comparison Graphs

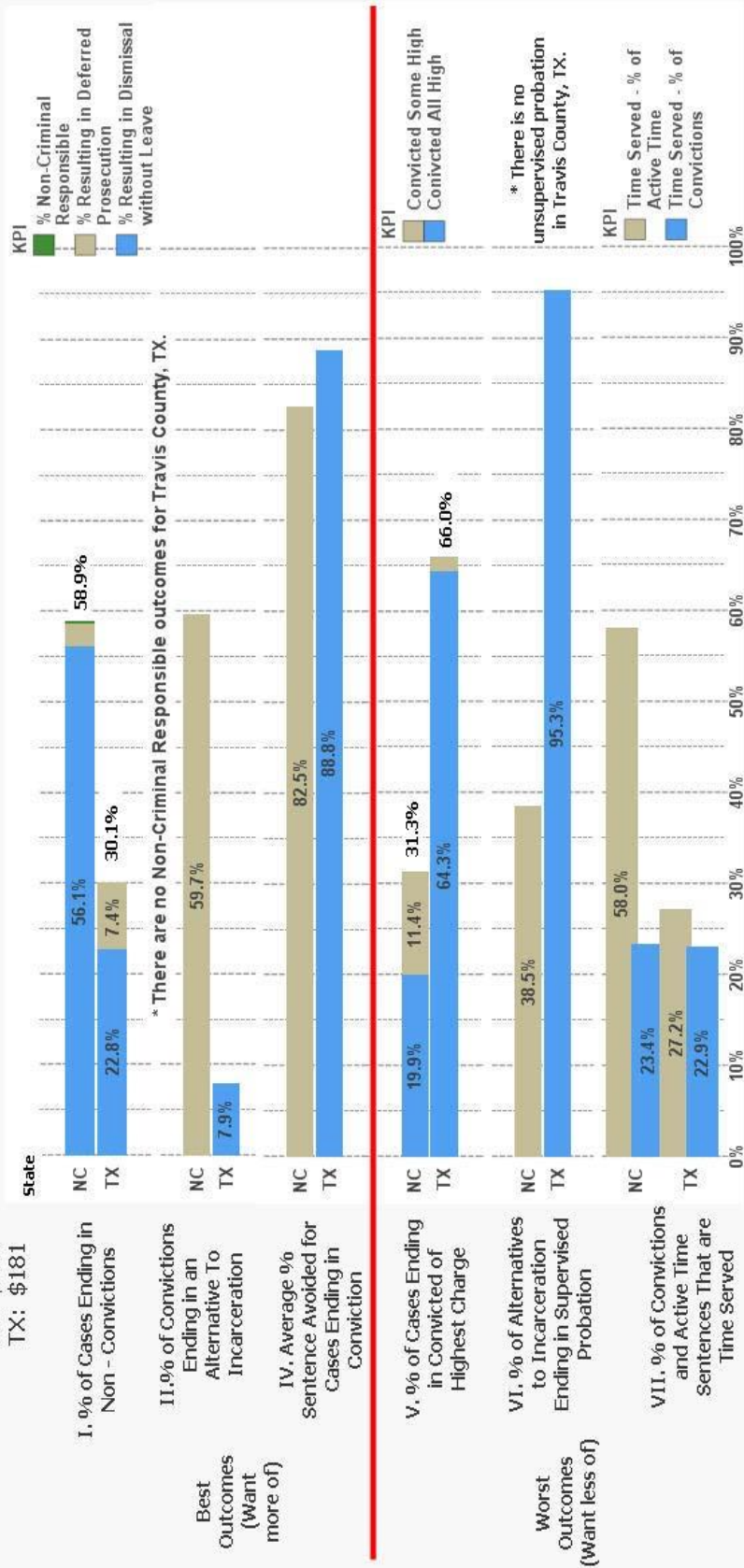
# High Exposure Felony: All Category Groups Indigent Defense FY 2012

VIII. Average Cost Per Case:  
NC: \$520  
TX: \$570



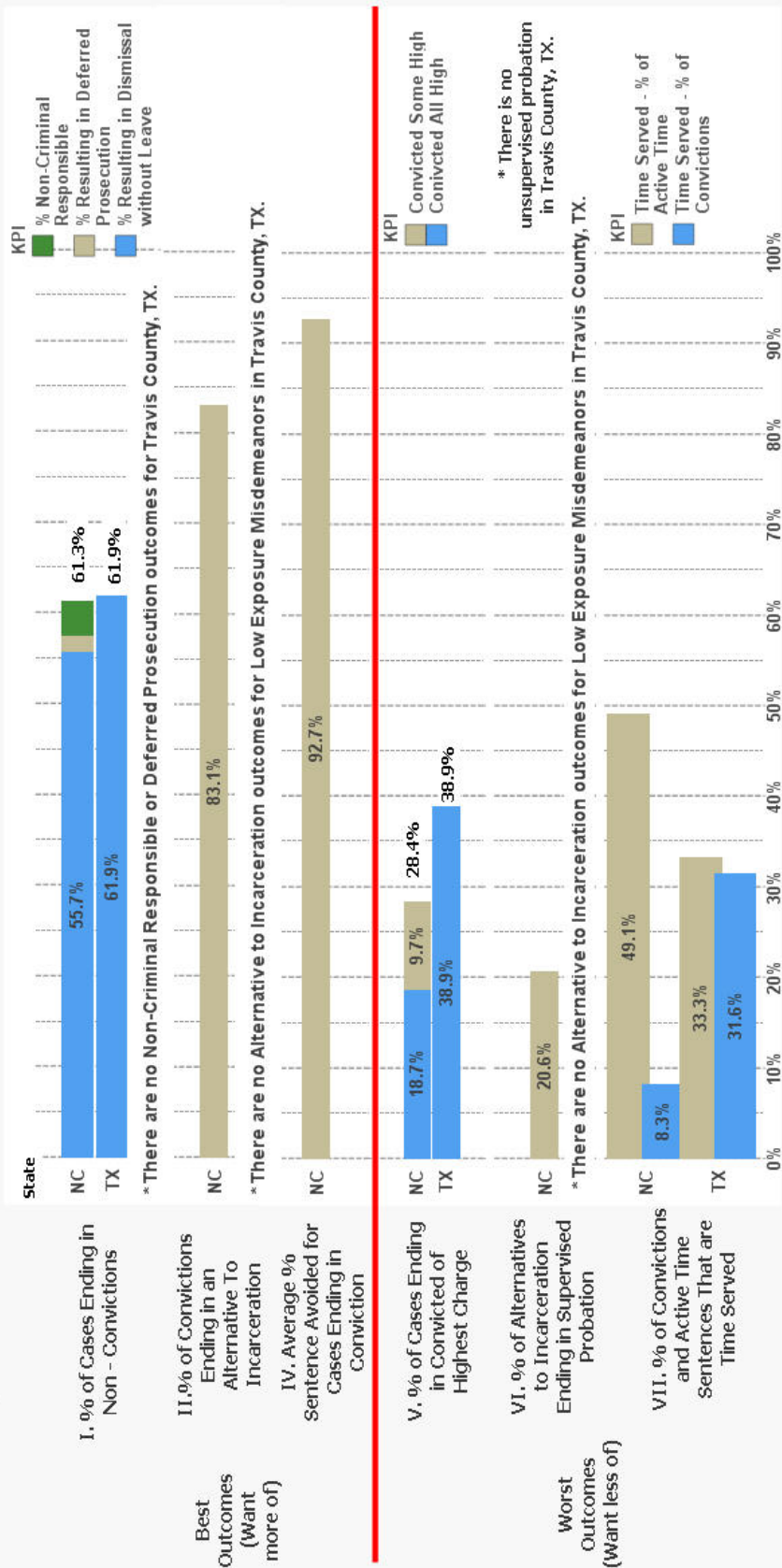
# High Exposure Misdemeanor: All Category Groups Indigent Defense FY 2012

VIII. Average Cost Per Case:  
NC: \$202  
TX: \$181



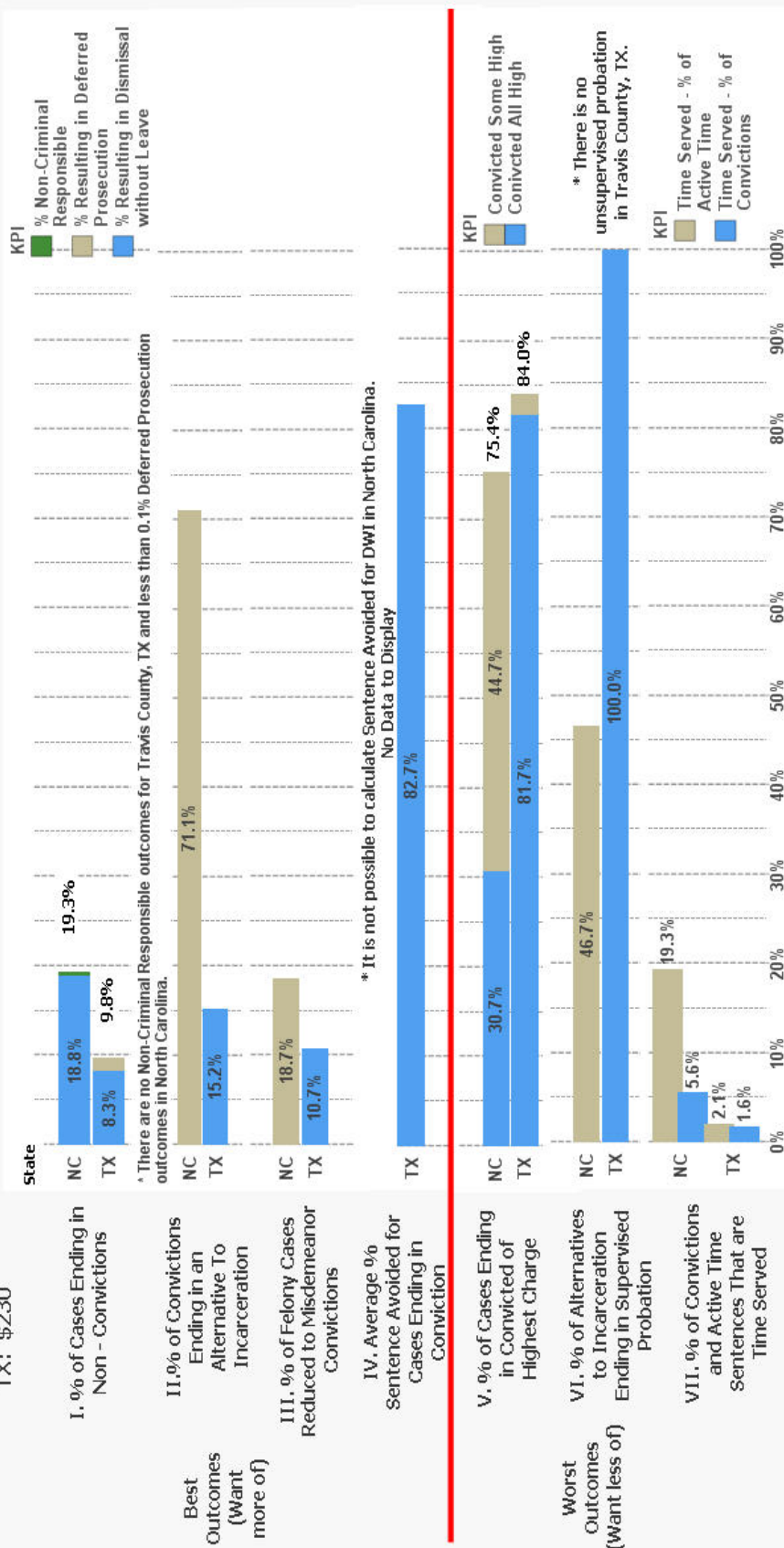
VIII. Average Cost Per Case:  
 NC: \$193  
 TX: \$140

Low Exposure Misdemeanor: All Category Groups  
 Indigent Defense  
 FY 2012



VIII. Average Cost Per Case:  
 NC: \$328  
 TX: \$230

# High Exposure DWI & DWI Related Indigent Defense FY 2012

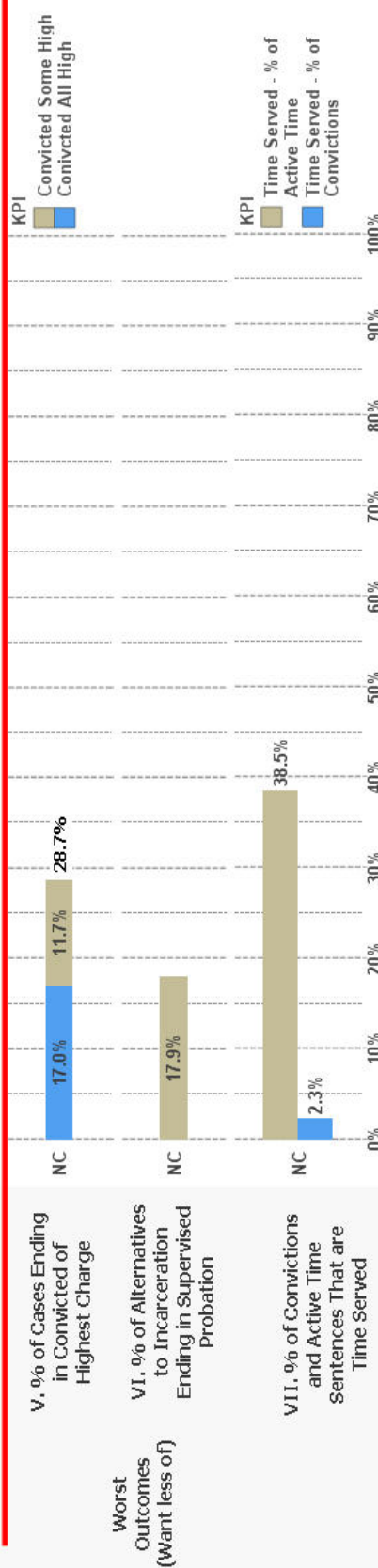
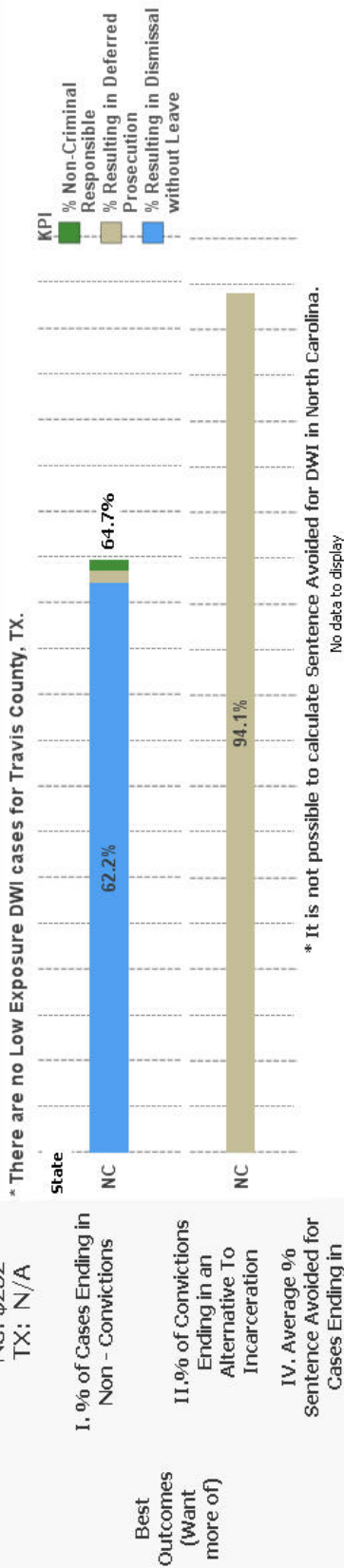




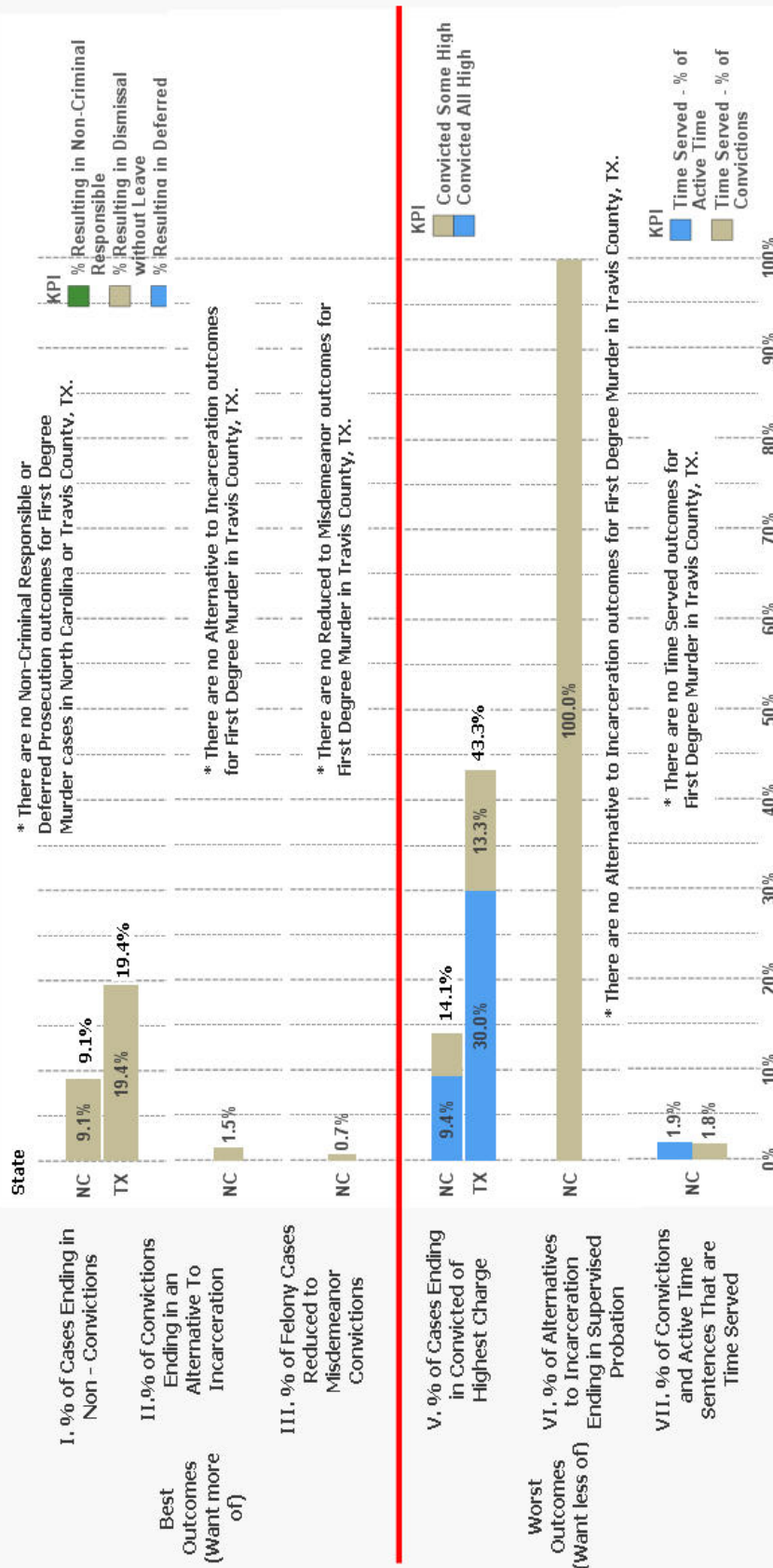
# Low Exposure DWI & DWI Related Indigent Defense FY 2012

## VIII. Average Cost Per Case:

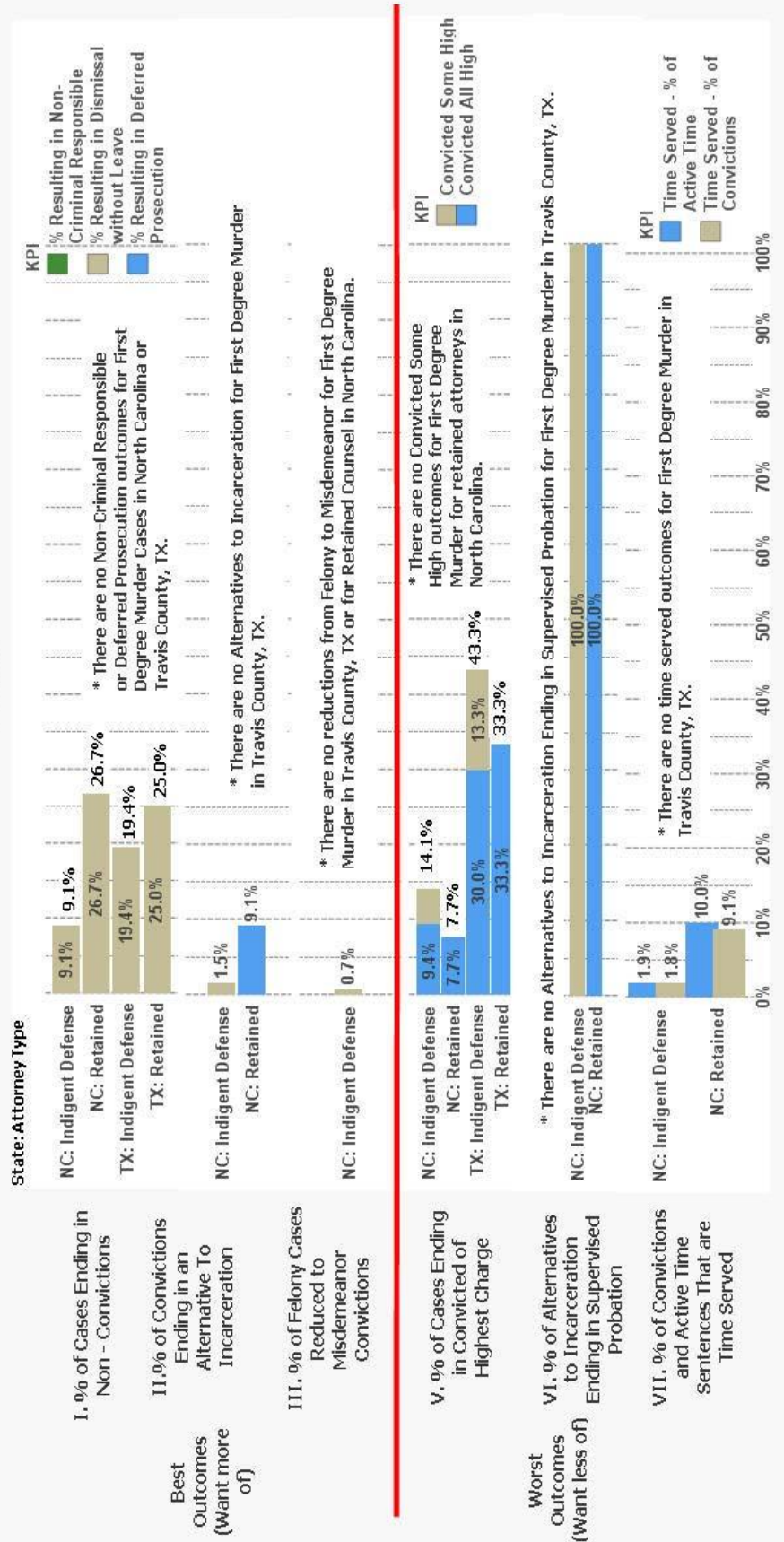
NC: \$232  
TX: N/A



First Degree Murder and Life Without Parole  
Indigent Defense Only  
FY 2012



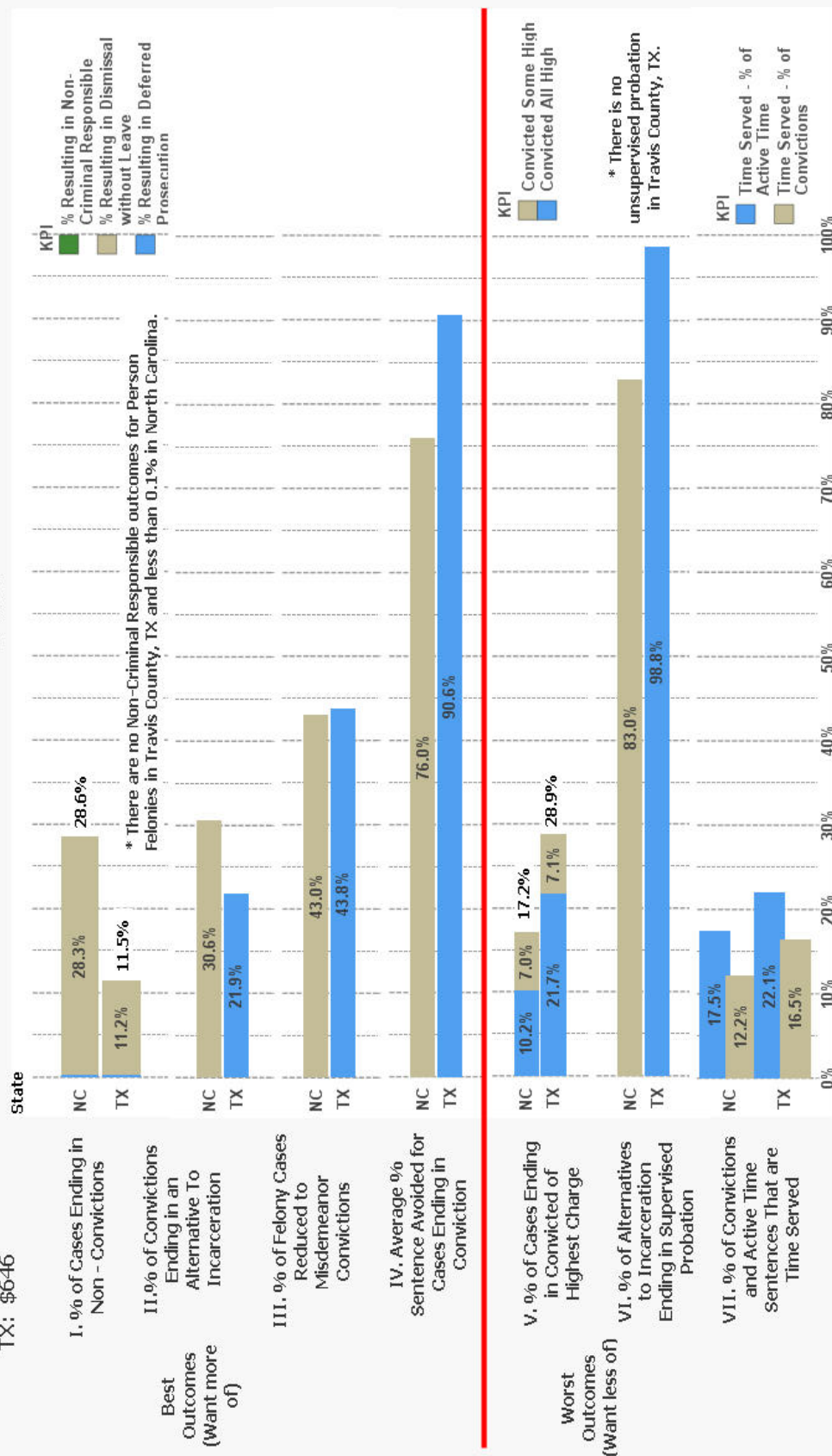
First Degree Murder and Life Without Parole  
Indigent and Retained Counsel  
FY 2012





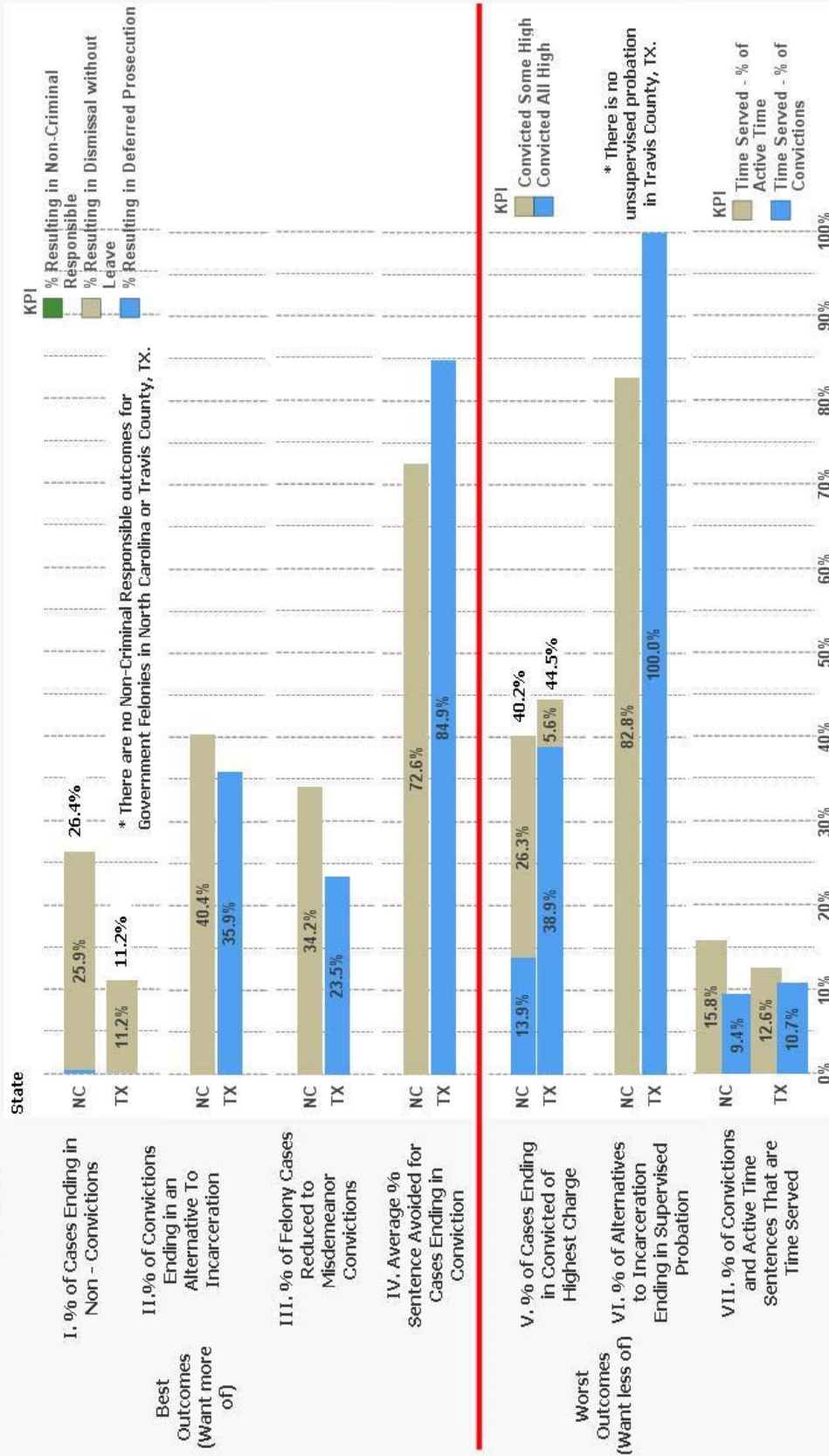
# High Exposure Felony: Person Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$987  
TX: \$646



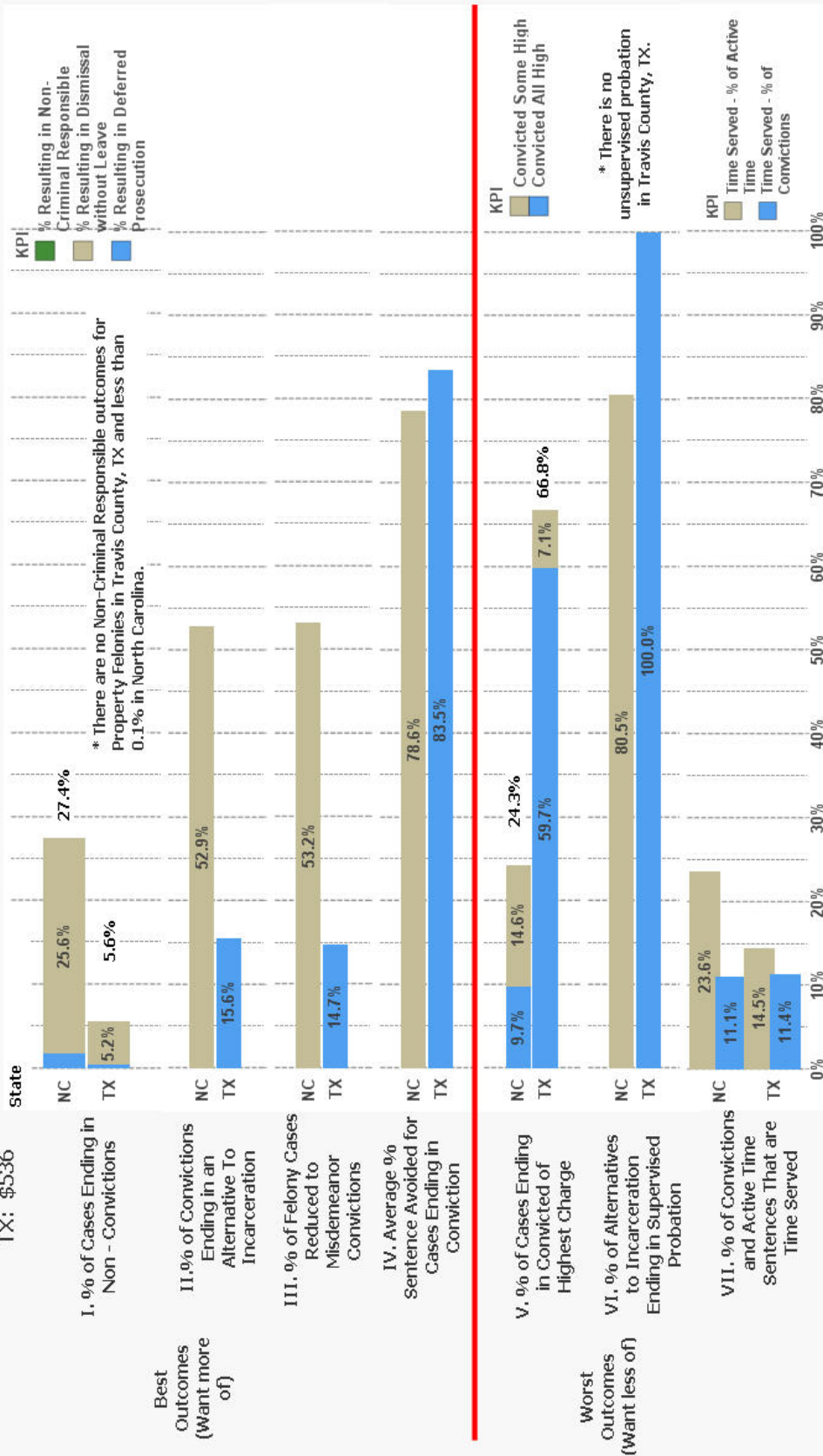
# High Exposure Felony: Government Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$531  
TX: \$556



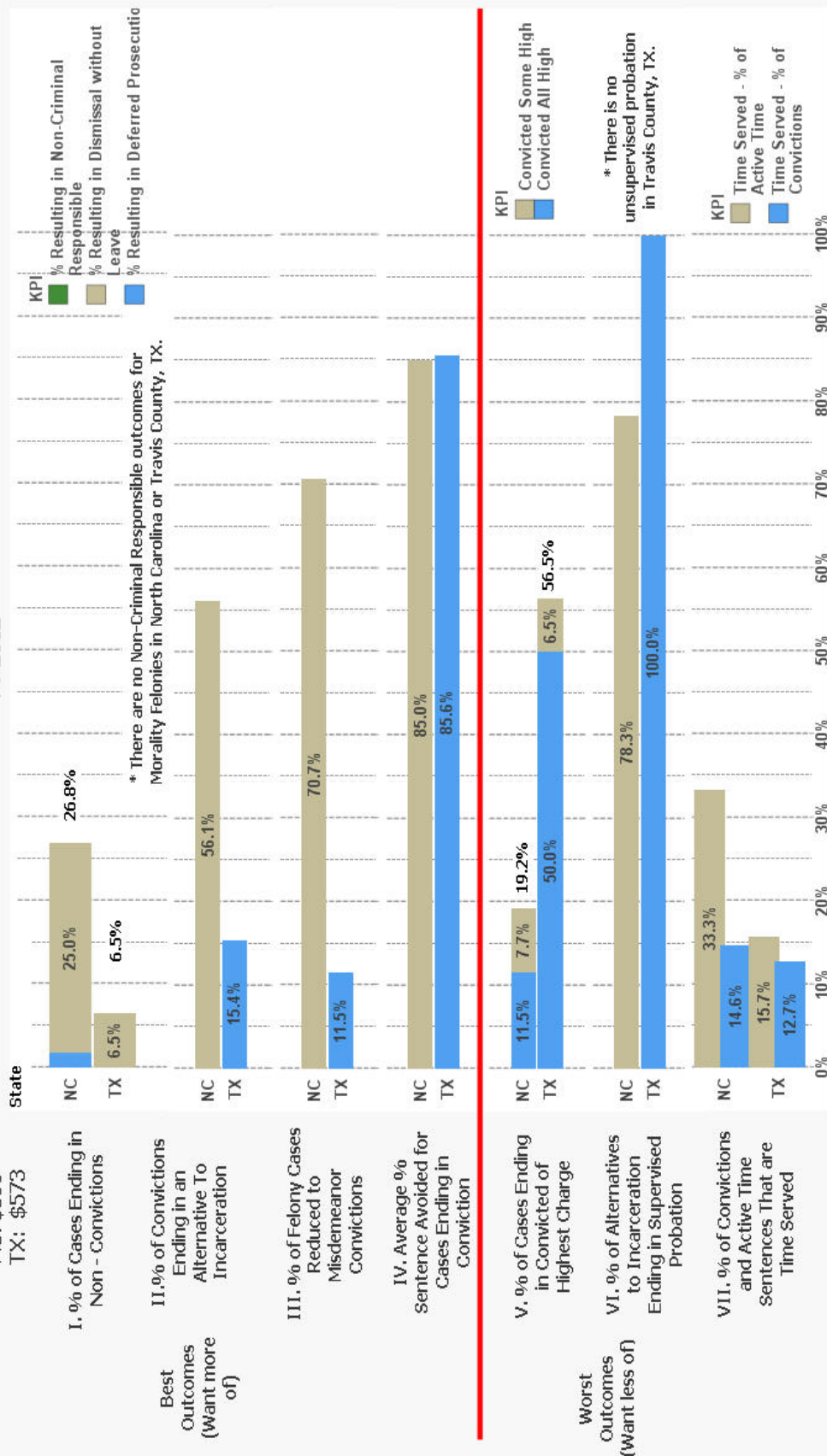
# High Exposure Felony: Property Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$448  
TX: \$536



# High Exposure Felony: Morality Indigent Defense FY 2012

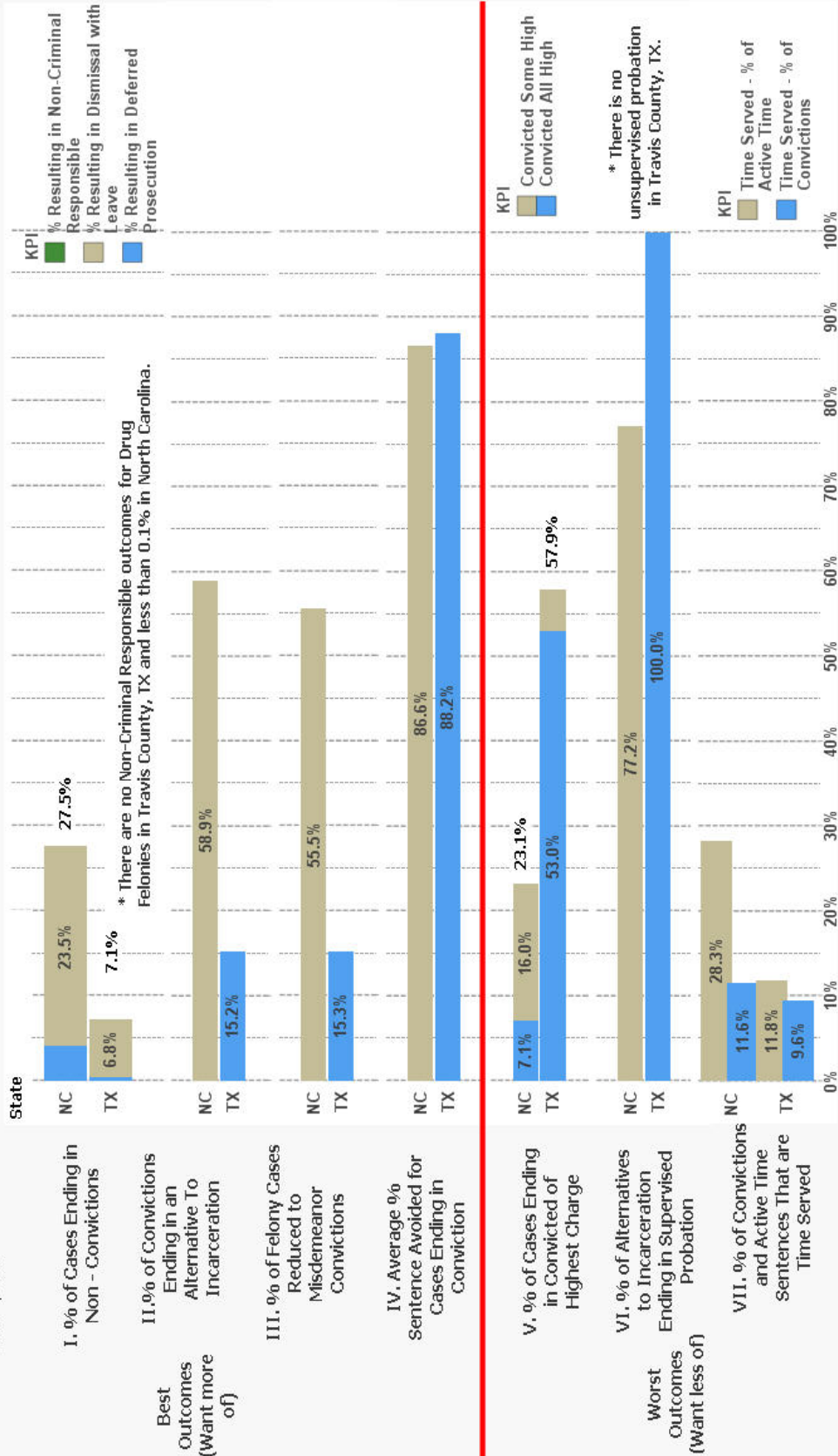
Average Cost Per Case:  
NC: \$399  
TX: \$573





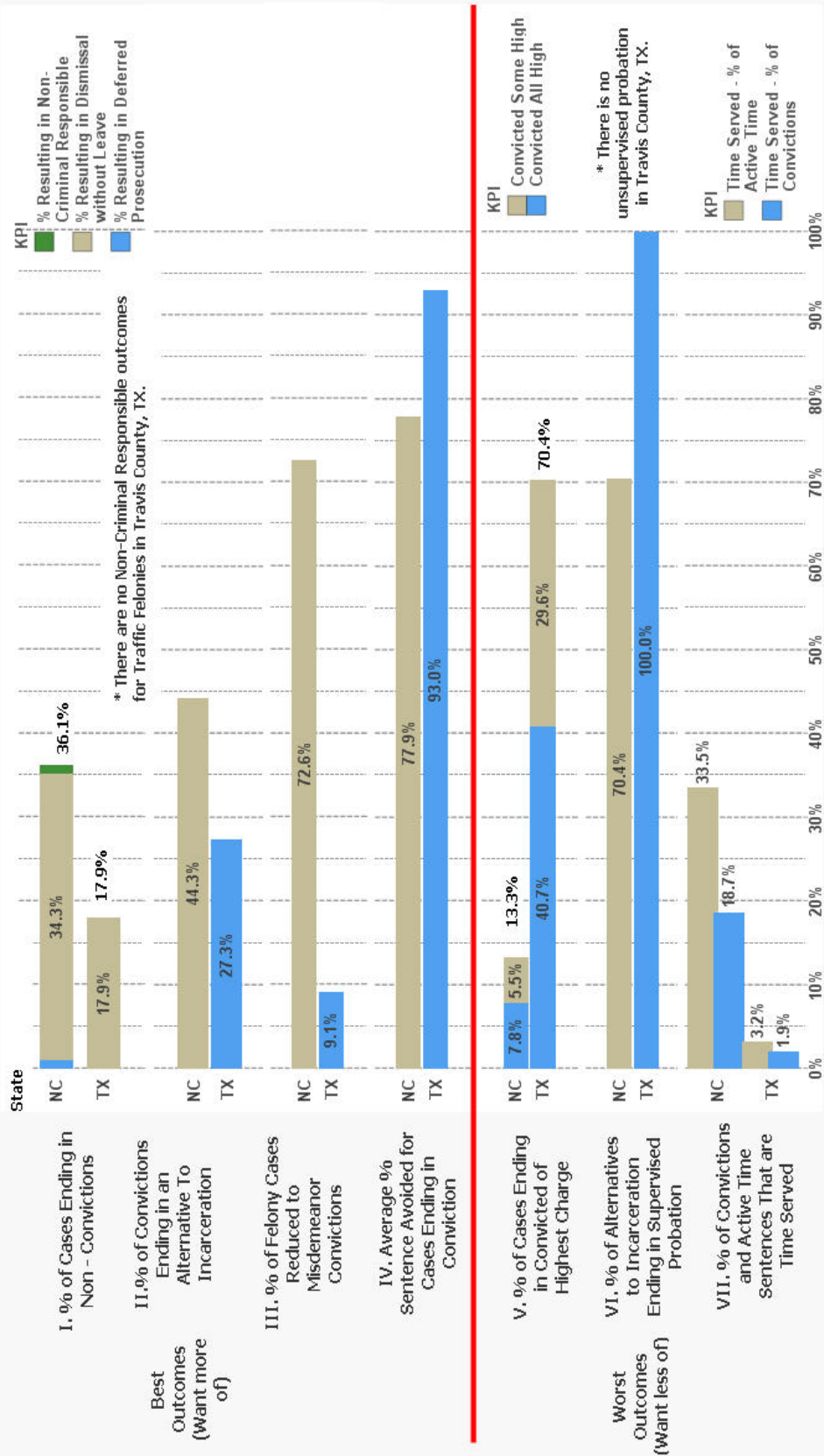
Average Cost Per Case:  
 NC: \$398  
 TX: \$460

# High Exposure Felony: Drugs Indigent Defense FY 2012



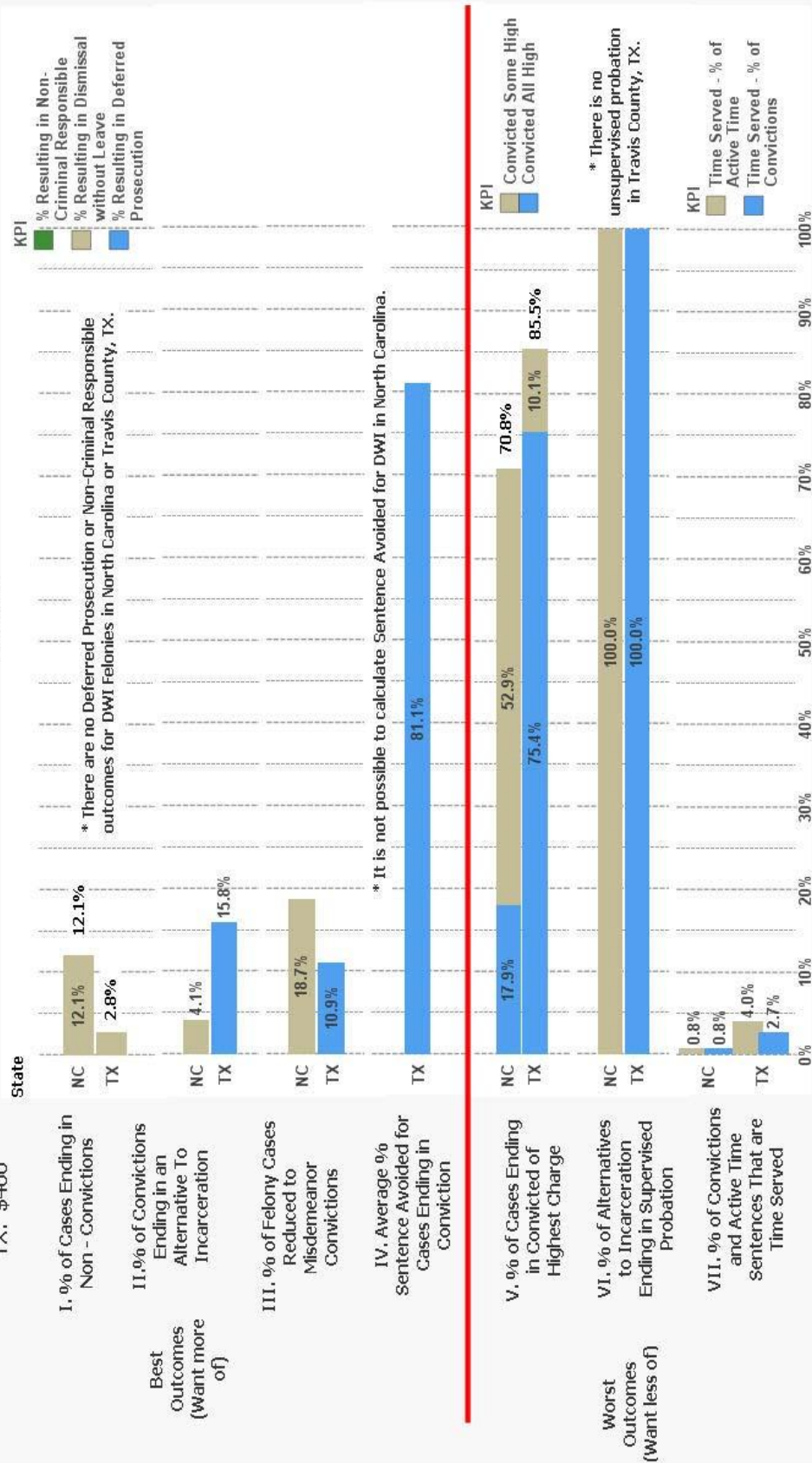
# High Exposure Felony: Traffic Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$386  
TX: \$468



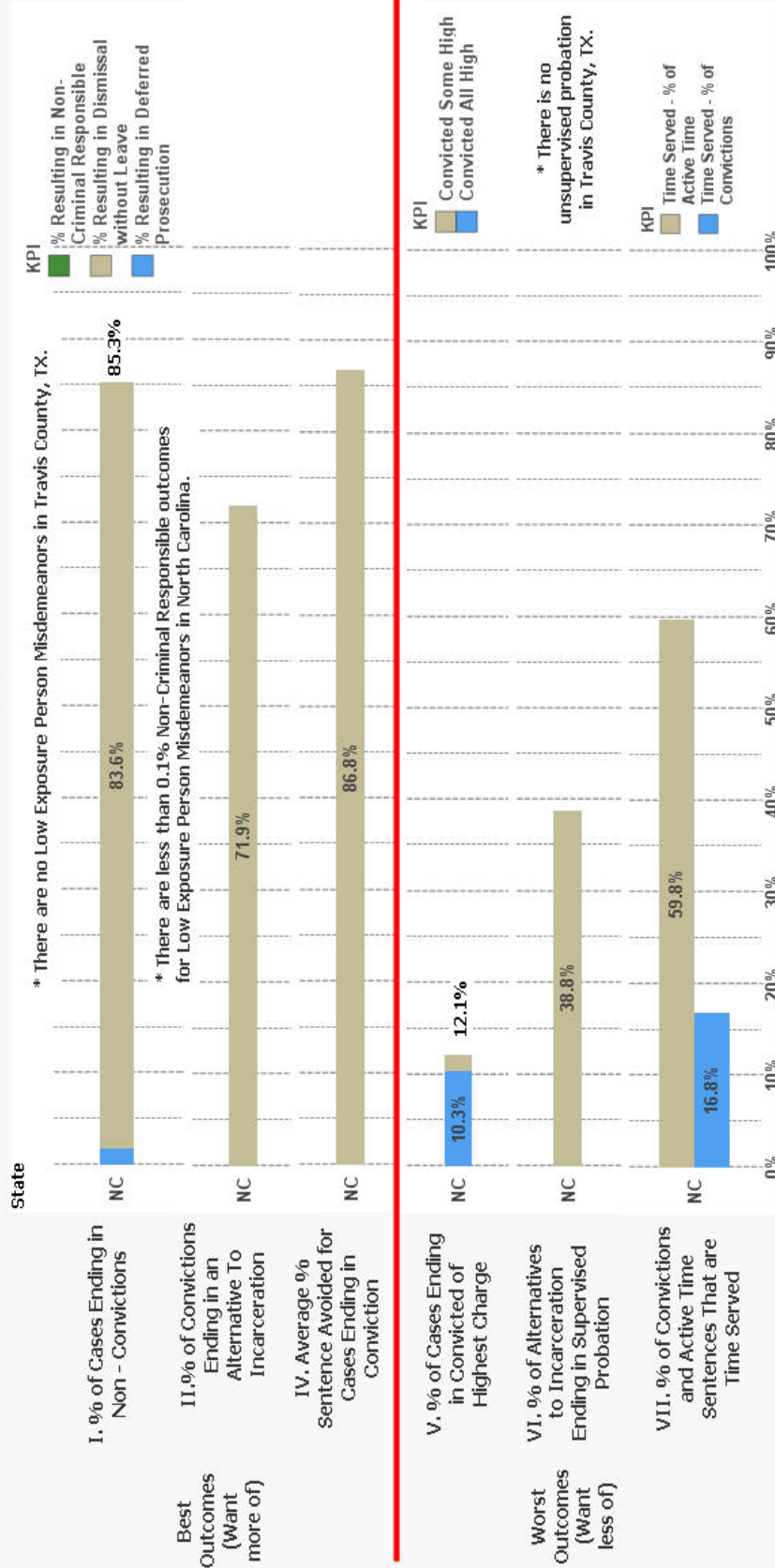
# High Exposure Felony: DWI and DWI Related Indigent Defense FY2012

Average Cost Per Case:  
NC: \$789  
TX: \$460



# Low Exposure Misdemeanor: Person Indigent Defense FY 2012

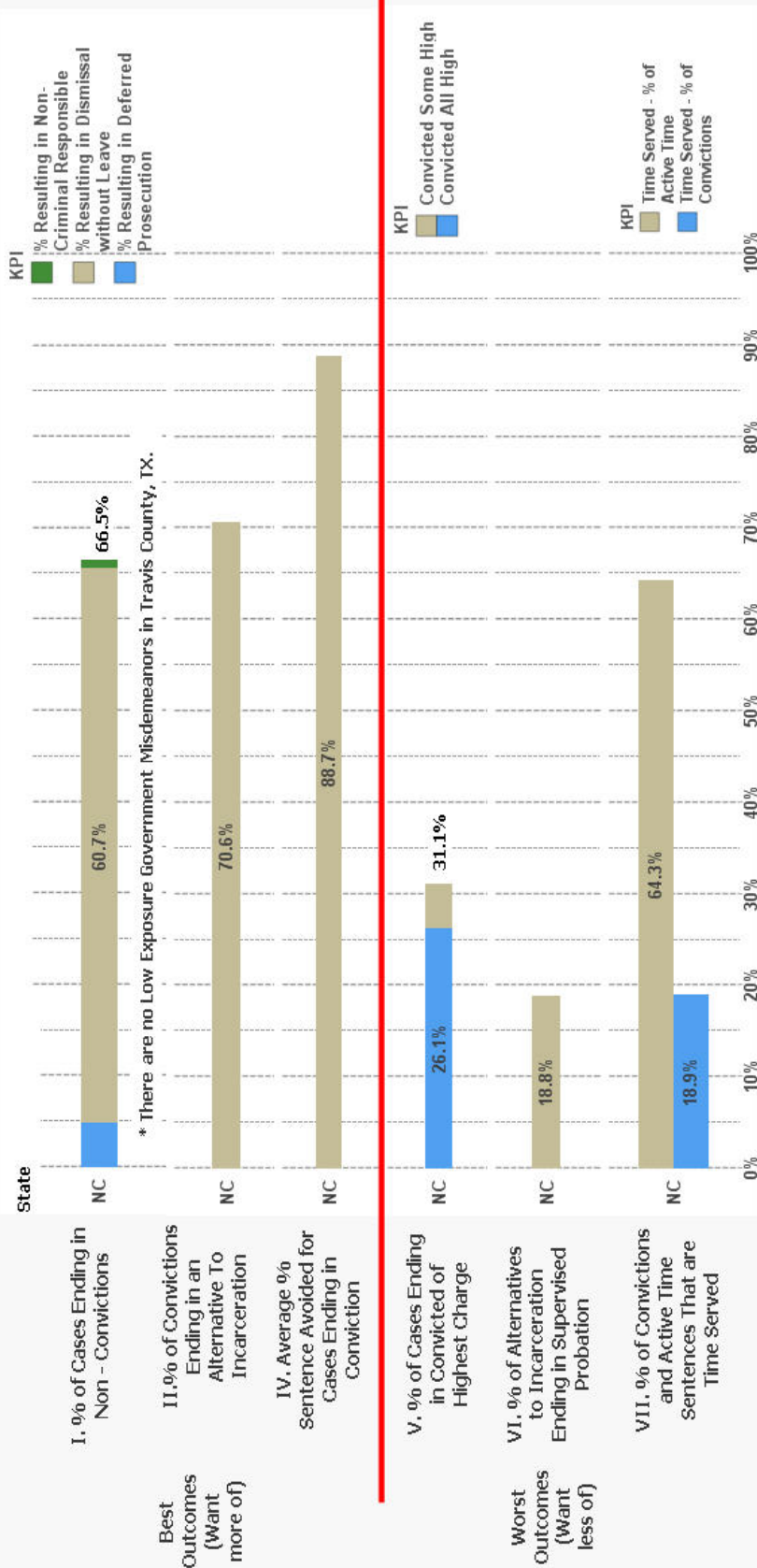
Average Cost Per Case:  
NC: \$197





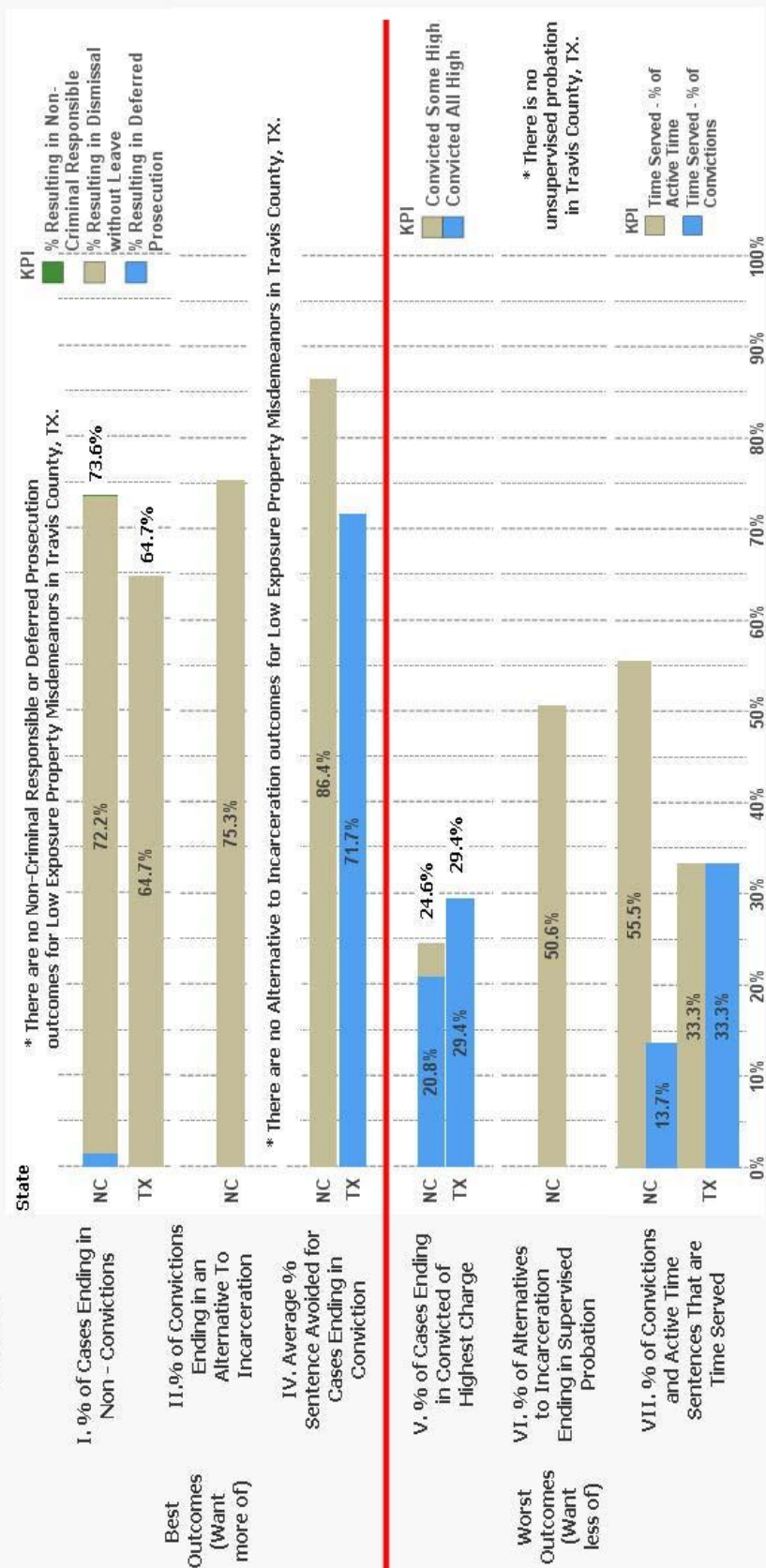
Low Exposure Misdemeanor: Government  
Indigent Defense  
FY 2012

Average Cost Per Case:  
NC: \$222



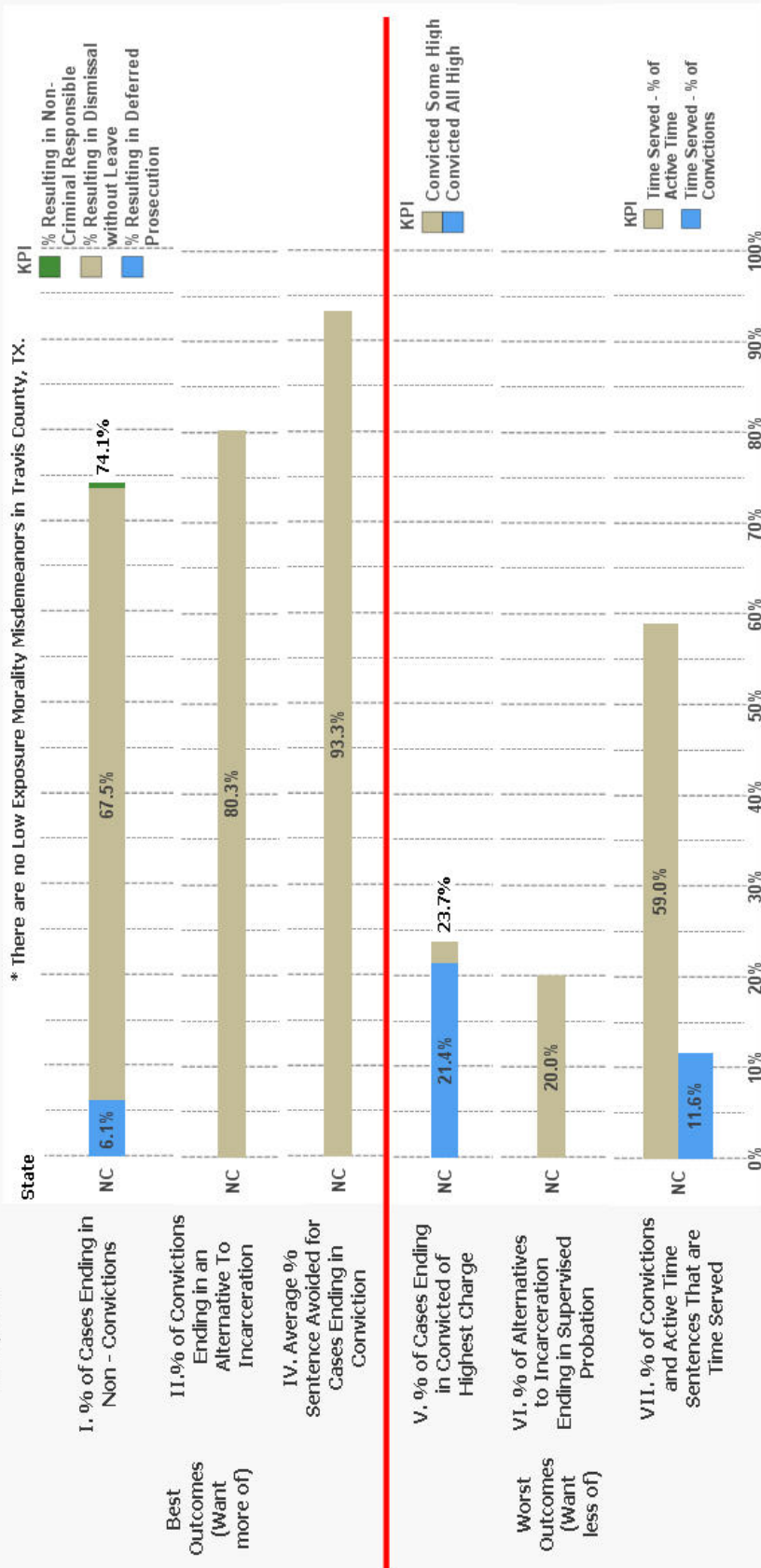
# Low Exposure Misdemeanor: Property Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$198  
TX: \$130



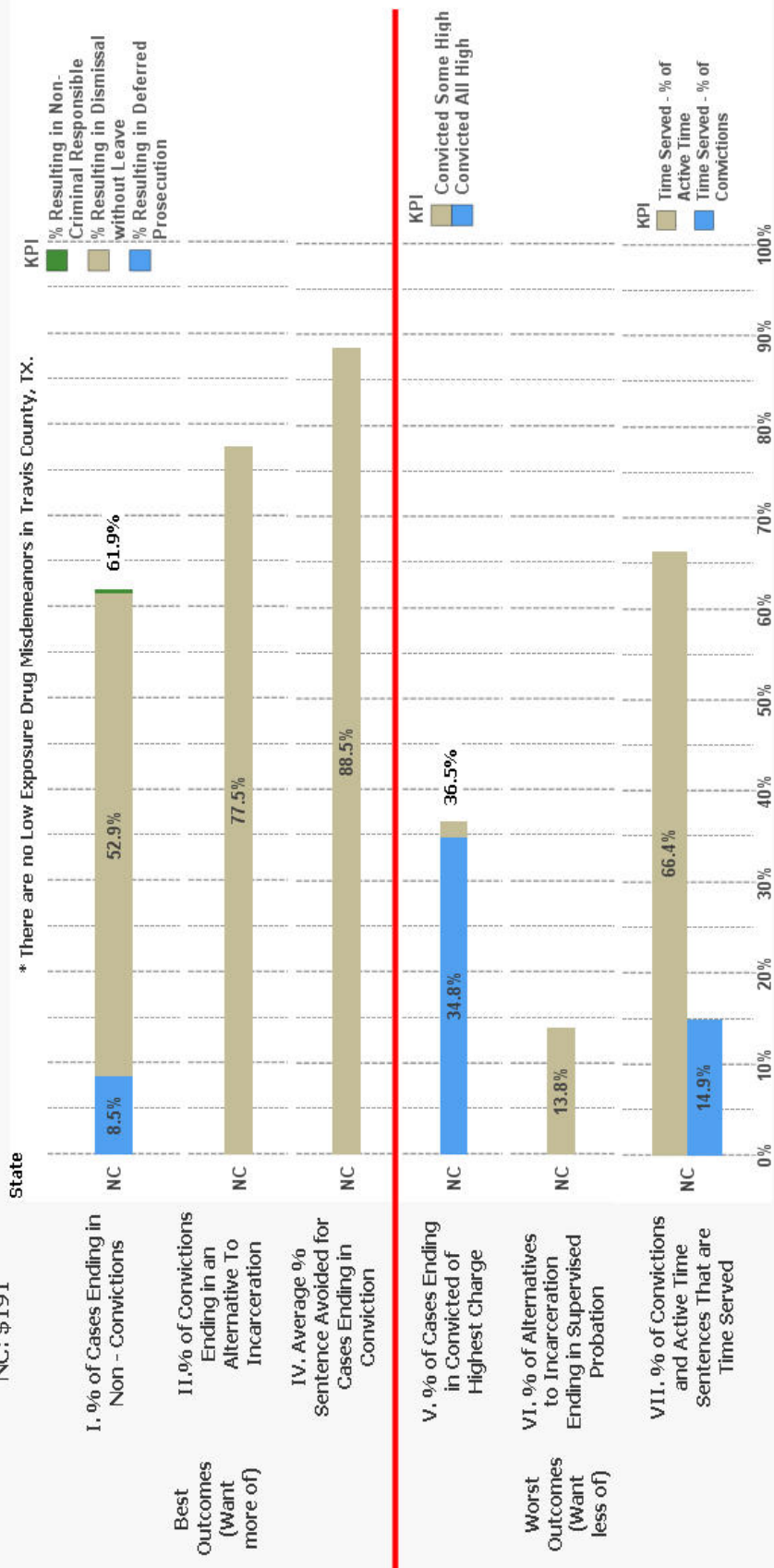
# Low Exposure Misdemeanor: Morality Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$189



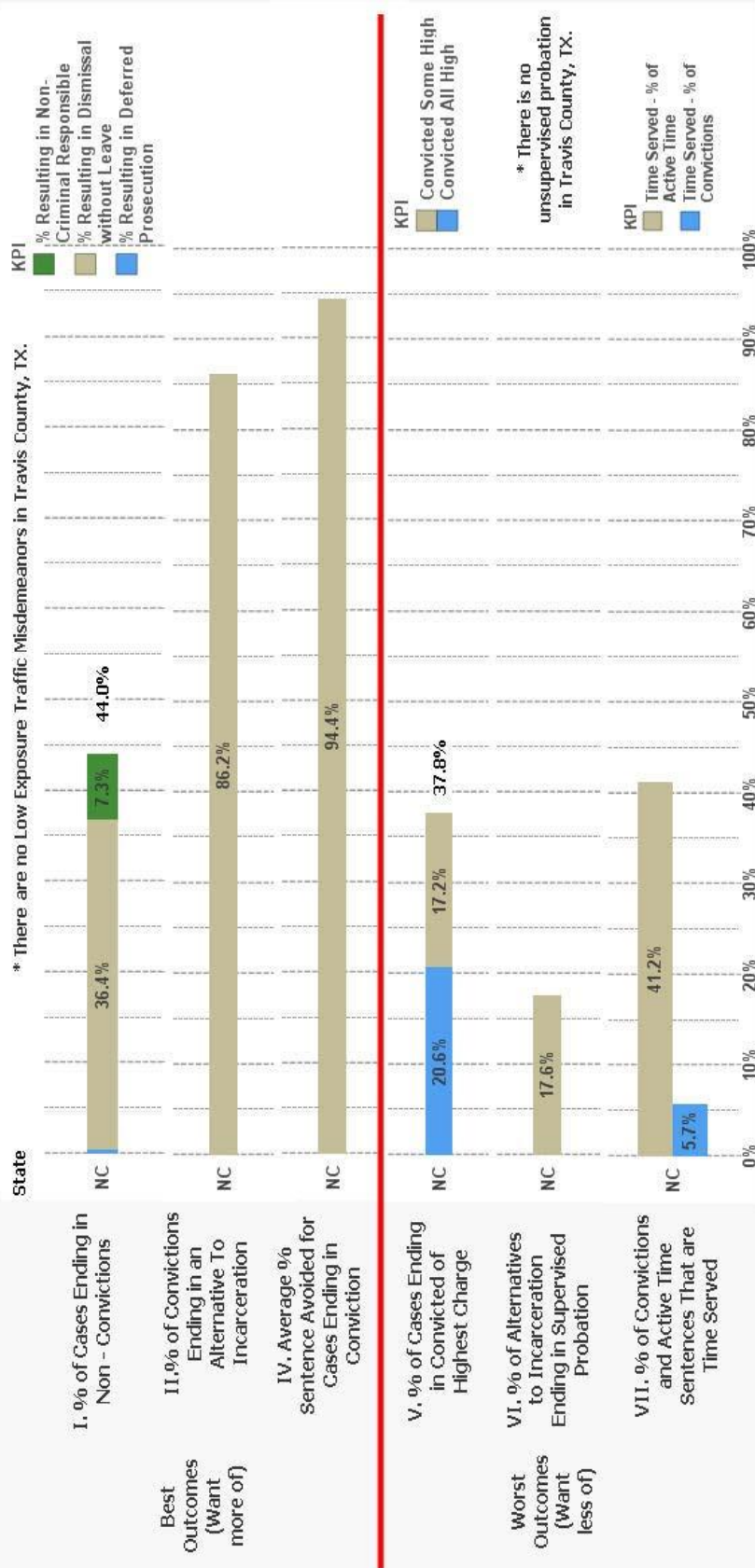
Low Exposure Misdemeanor: Drugs  
Indigent Defense  
FY 2012

Average Cost Per Case:  
NC: \$191



Low Exposure Misdemeanor: Traffic  
Indigent Defense  
FY 2012

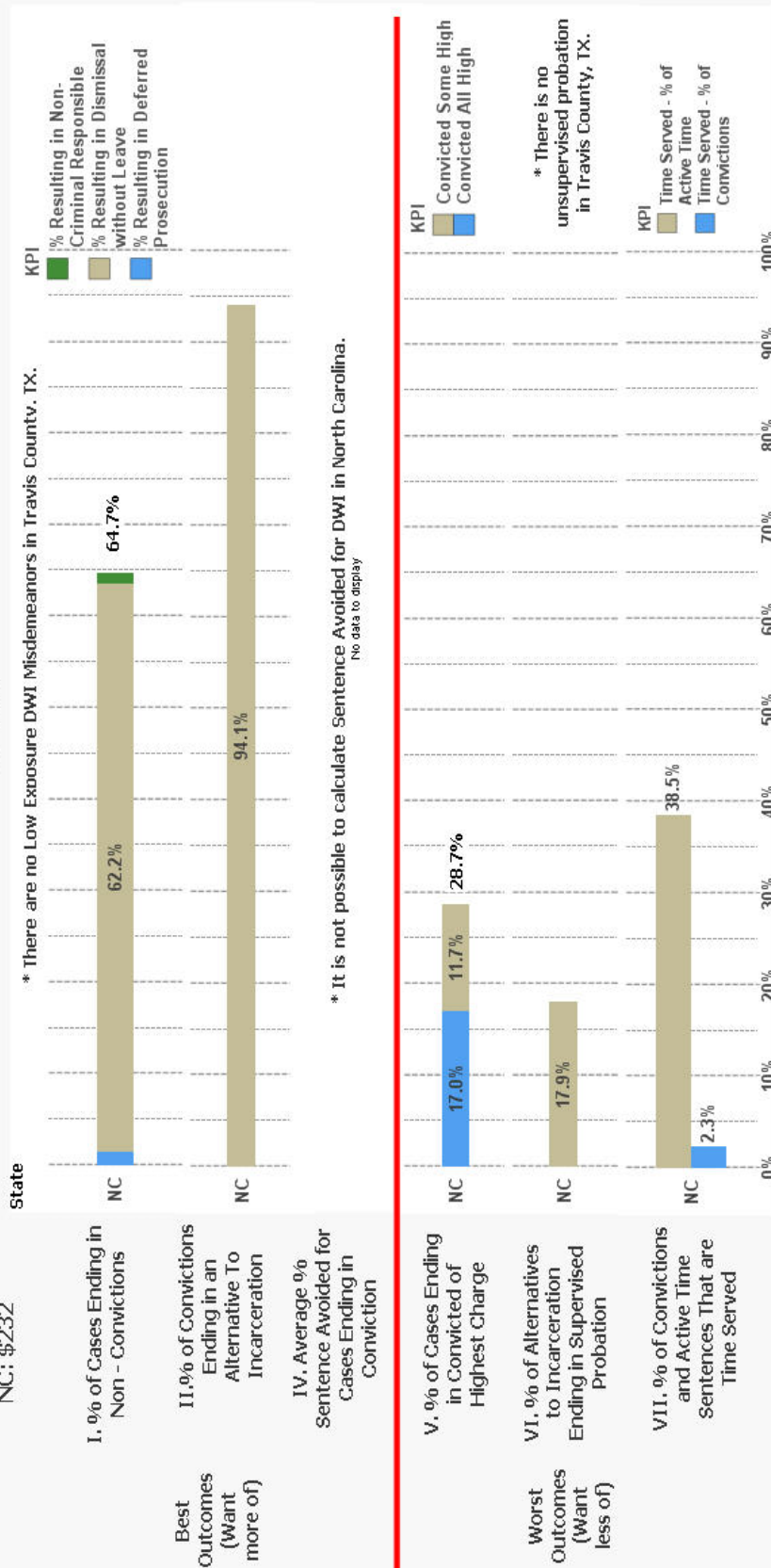
Average Cost Per Case:  
NC: \$190





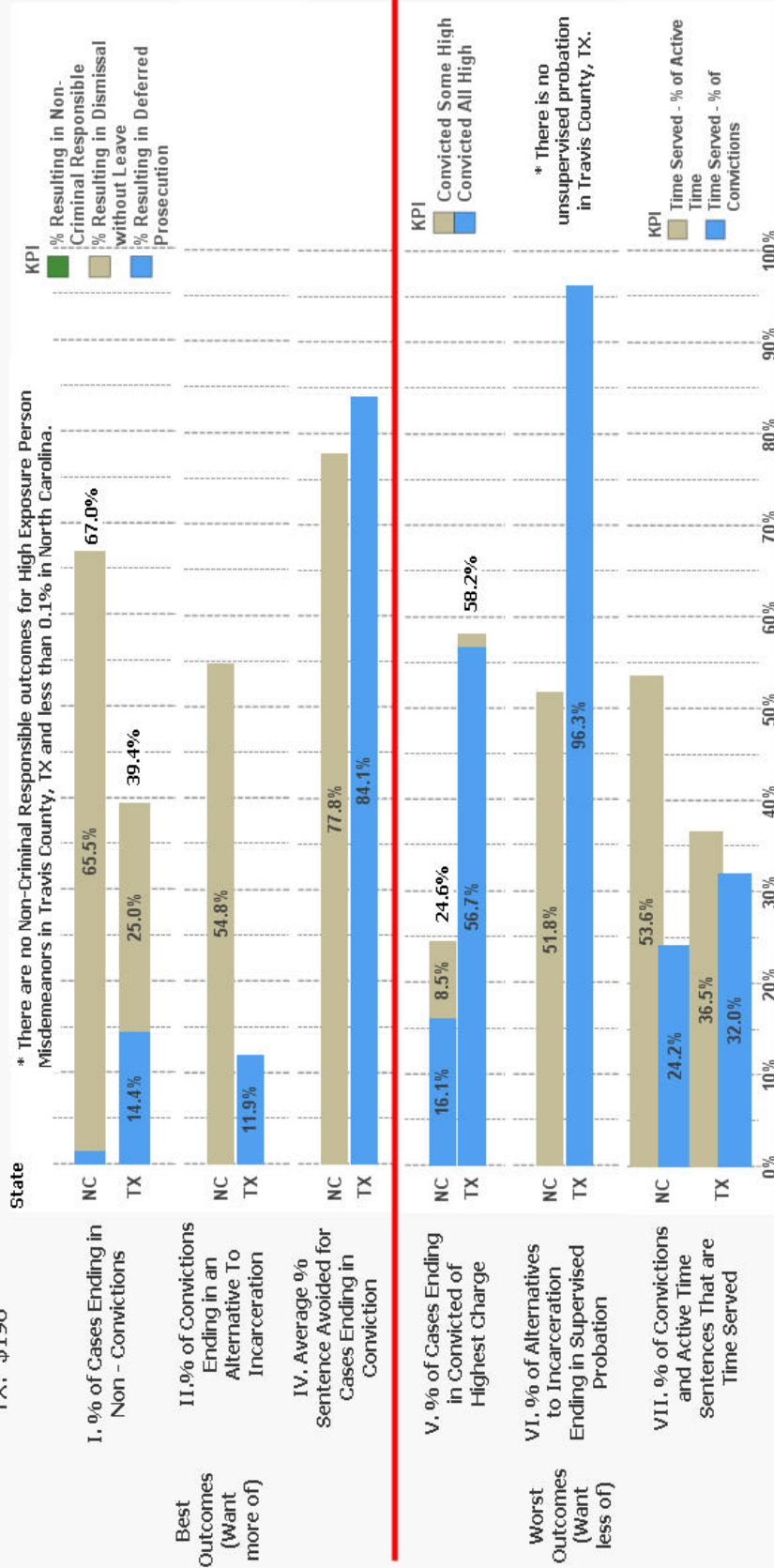
Low Exposure Misdemeanor: DWI & DWI Related  
Indigent Defense  
FY 2012

Average Cost Per Case:  
NC: \$232



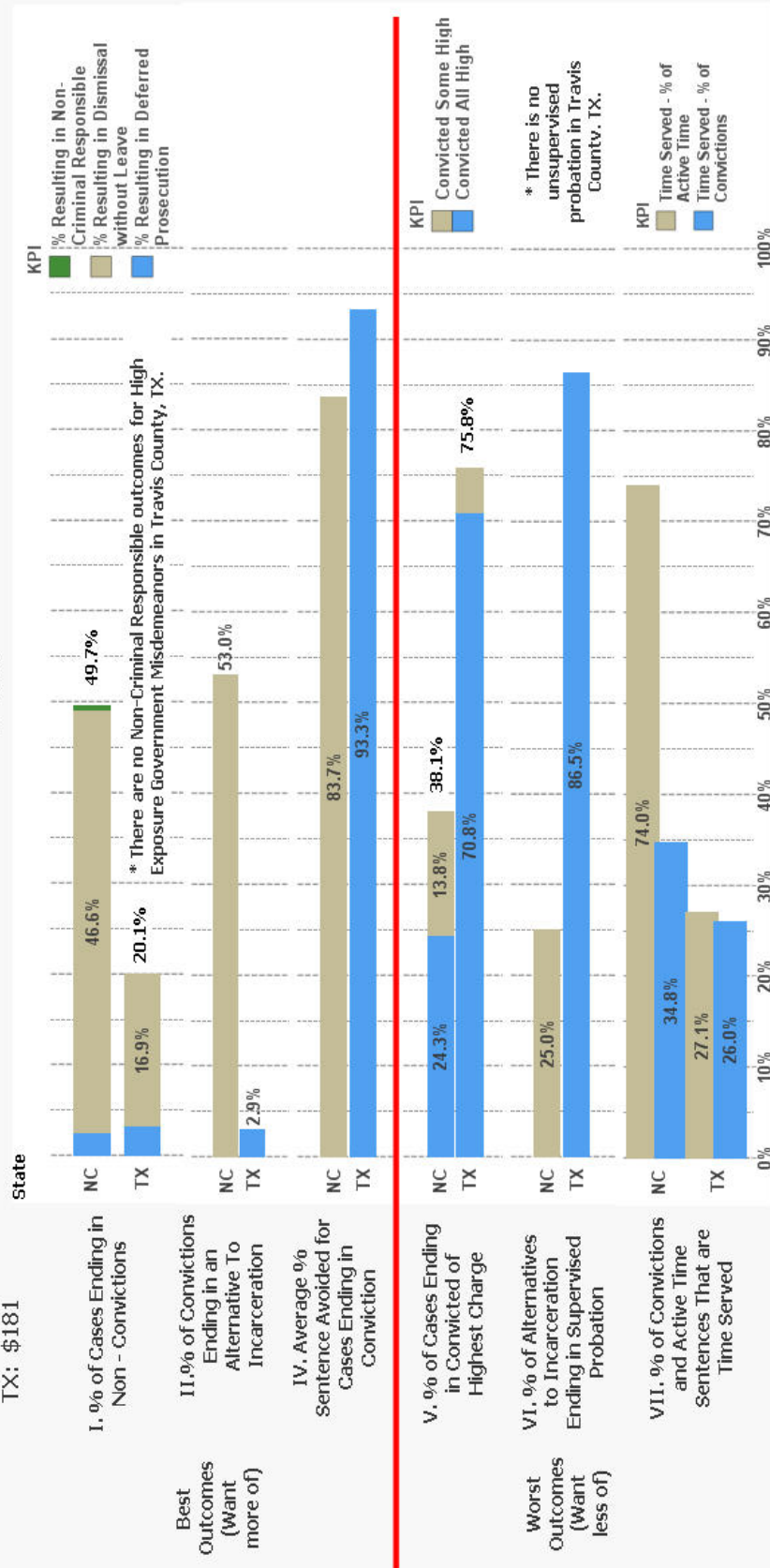
# High Exposure Misdemeanor: Person Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$210  
TX: \$198



# High Exposure Misdemeanor: Government Indigent Defense FY 2012

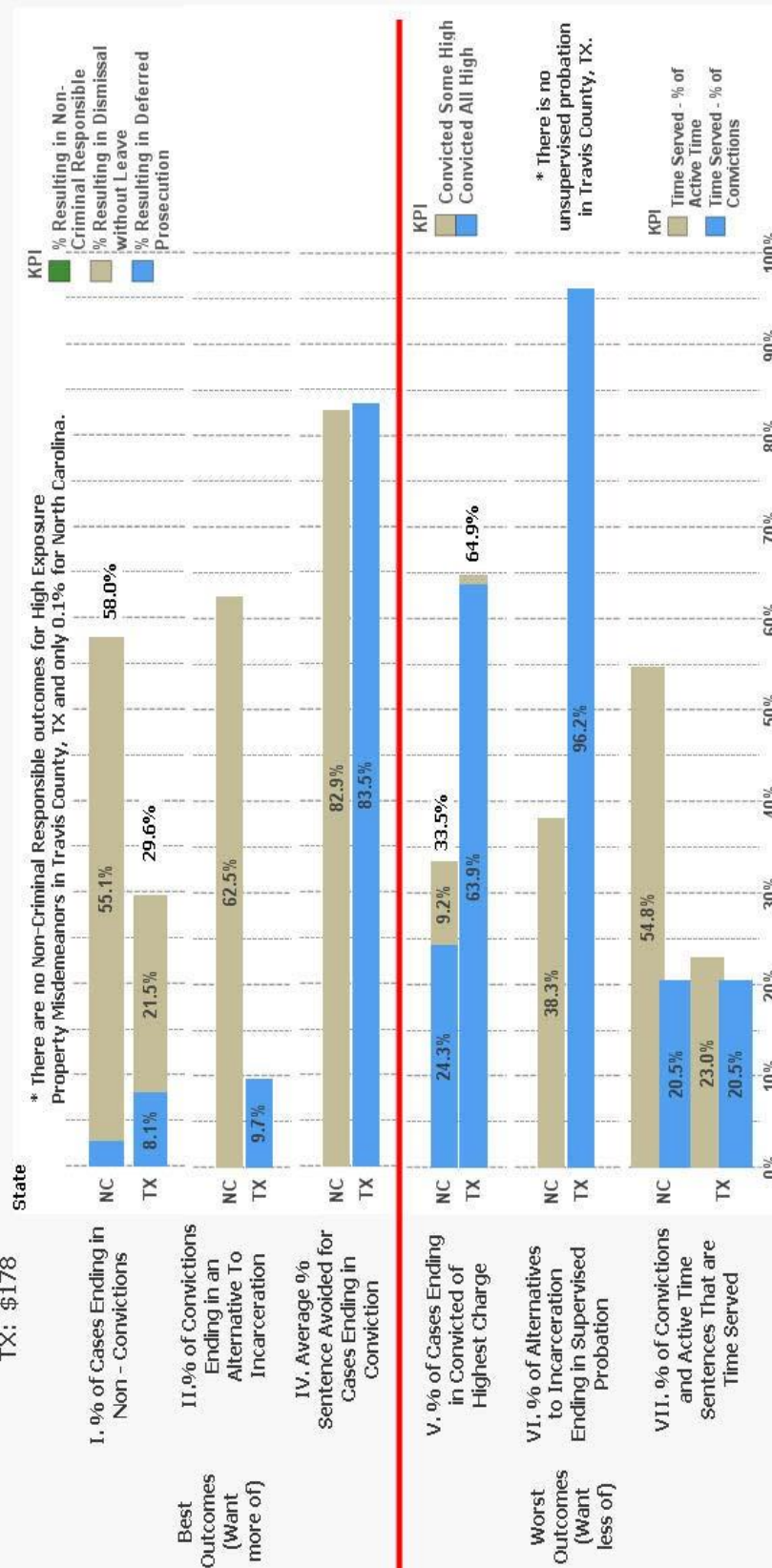
Average Cost Per Case:  
NC: \$199  
TX: \$181





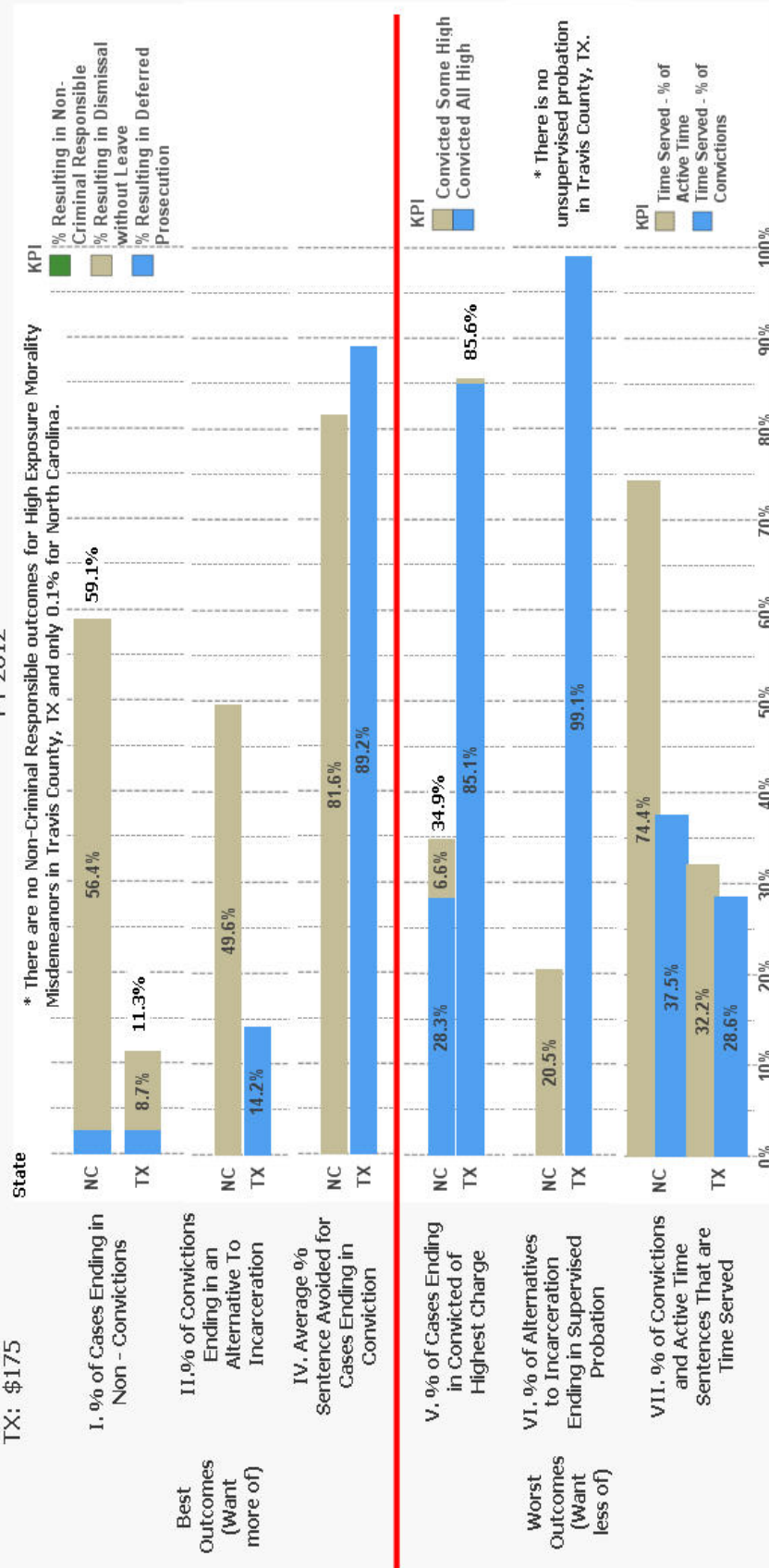
# High Exposure Misdemeanor: Property Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$195  
TX: \$178



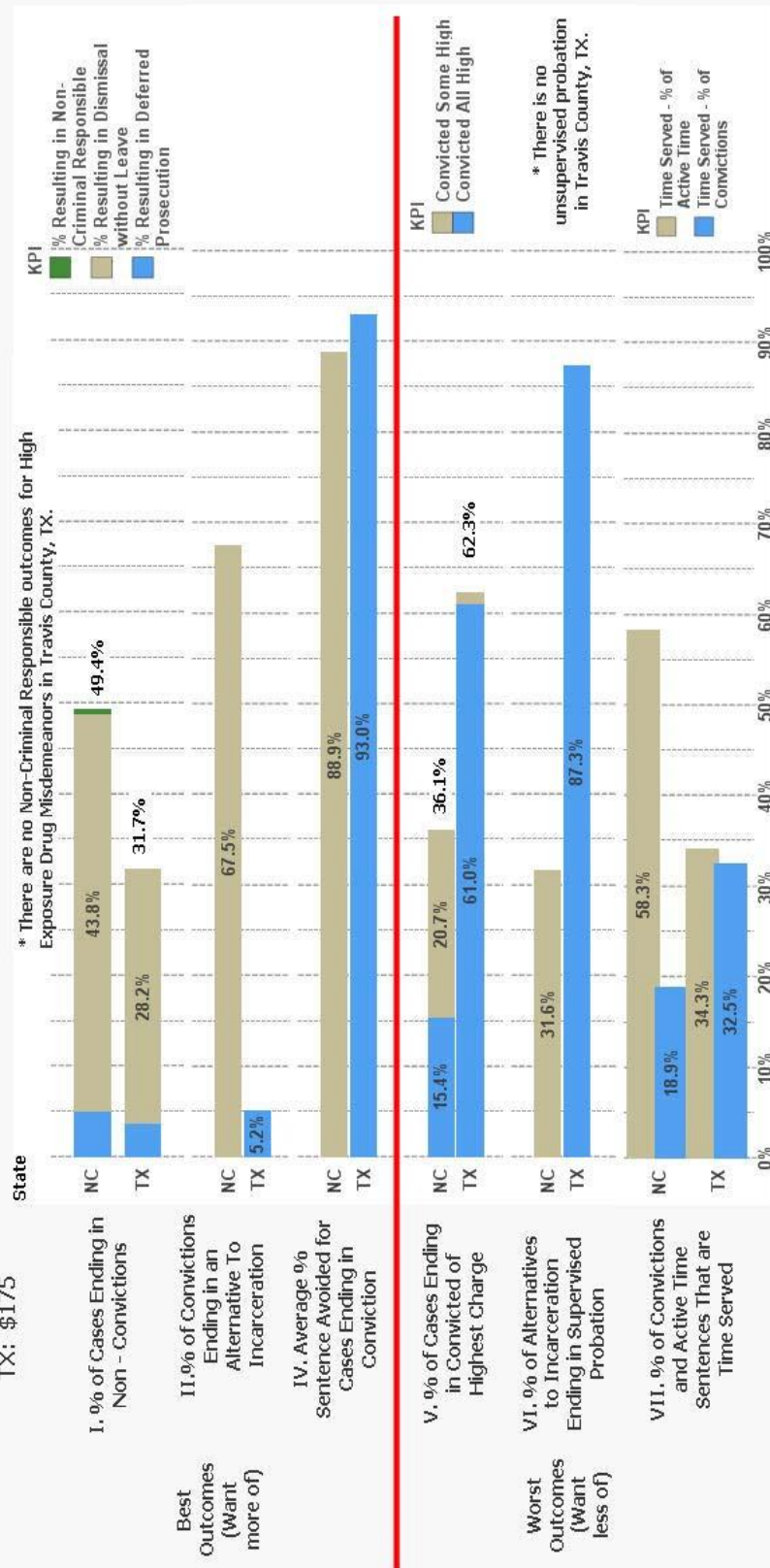
# High Exposure Misdemeanor: Morality Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$186  
TX: \$175



# High Exposure Misdemeanor: Drugs Indigent Defense FY 2012

Average Cost Per Case:  
NC: \$201  
TX: \$175

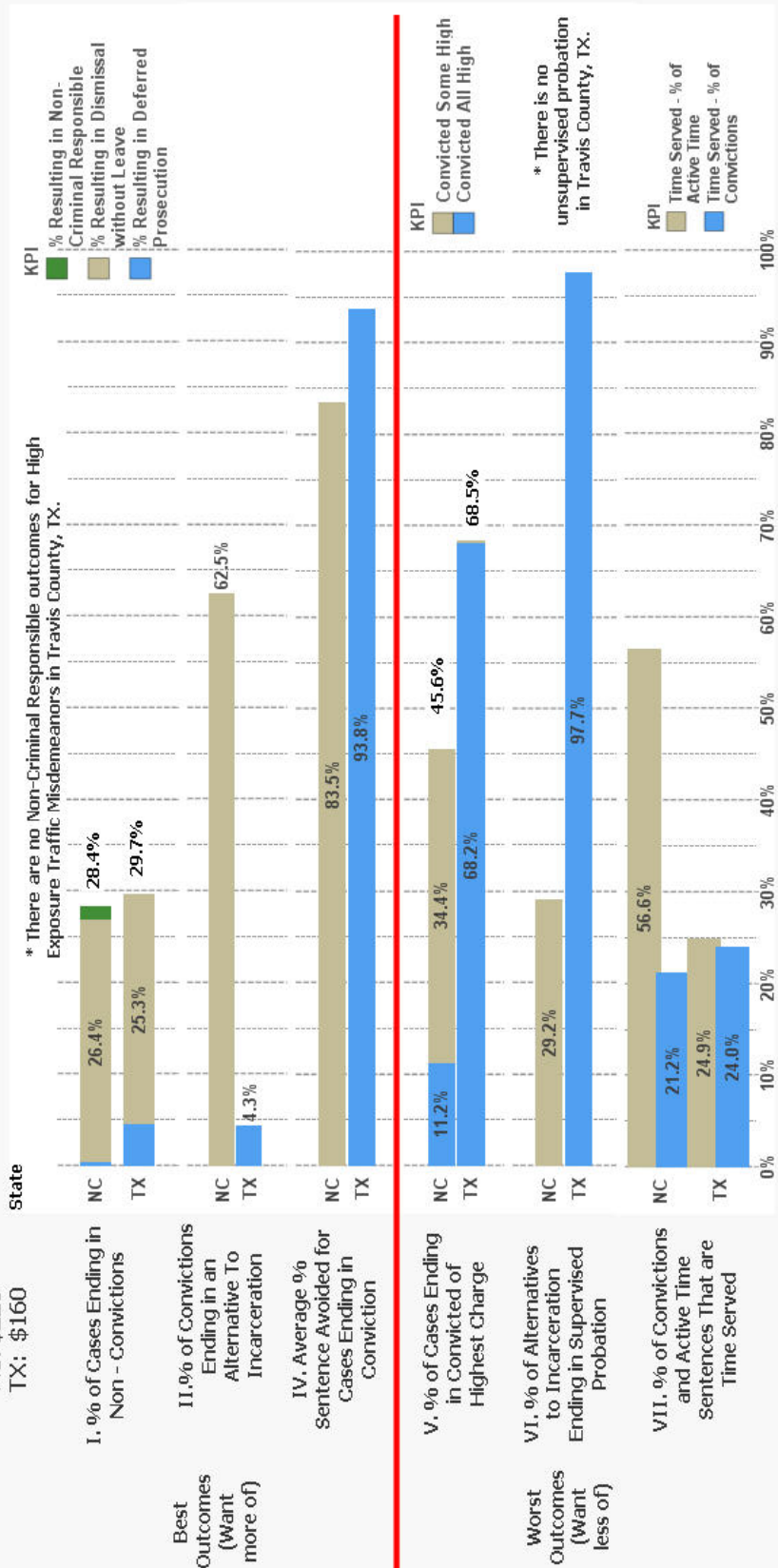


# High Exposure Misdemeanor: Traffic Indigent Defense FY 2012

Average Cost Per Case:

NC: \$220

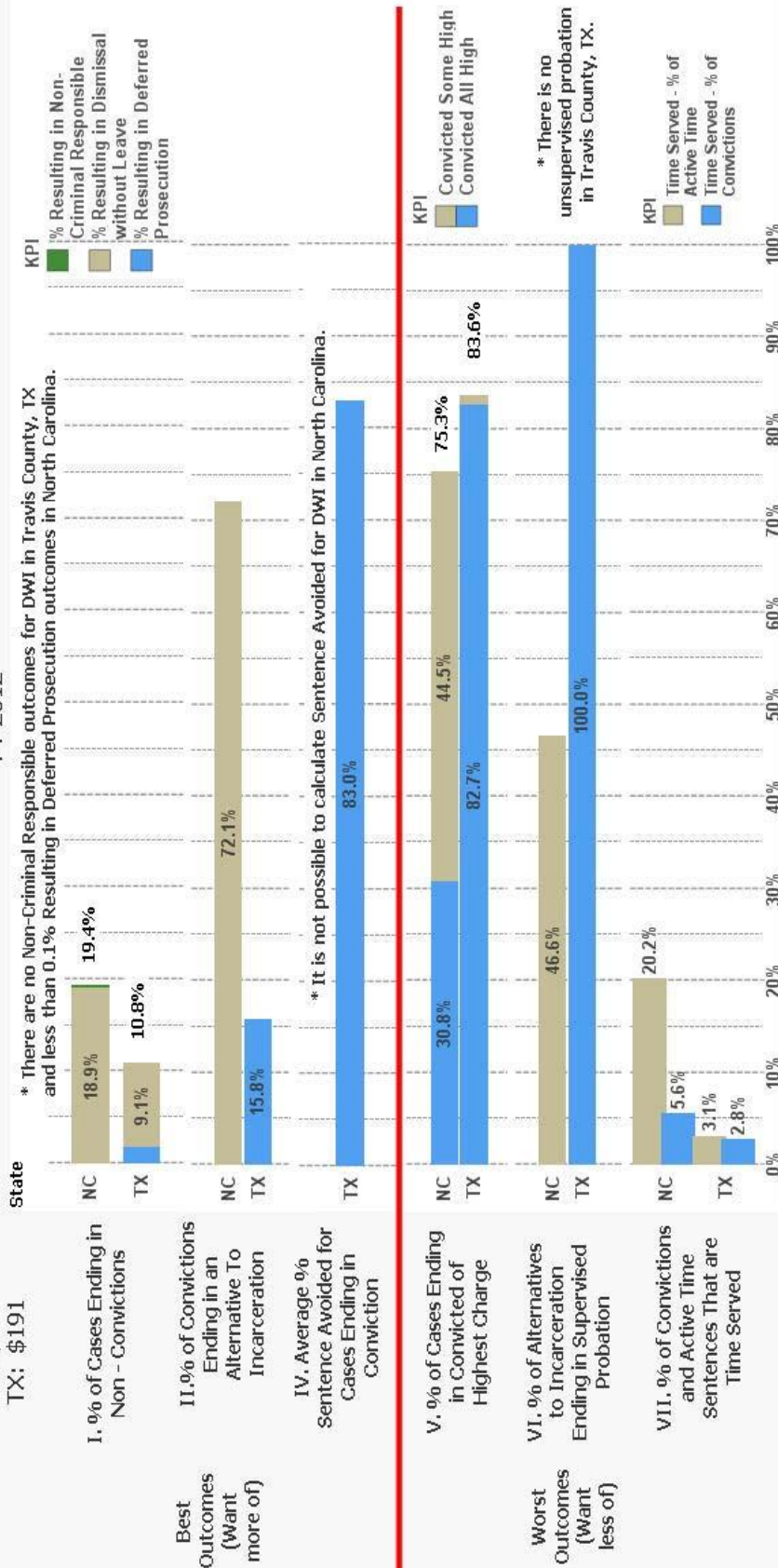
TX: \$160



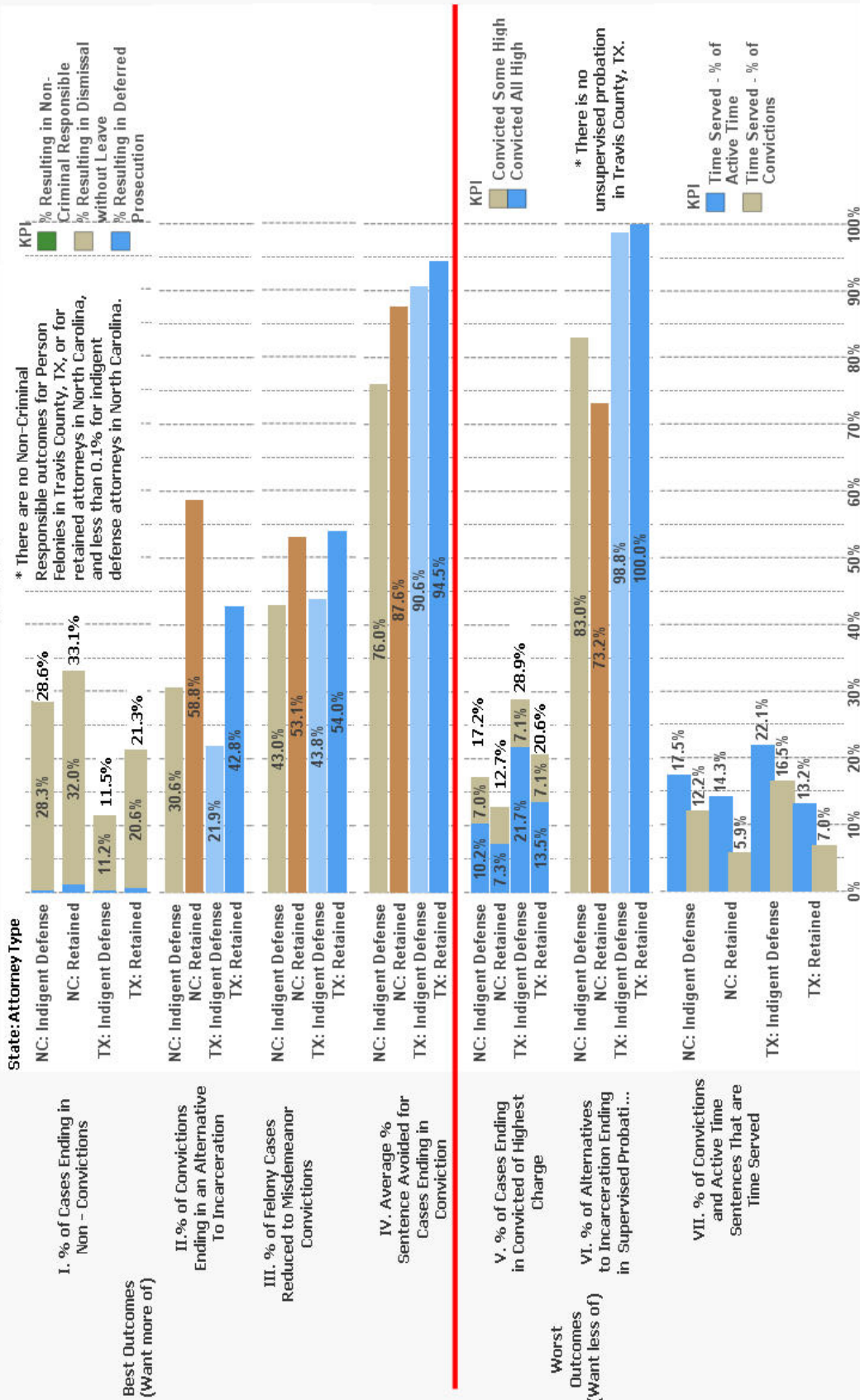


# High Exposure Misdemeanor: DWI & DWI Related Indigent Defense FY 2012

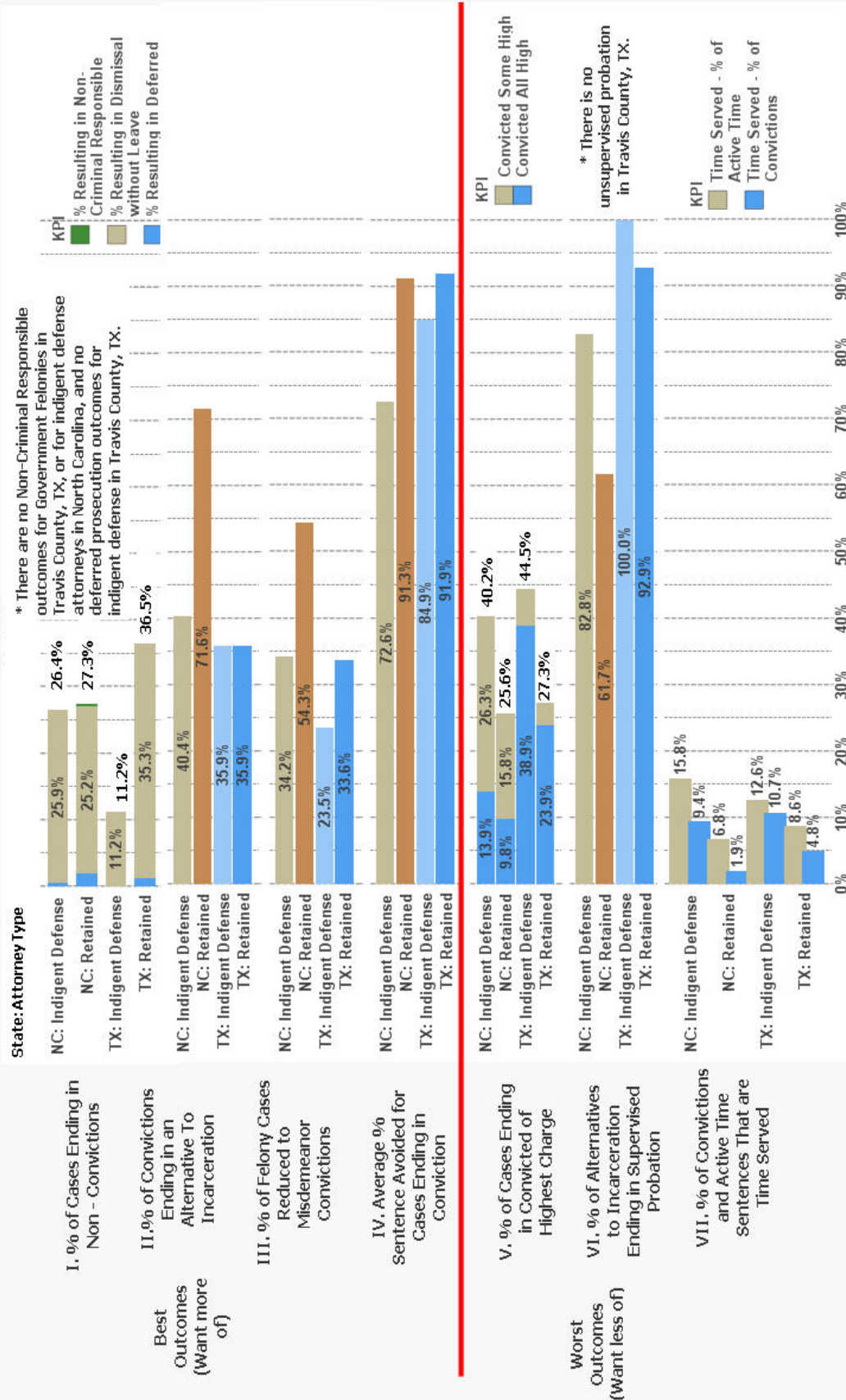
Average Cost Per Case:  
NC: \$322  
TX: \$191



# High Exposure Felony: Person Indigent and Retained Counsel FY 2012

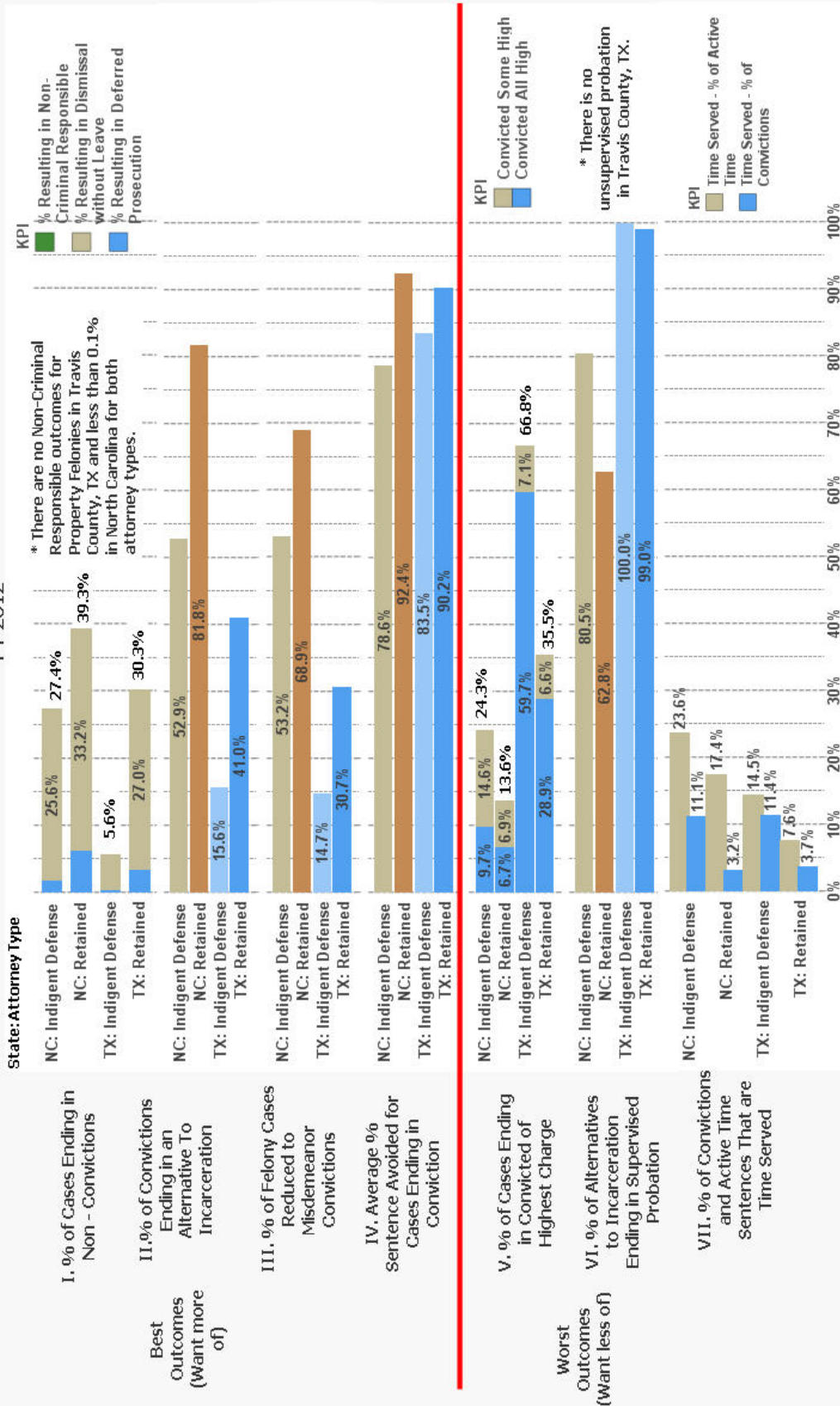


# High Exposure Felony: Government Indigent and Retained Counsel FY 2012



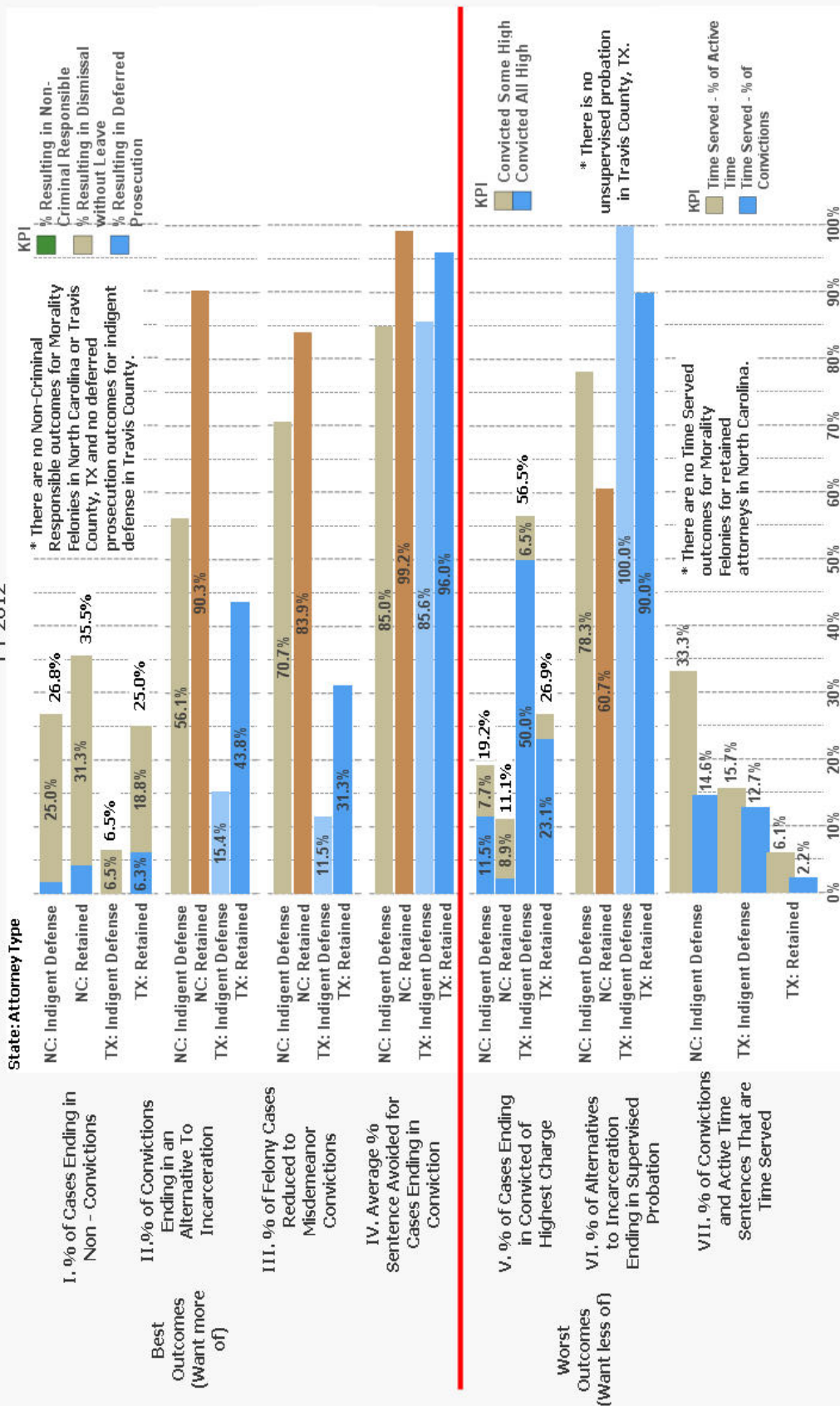


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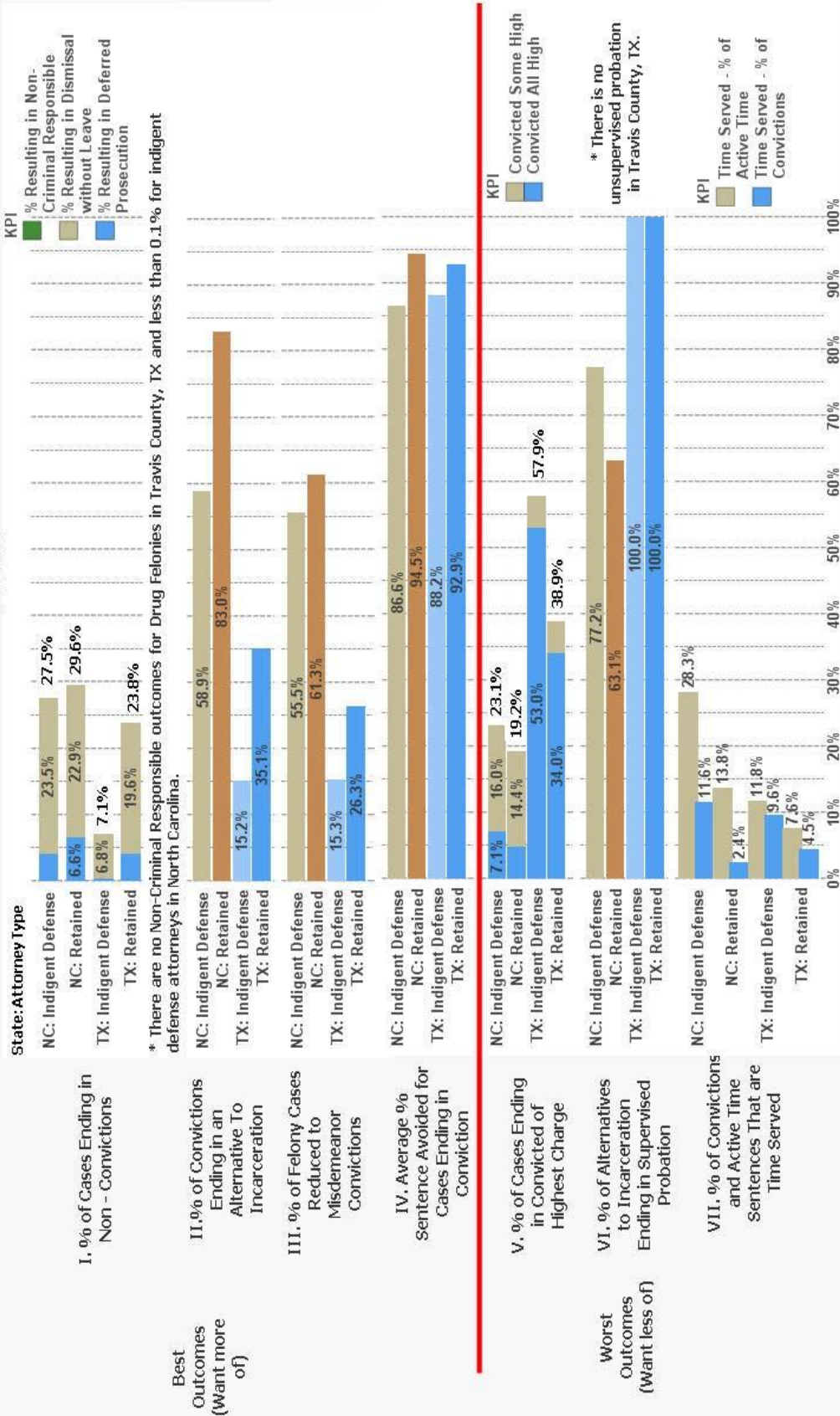




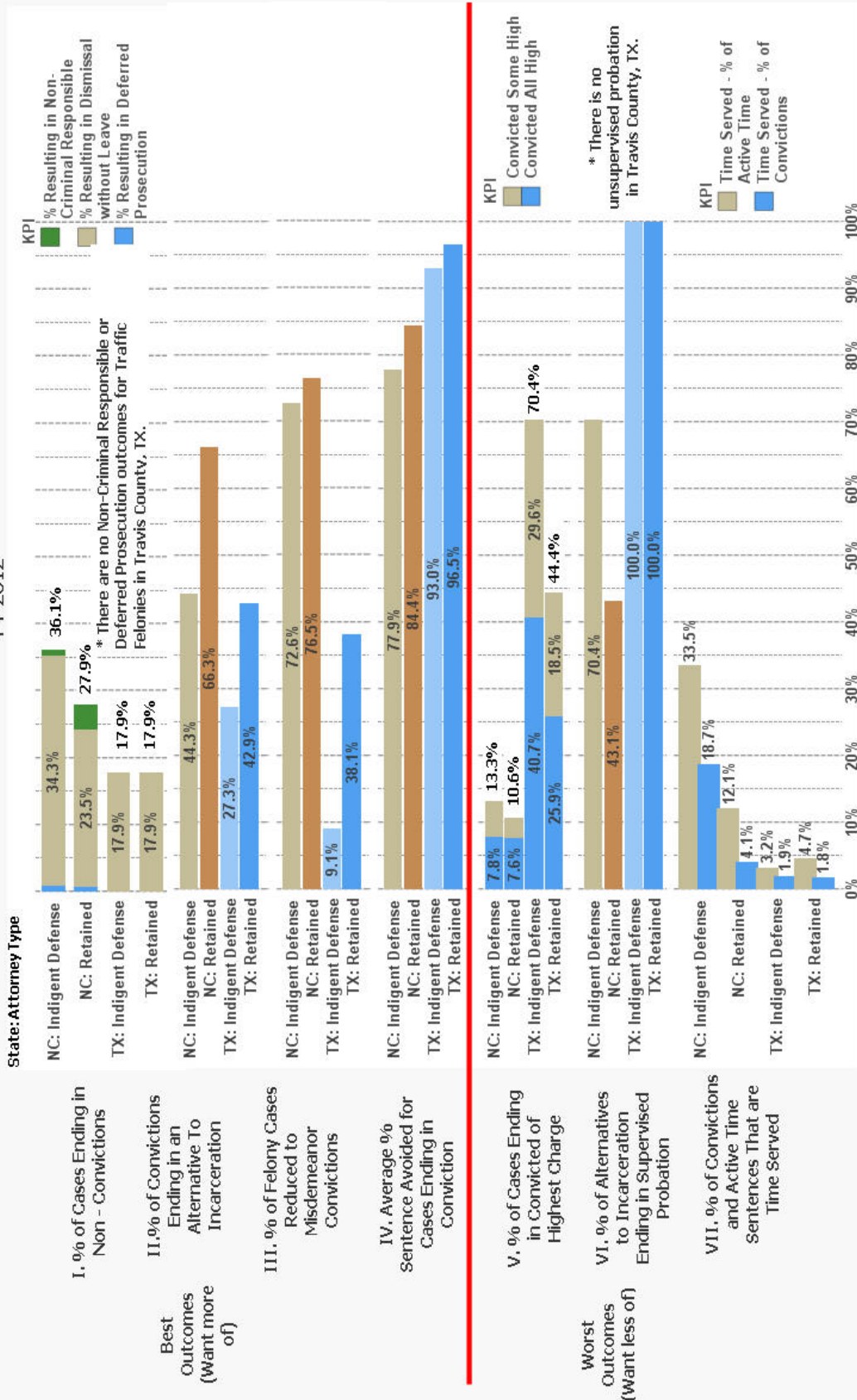
# High Exposure Felony: Morality Indigent and Retained Counsel FY 2012



# High Exposure Felony: Drugs Indigent and Retained Counsel FY 2012

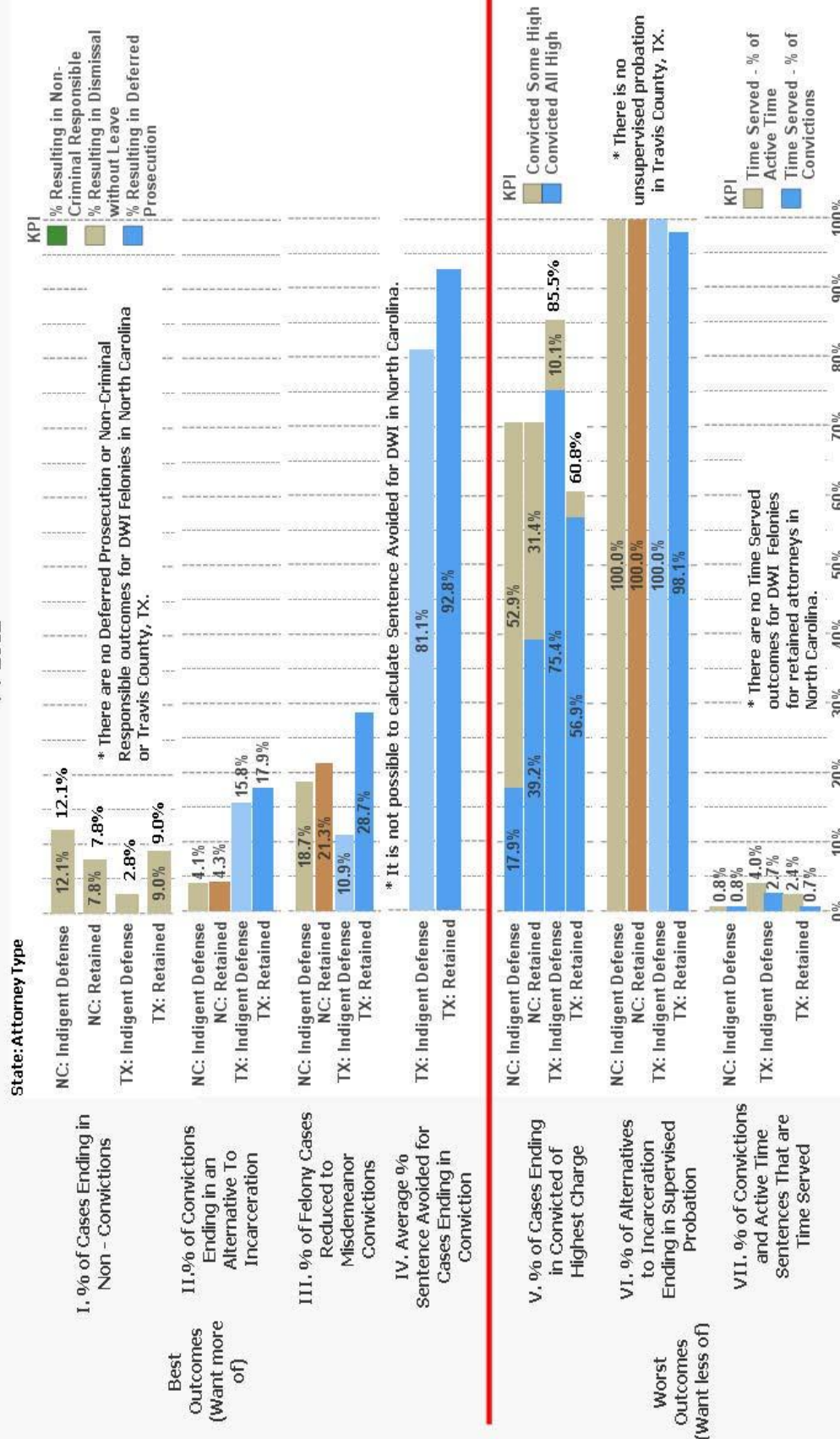


# High Exposure Felony: Traffic Indigent and Retained Counsel FY 2012



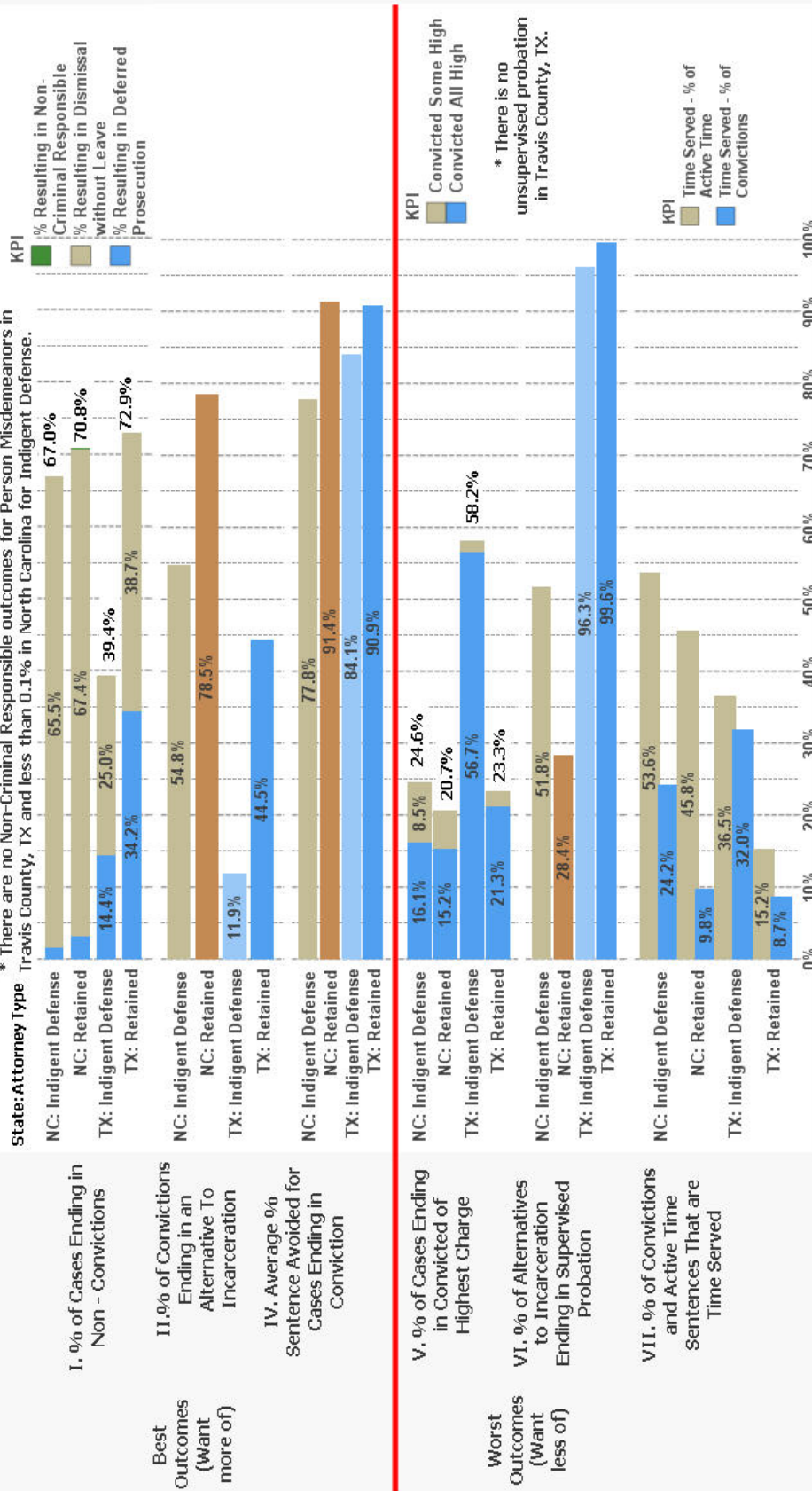


# High Exposure Felony: DWI & DWI Related Indigent and Retained Counsel FY 2012

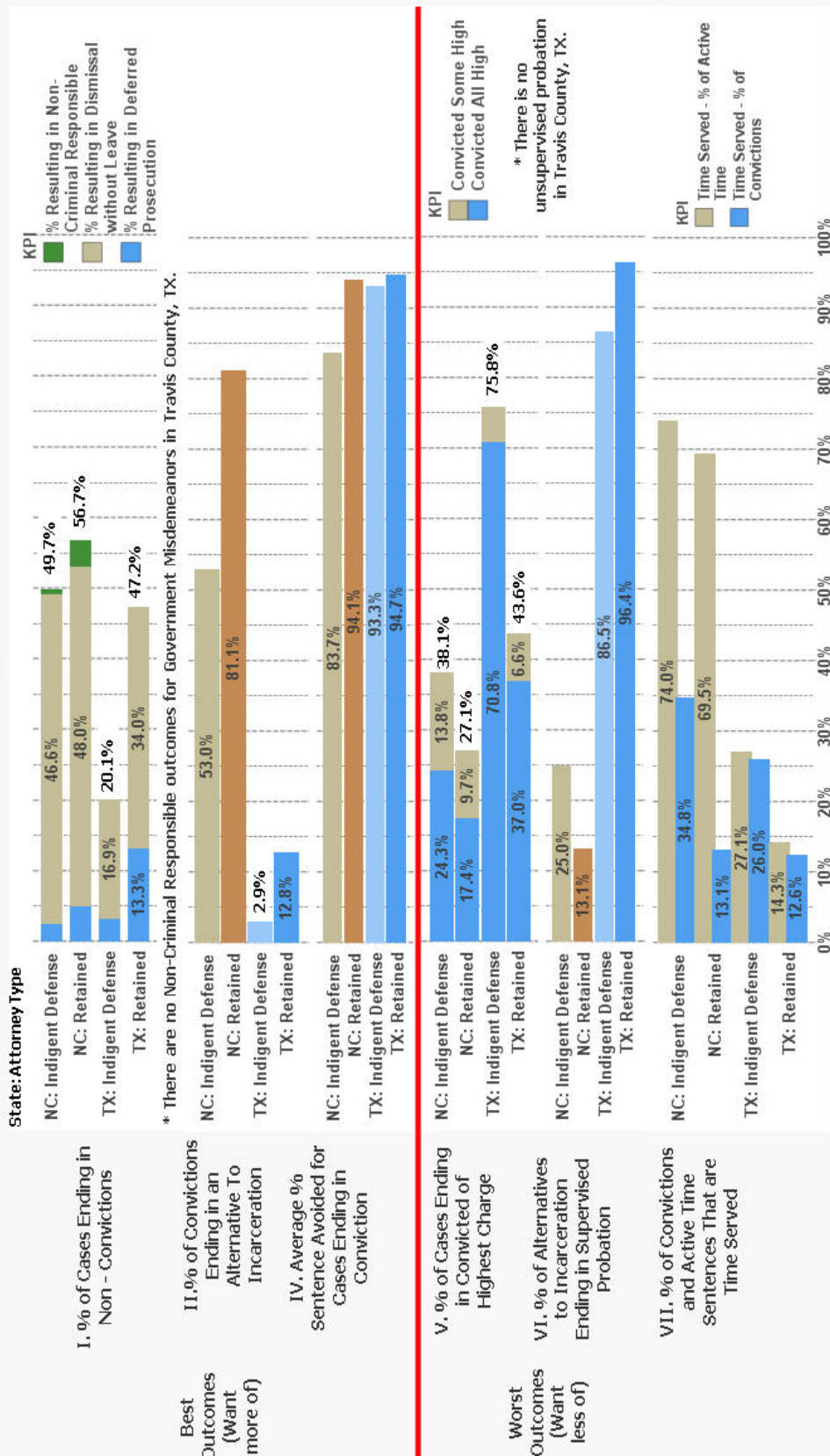


# High Exposure Misdemeanor: Person Indigent and Retained Counsel FY 2012

\* There are no Non-Criminal Responsible outcomes for Person Misdemeanors in Travis County, TX and less than 0.1% in North Carolina for Indigent Defense.

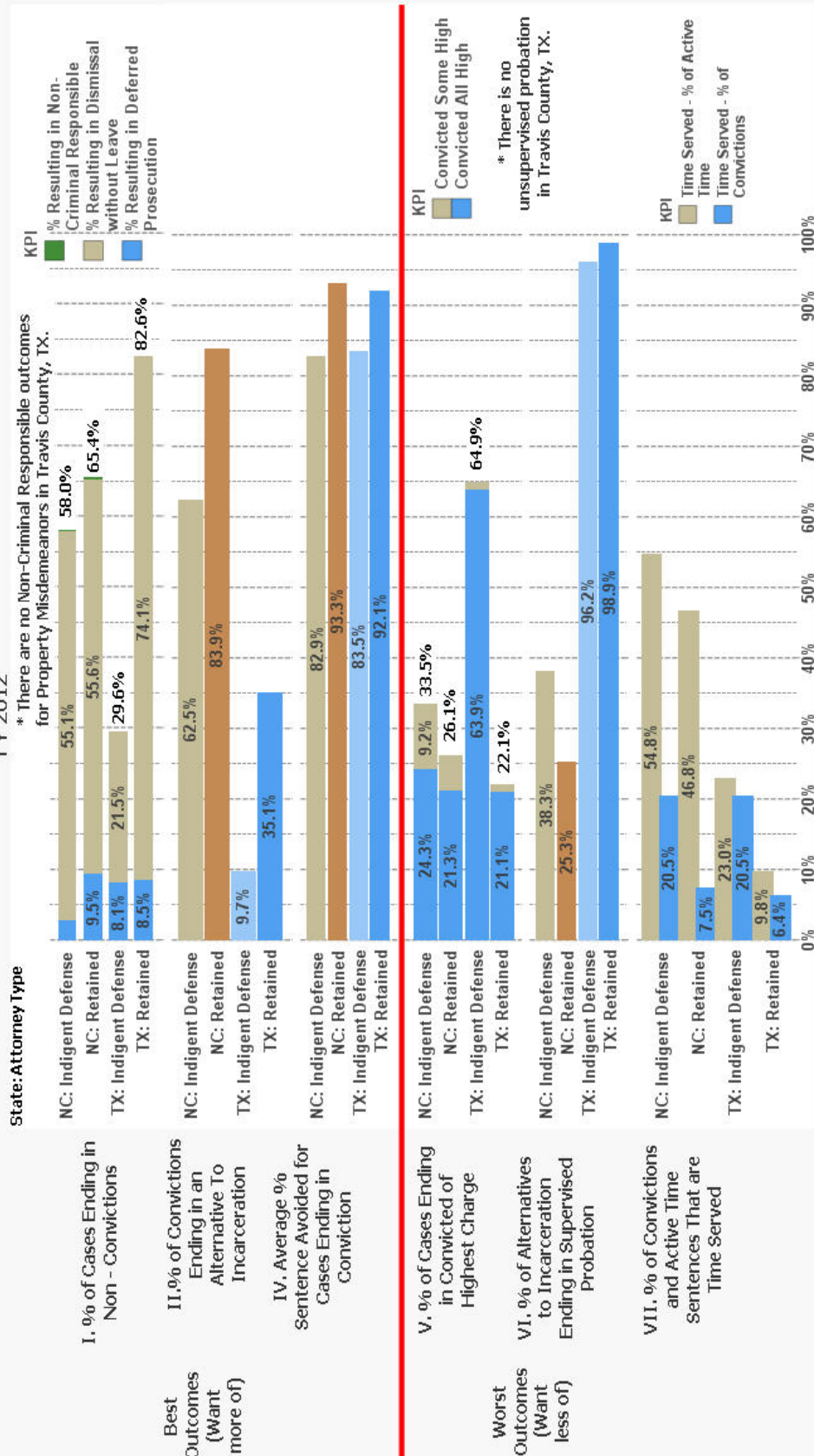


# High Exposure Misdemeanor: Government Indigent and Retained Counsel FY 2012

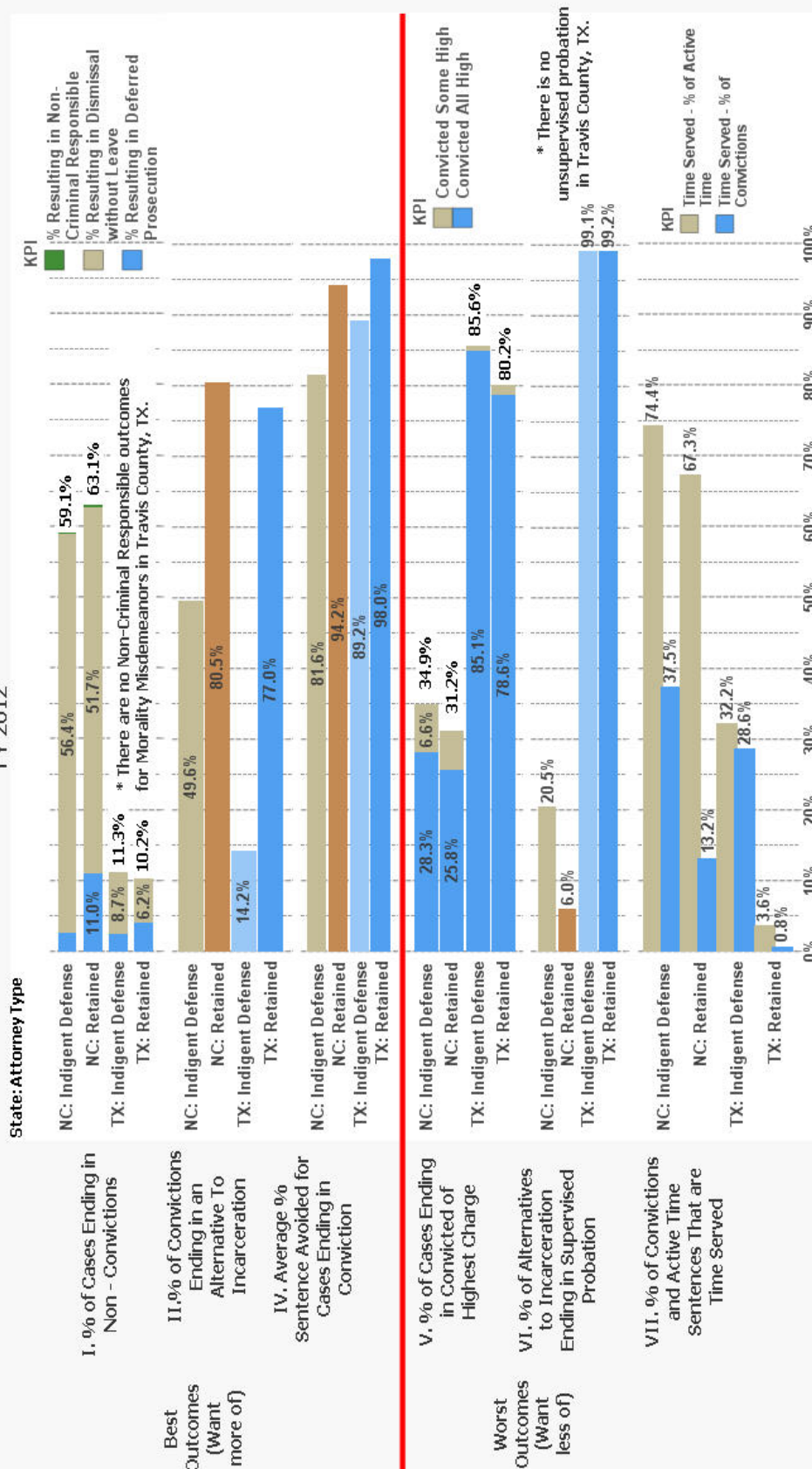




# High Exposure Misdemeanor: Property Indigent and Retained Counsel FY 2012



# High Exposure Misdemeanor: Morality Indigent and Retained Counsel FY 2012



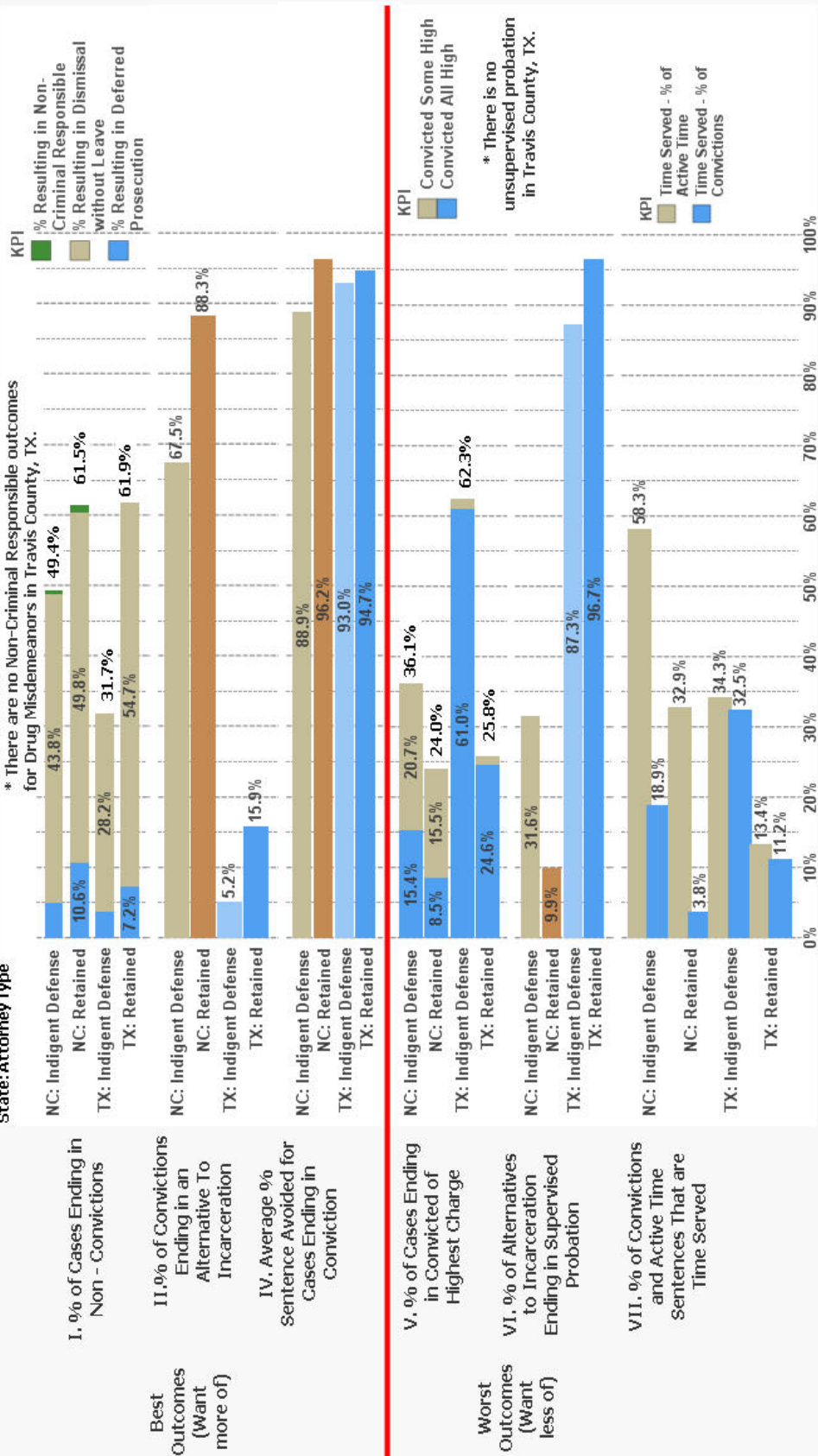


# High Exposure Misdemeanor: Drugs Indigent and Retained Counsel

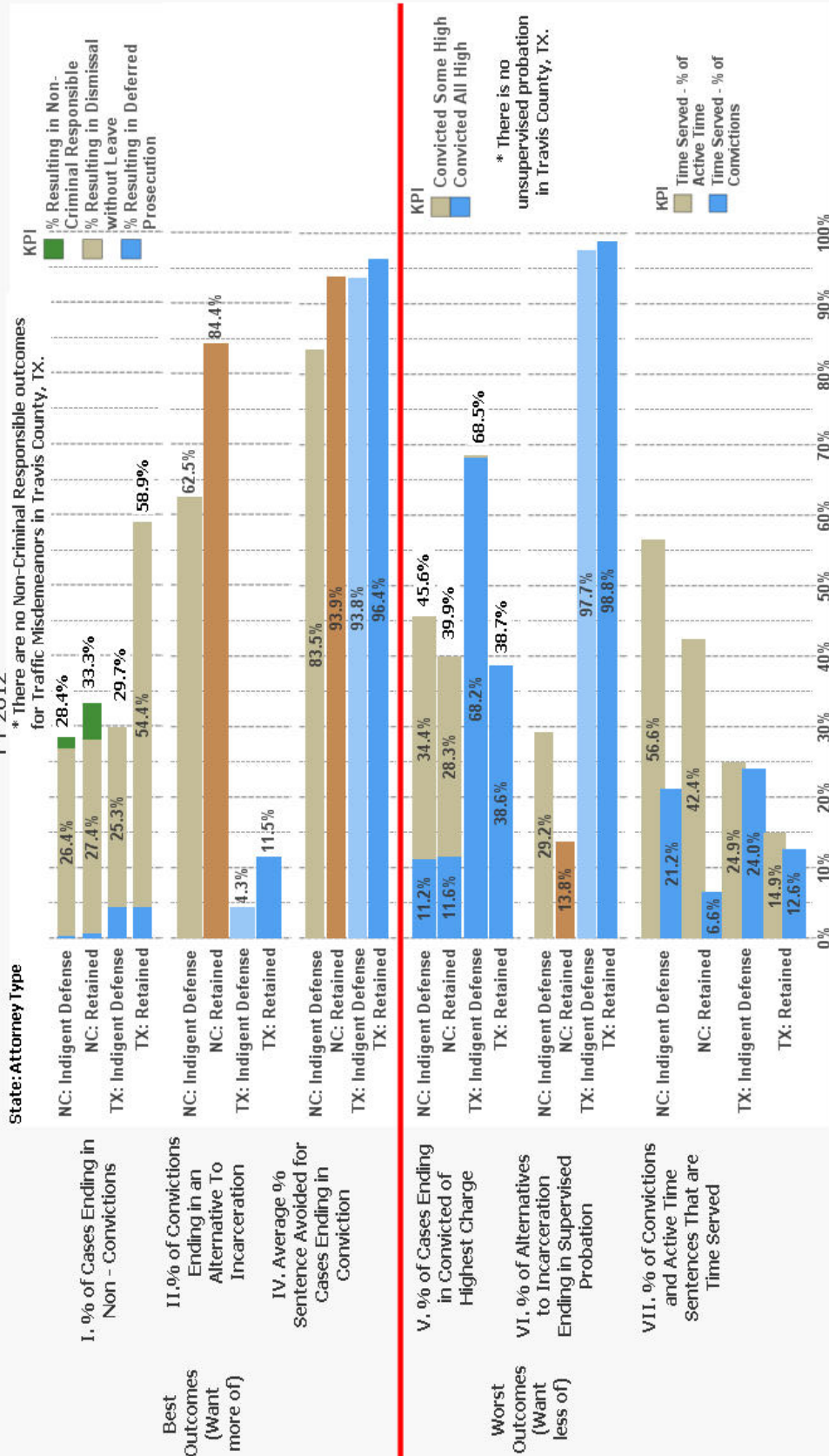
FY 2012

State: Attorney Type

\* There are no Non-Criminal Responsible outcomes for Drug Misdemeanors in Travis County, TX.



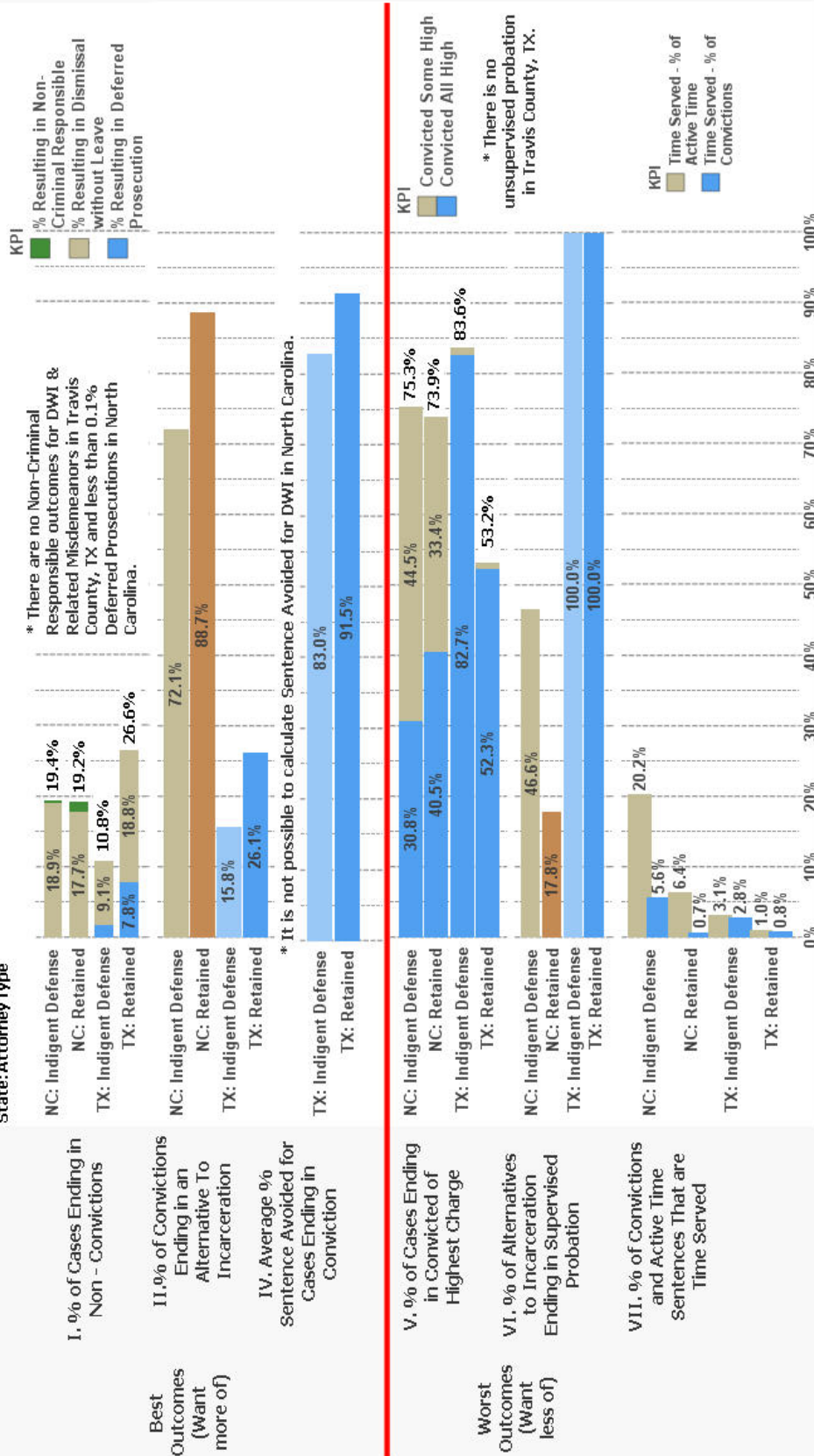
# High Exposure Misdemeanor: Traffic Indigent and Retained Counsel FY 2012



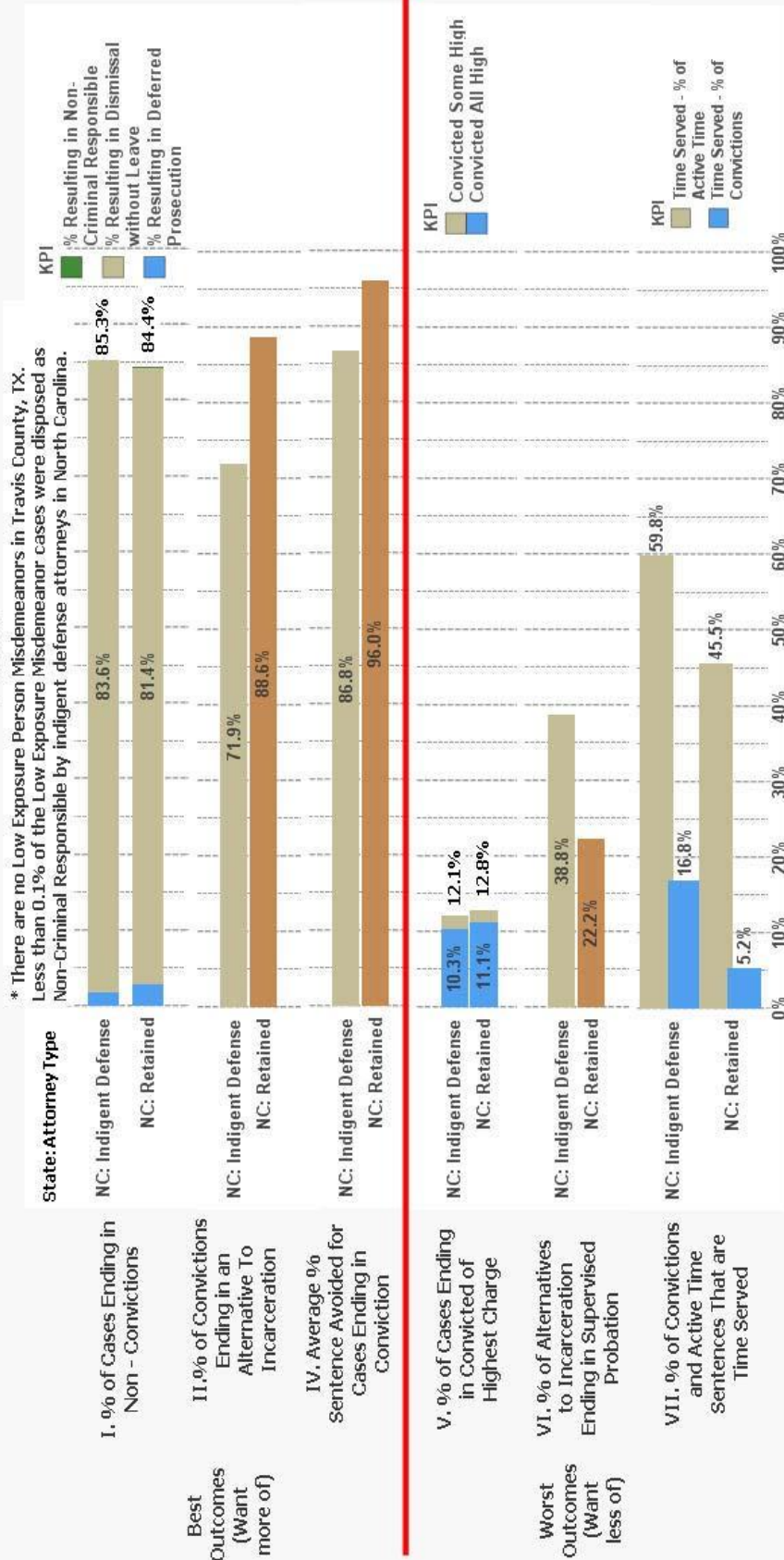
# High Exposure Misdemeanor: DWI & DWI Related Indigent and Retained Counsel

FY 2012

State: Attorney Type

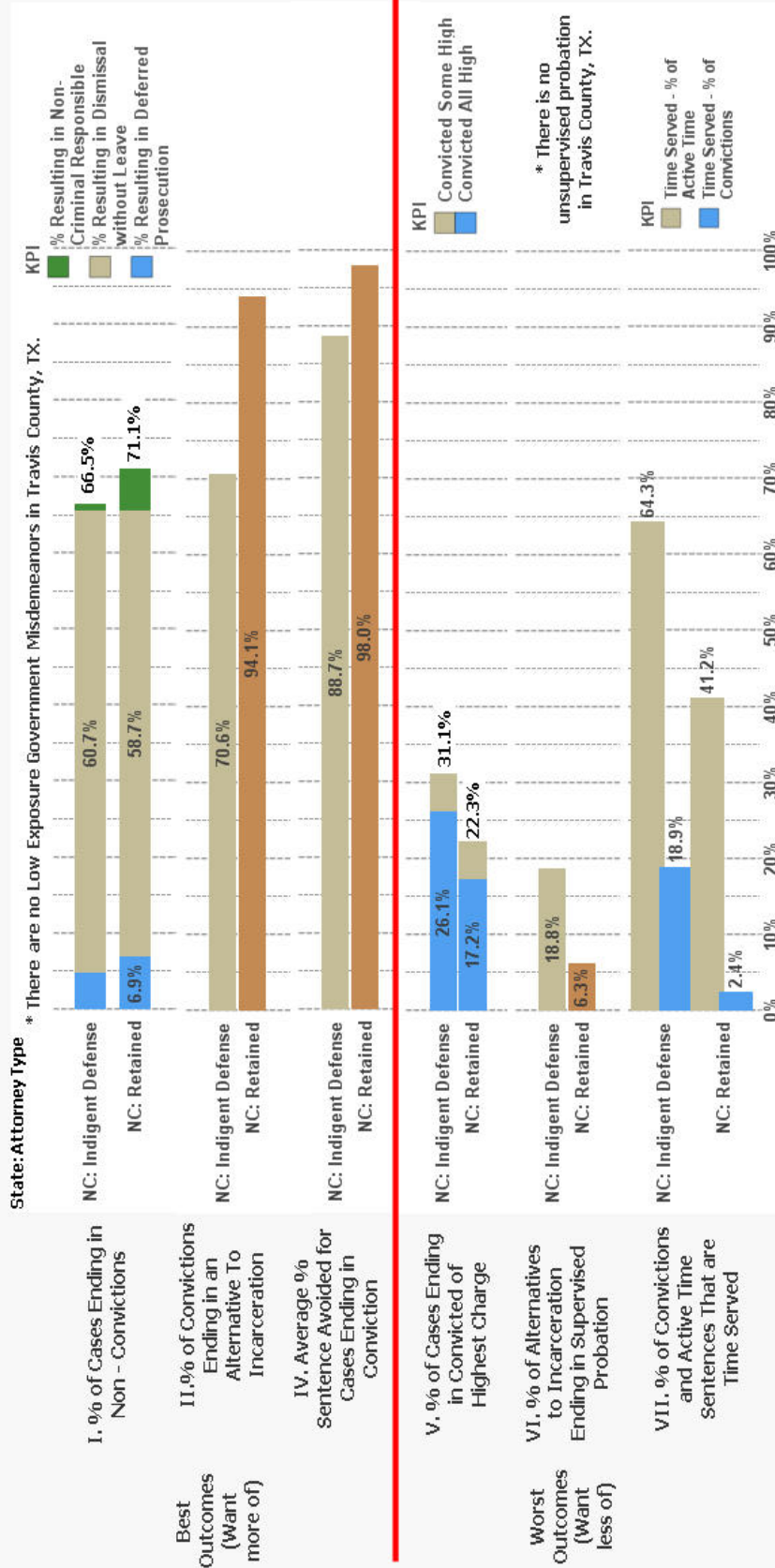


Low Exposure Misdemeanor: Person  
Indigent and Retained Counsel  
FY 2012

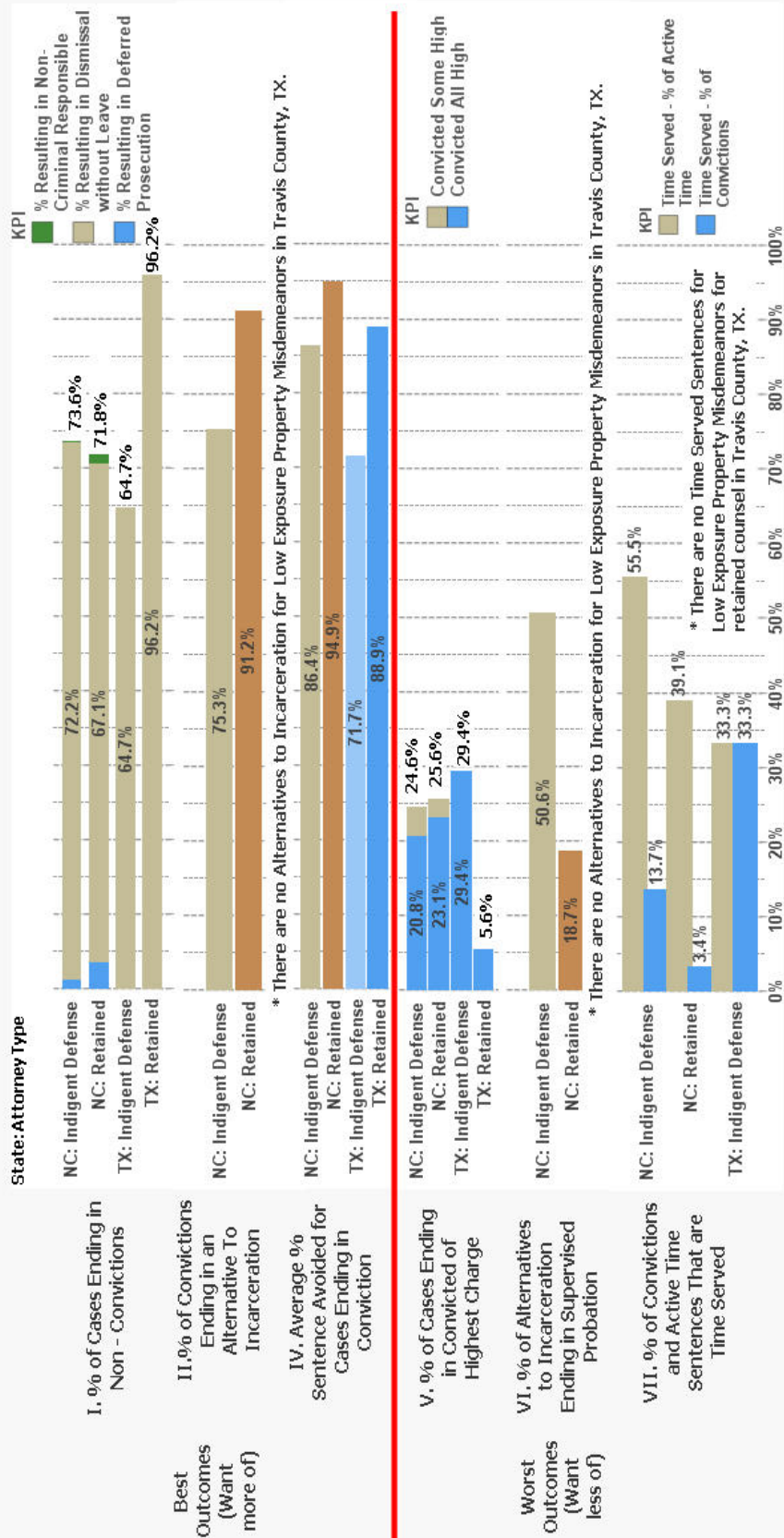




Low Exposure Misdemeanor: Government  
Indigent and Retained Counsel  
FY 2012



Low Exposure Misdemeanor: Property  
Indigent and Retained Counsel  
FY 2012



# Low Exposure Misdemeanor: Morality Indigent and Retained Counsel FY 2012

State: Attorney Type

\* There are no Low Exposure Morality Misdemeanors in Travis County, TX.

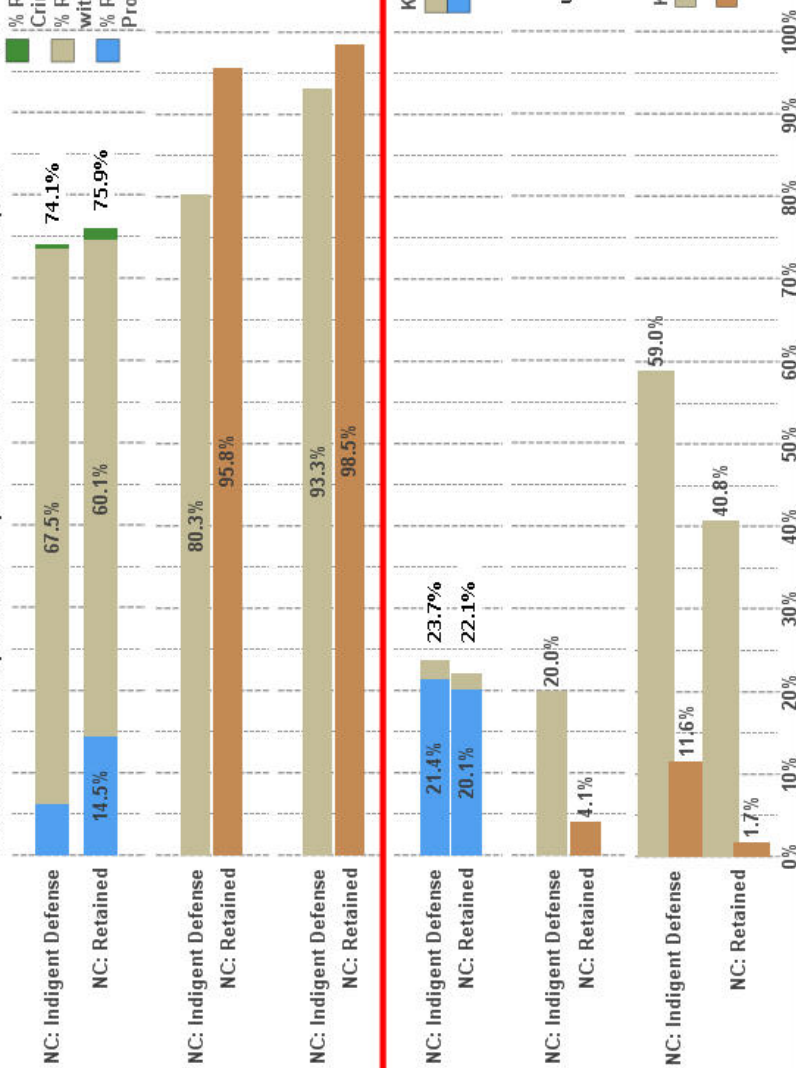
KPI  
 % Resulting in Non-Criminal Responsible  
 % Resulting in Dismissal without Leave  
 % Resulting in Deferred Prosecution

I. % of Cases Ending in Non - Convictions  
 II. % of Convictions Ending in an Alternative To Incarceration  
 IV. Average % Sentence Avoided for Cases Ending in Conviction

V. % of Cases Ending in Convicted of Highest Charge

Worst Outcomes (Want less of)  
 VI. % of Alternatives to Incarceration Ending in Supervised Probation

VII. % of Convictions and Active Time Sentences That are Time Served



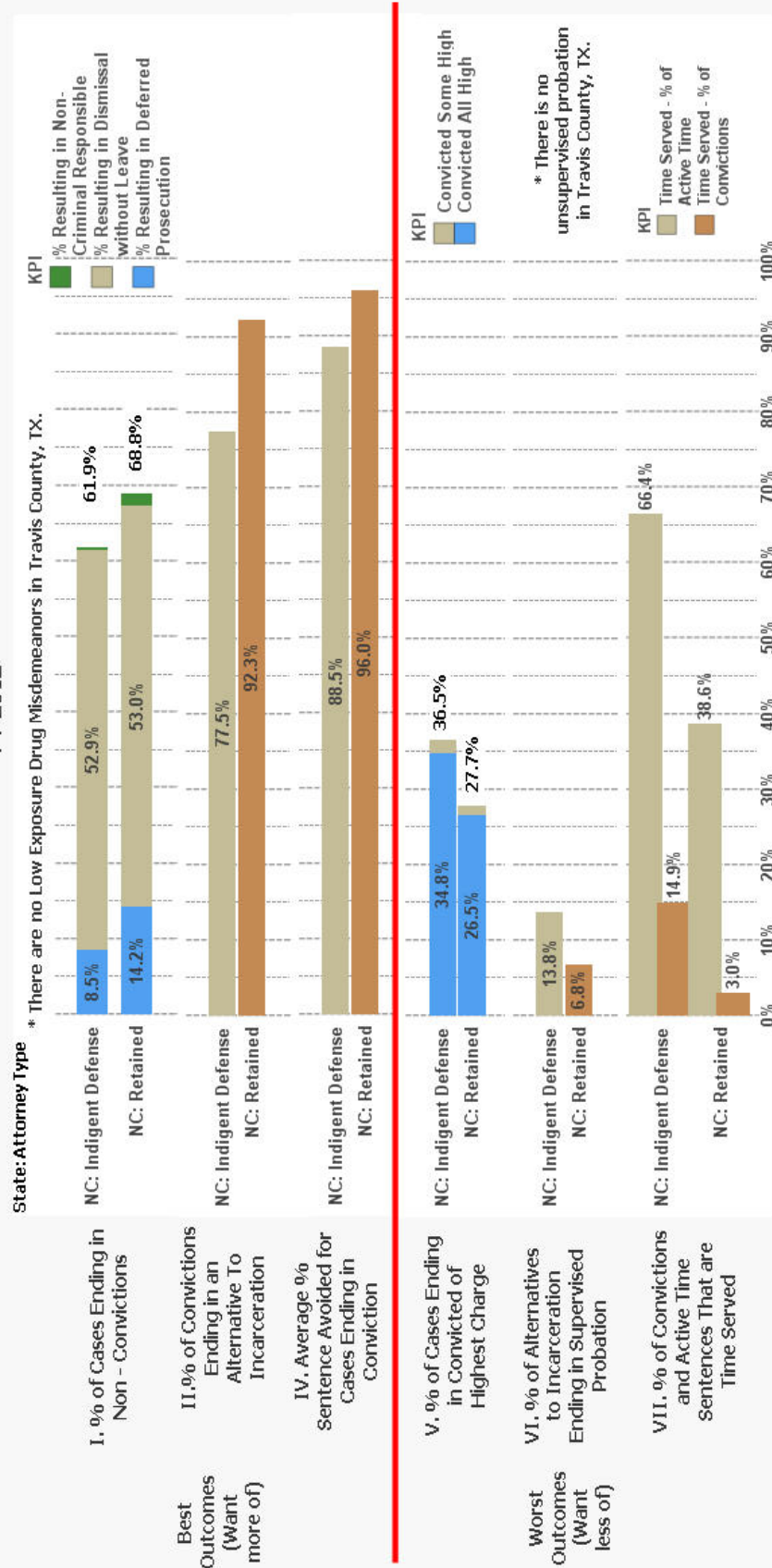
KPI  
 Convicted Some High  
 Convicted All High

\* There is no unsupervised probation in Travis County, TX.

KPI  
 Time Served - % of Active Time  
 Time Served - % of Convictions

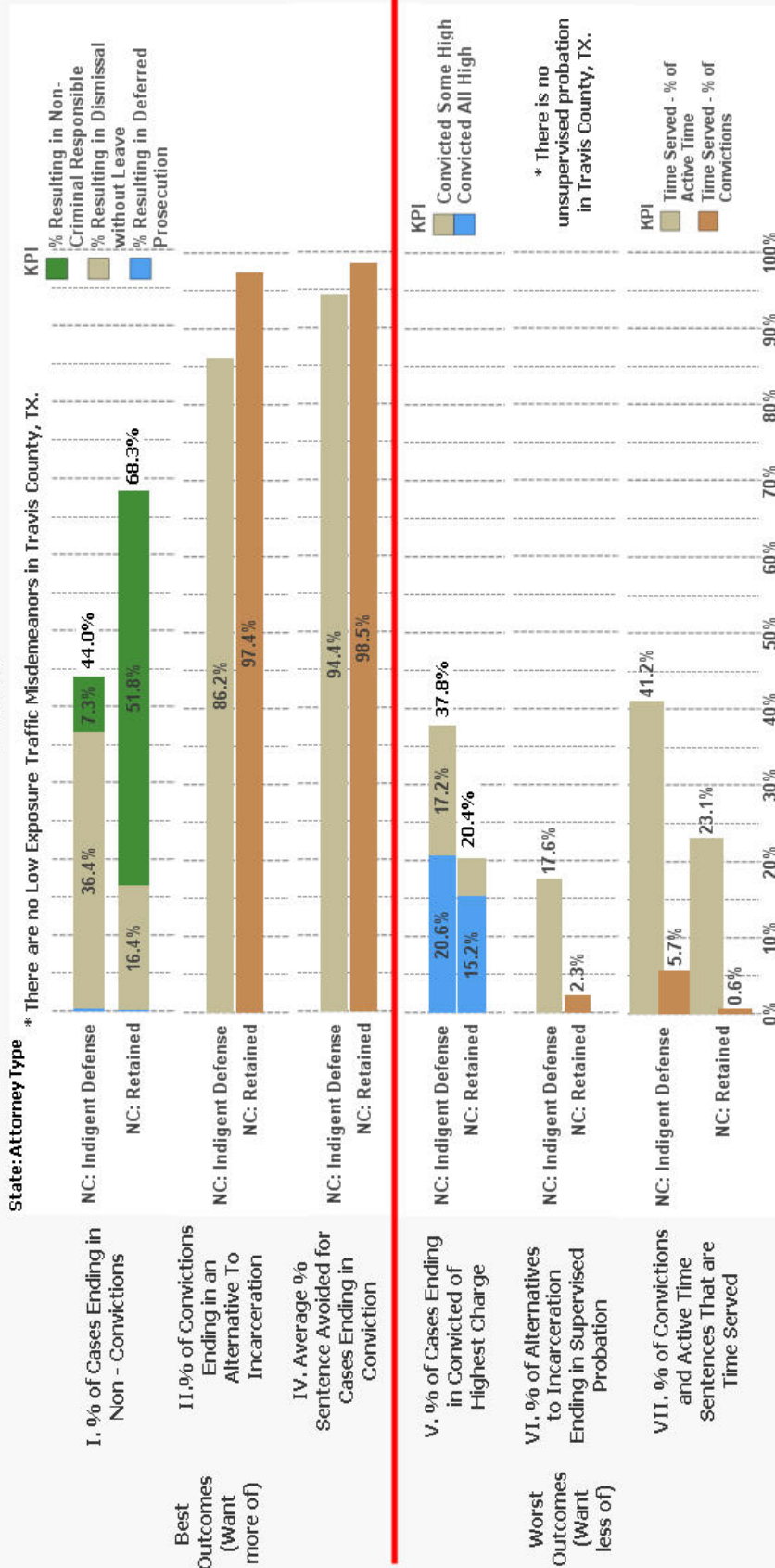
0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

Low Exposure Misdemeanor: Drugs  
Indigent and Retained Counsel  
FY 2012



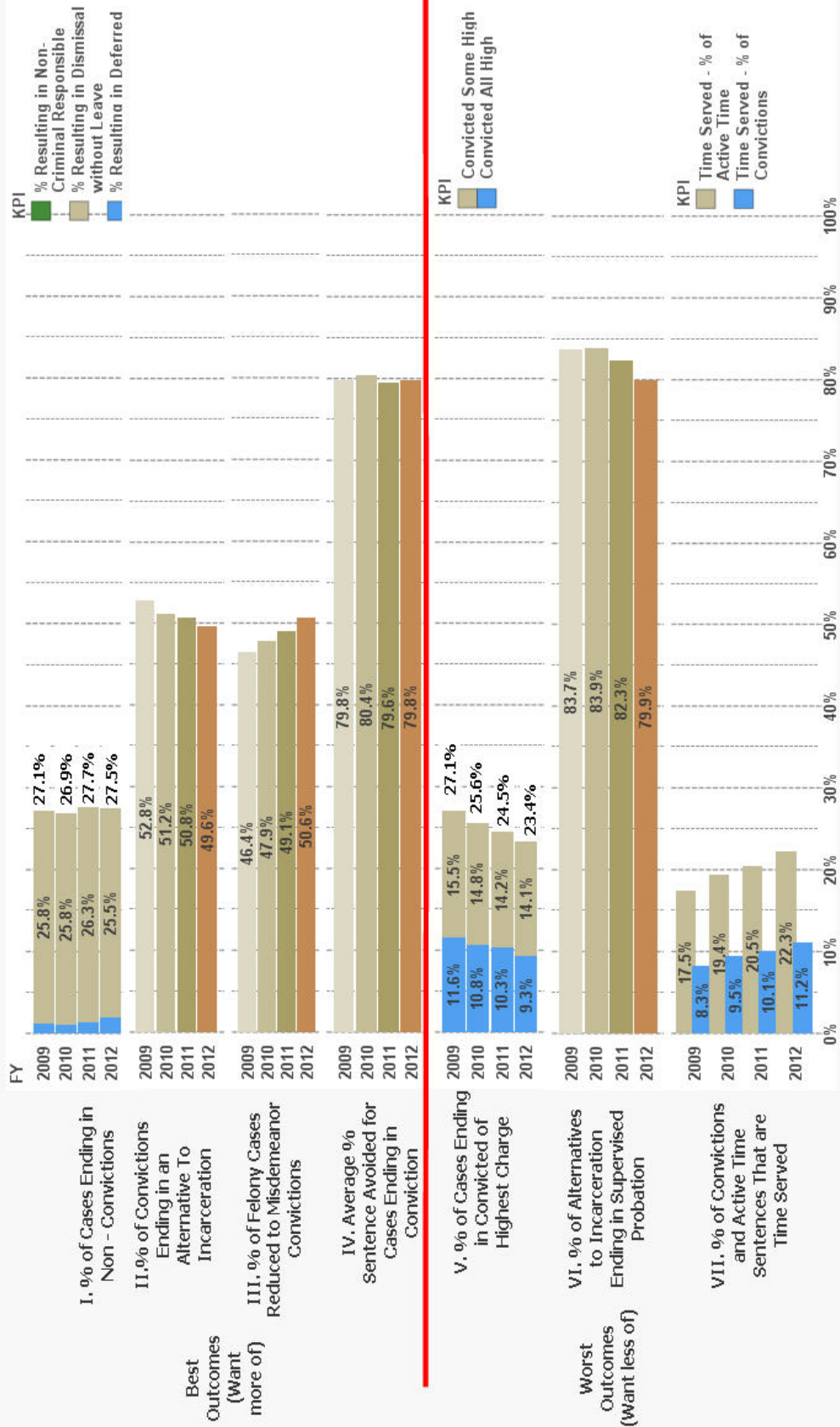


Low Exposure Misdemeanor: Traffic  
Indigent and Retained Counsel  
FY 2012

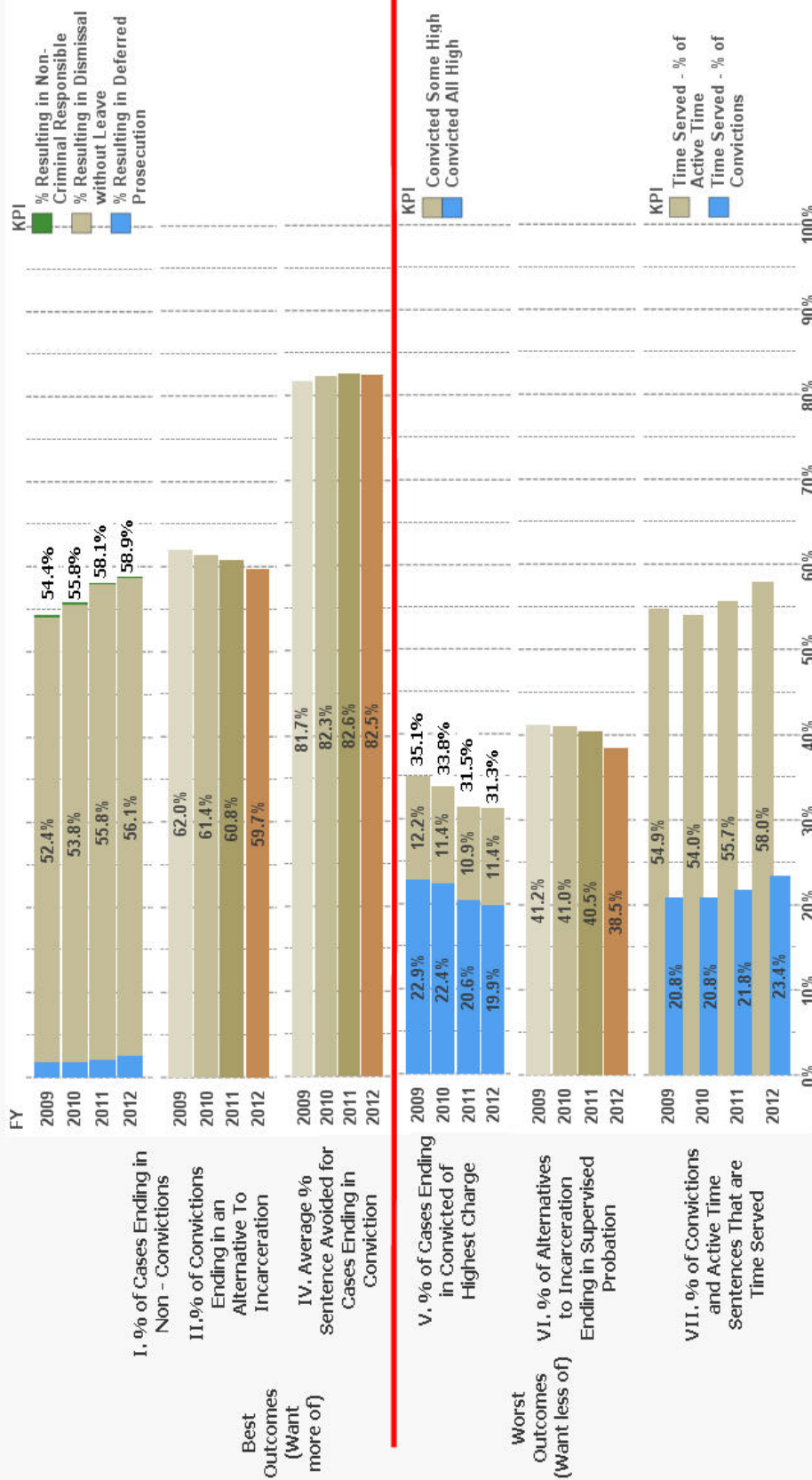




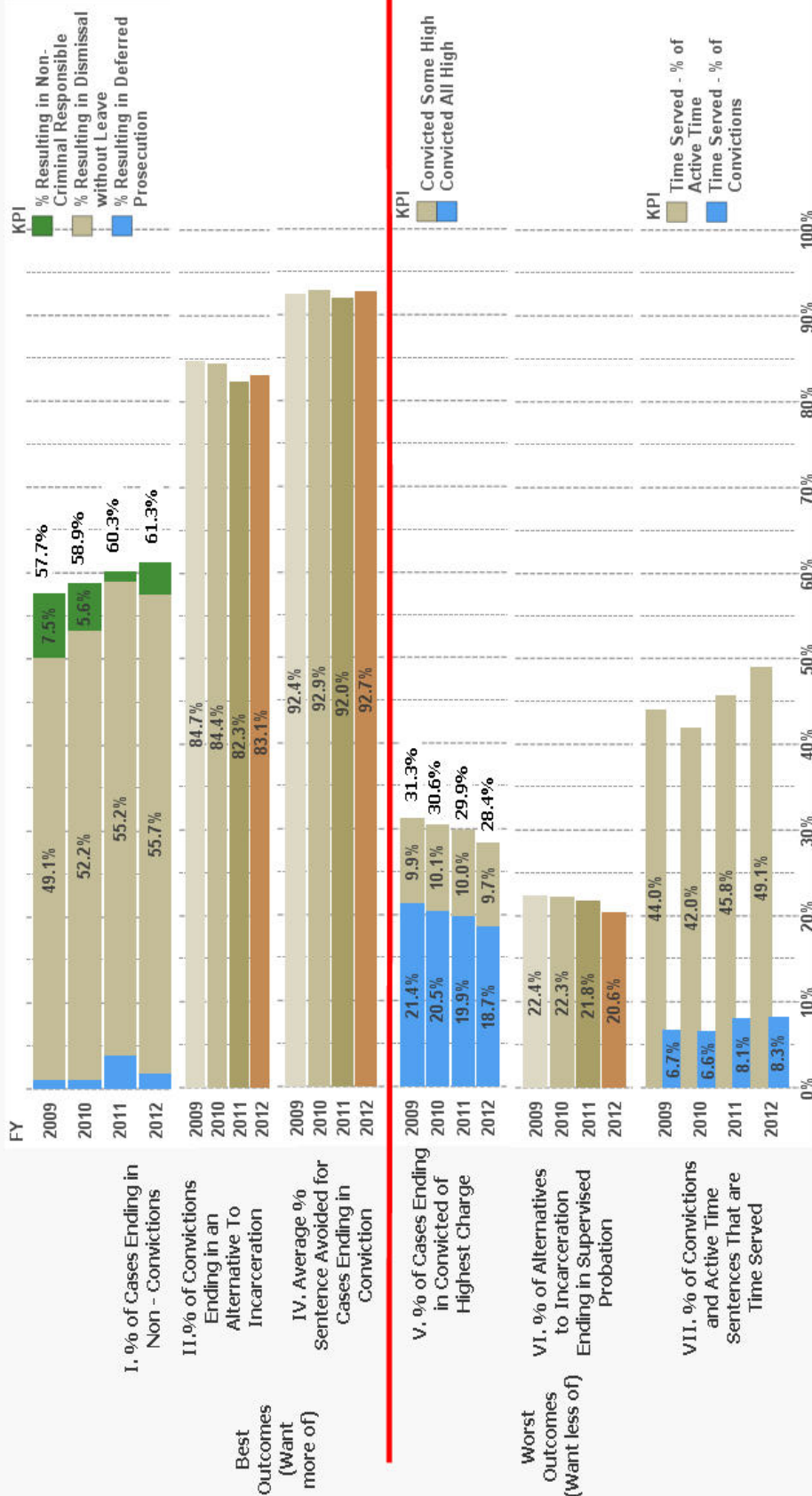
# High Exposure Felony: North Carolina Indigent Defense Only FY 2009-2012



# High Exposure Misdemeanor: North Carolina Indigent Defense Only FY 2009-2012

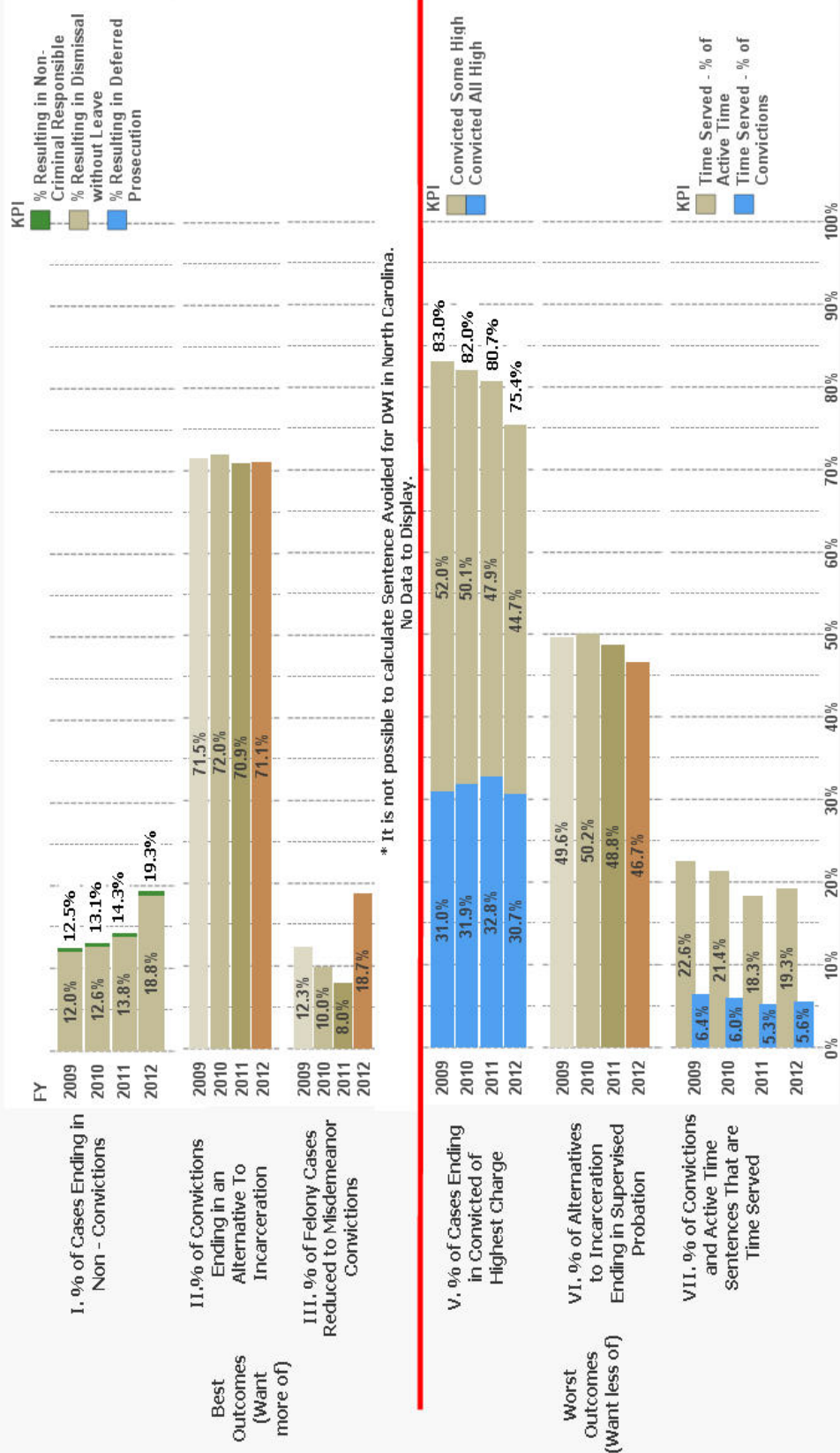


Low Exposure Misdemeanor: North Carolina  
Indigent Defense Only  
FY 2009-2012

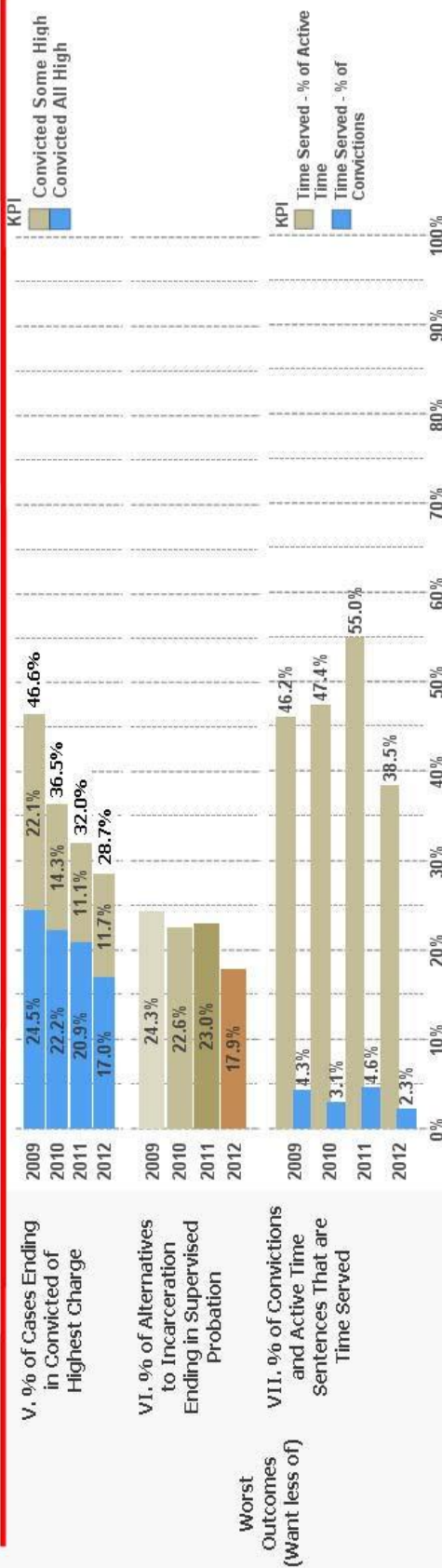
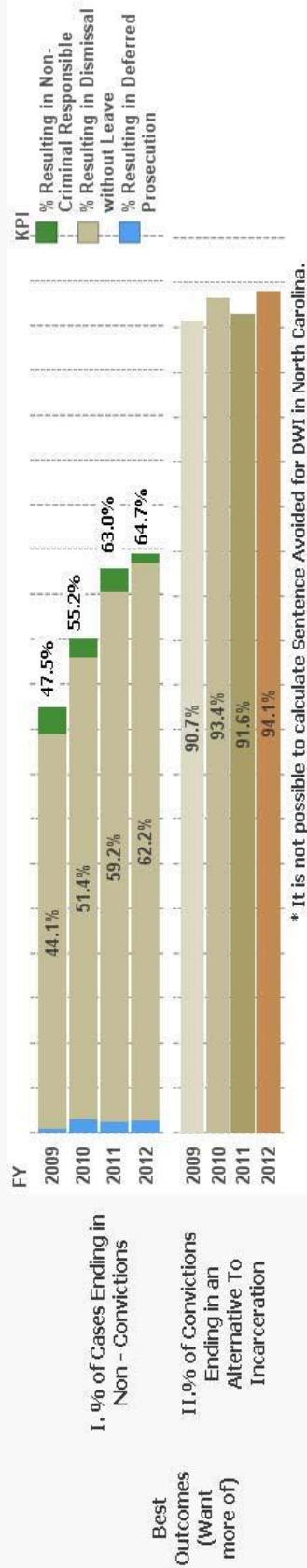




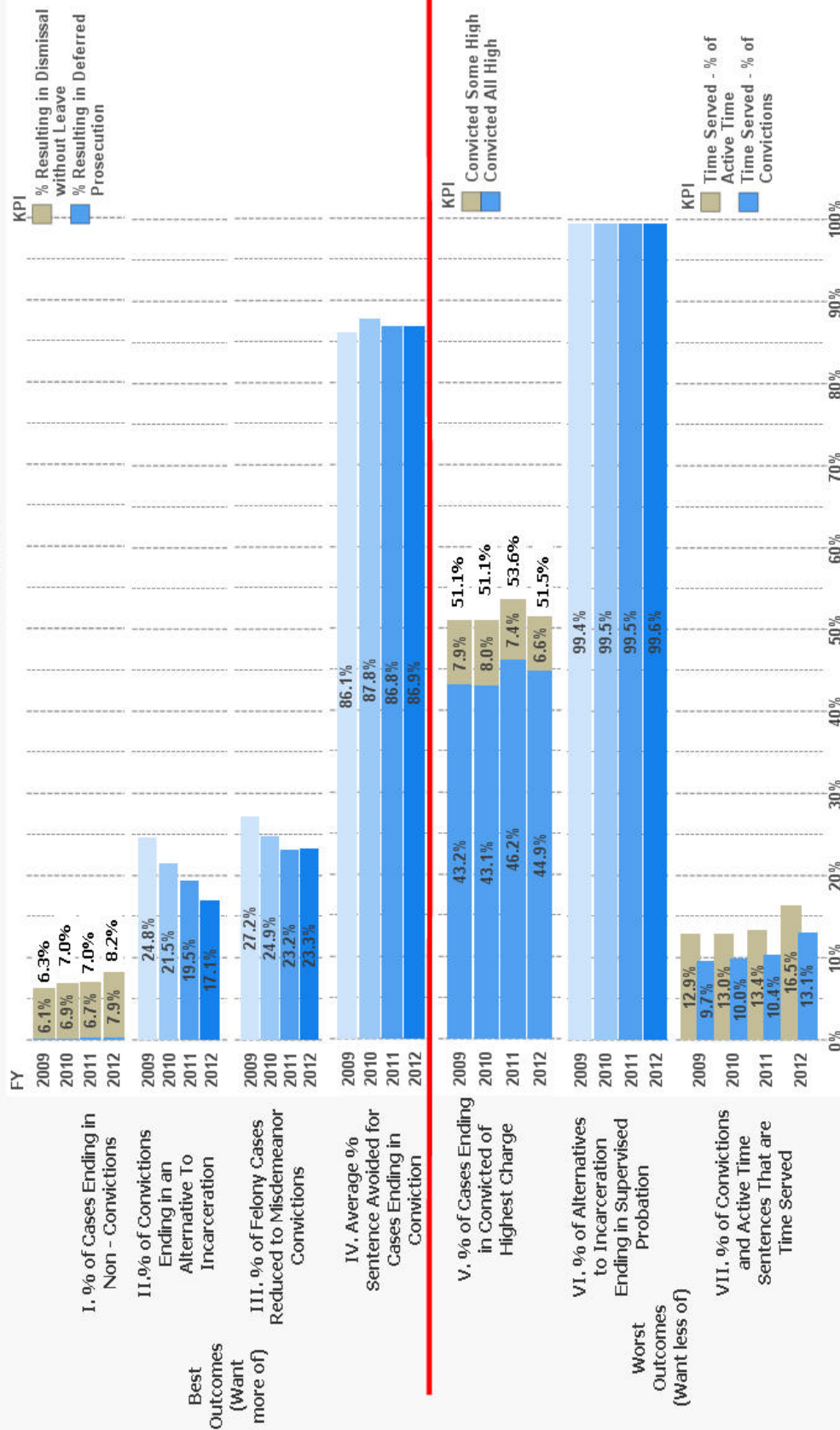
# High Exposure DWI and DWI Related: North Carolina Indigent Defense FY 2009-2012



Low Exposure DWI and DWI Related: North Carolina  
Indigent Defense  
FY 2009-2012

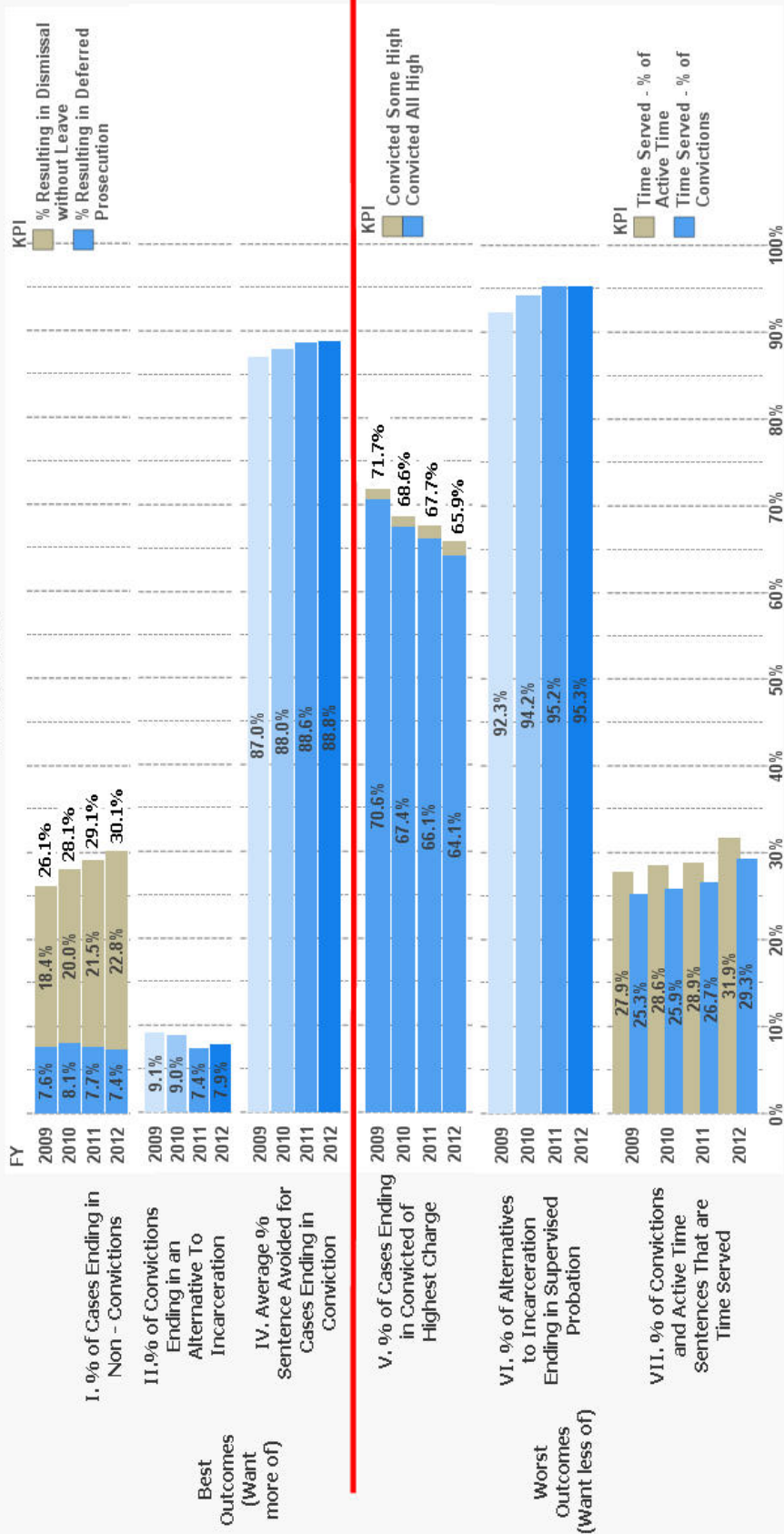


# High Exposure Felony: Travis County, TX Indigent Defense FY 2009-2012

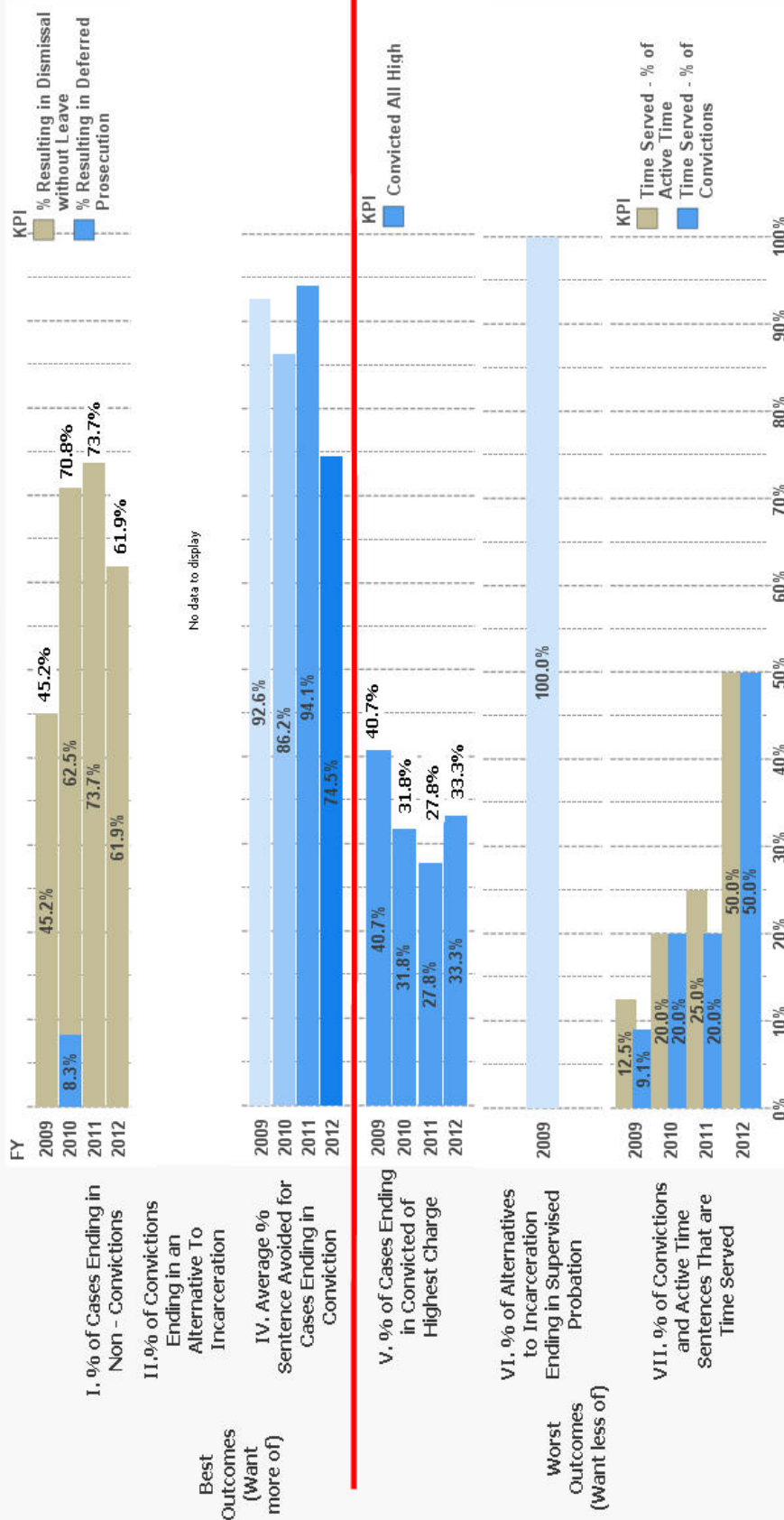




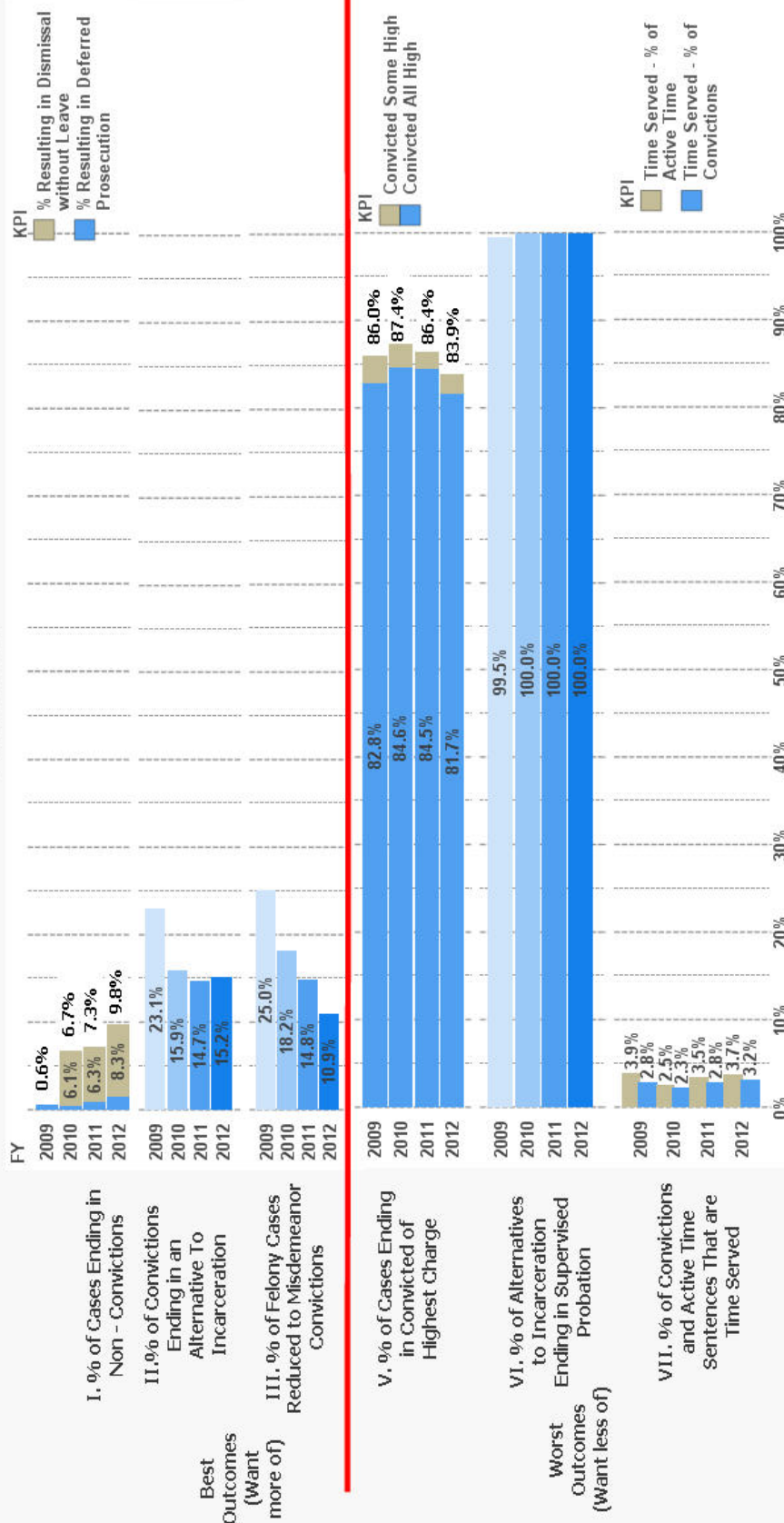
High Exposure Misdemeanor: Travis County, TX  
Indigent Defense  
FY 2009-2012

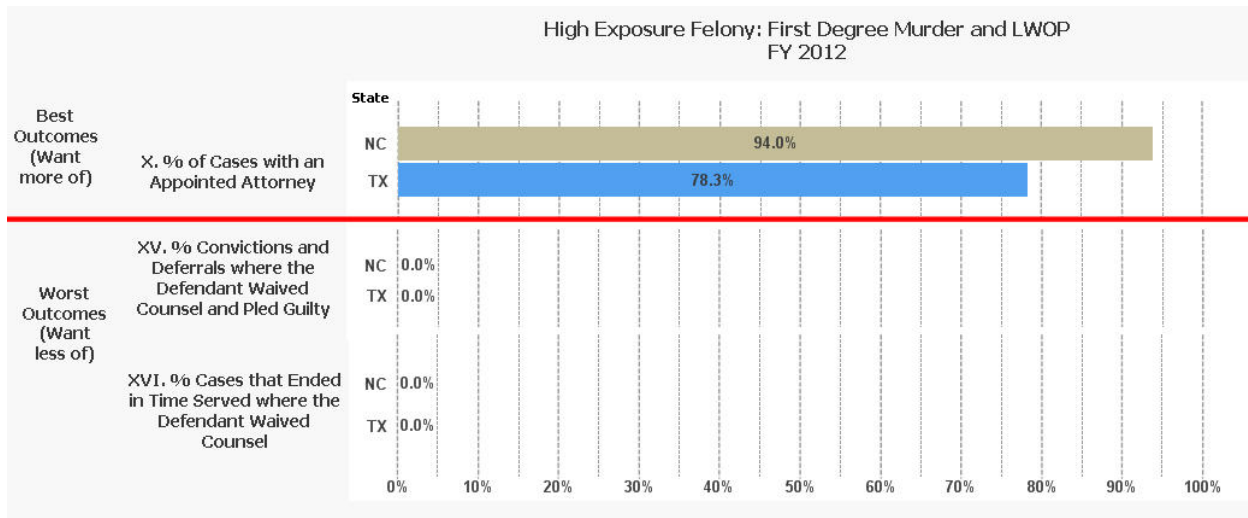
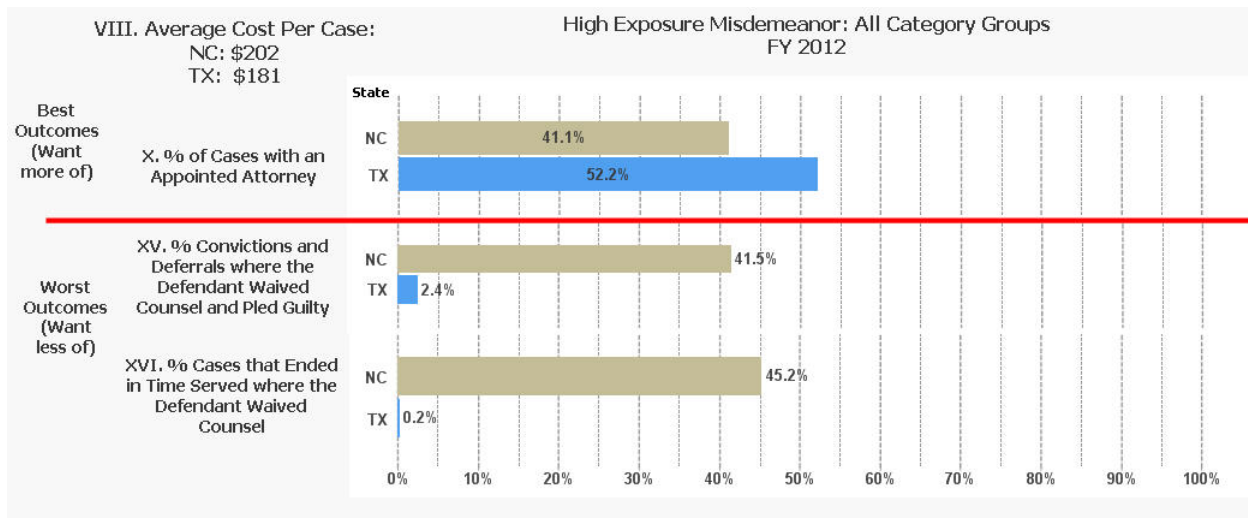
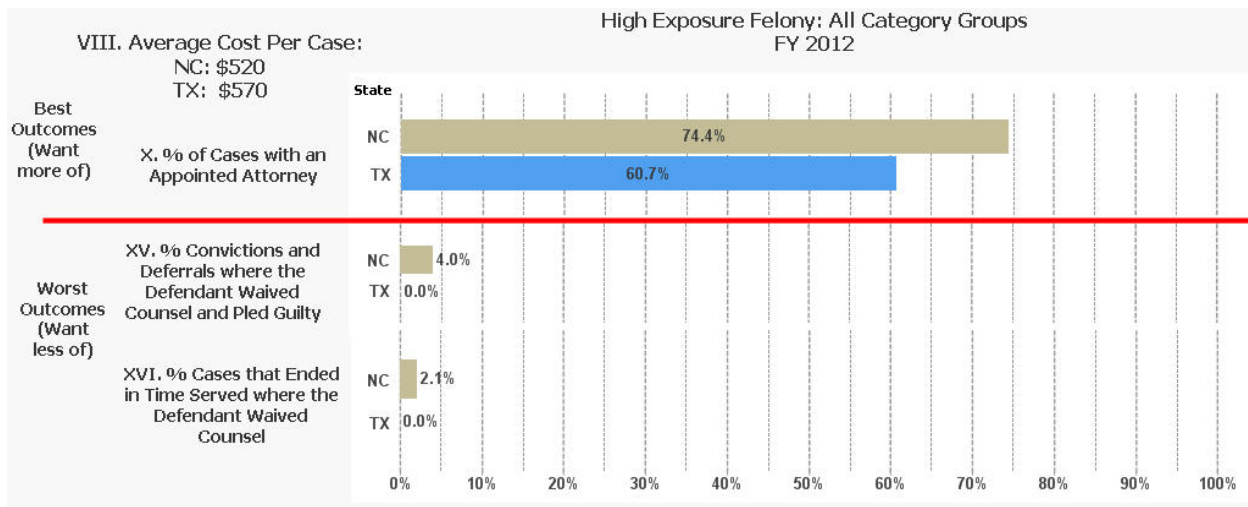


Low Exposure Misdemeanor: Travis County, TX  
Indigent Defense  
FY 2009-2012



# High Exposure DWI and DWI Related: Travis County, TX Indigent Defense FY 2009-2012





VIII. Average Cost Per Case:  
 NC: \$193  
 TX: \$140

Low Exposure Misdemeanor: All Category Groups  
 FY 2012

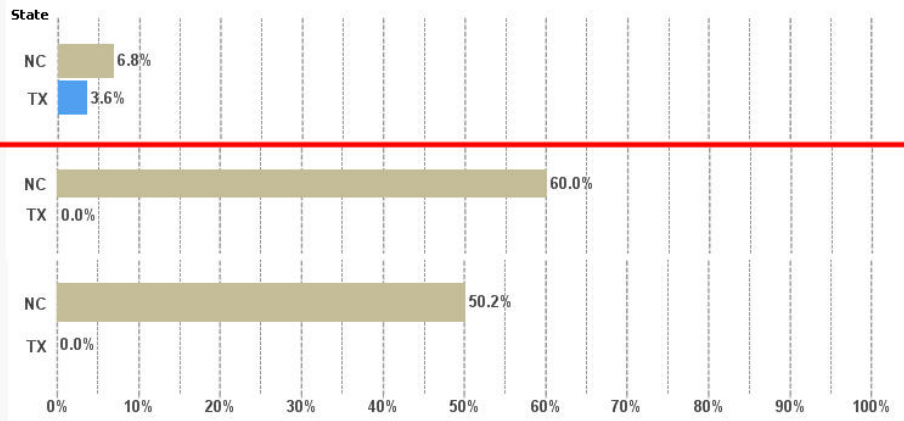
Best  
 Outcomes  
 (Want  
 more of)

X. % of Cases with an  
 Appointed Attorney

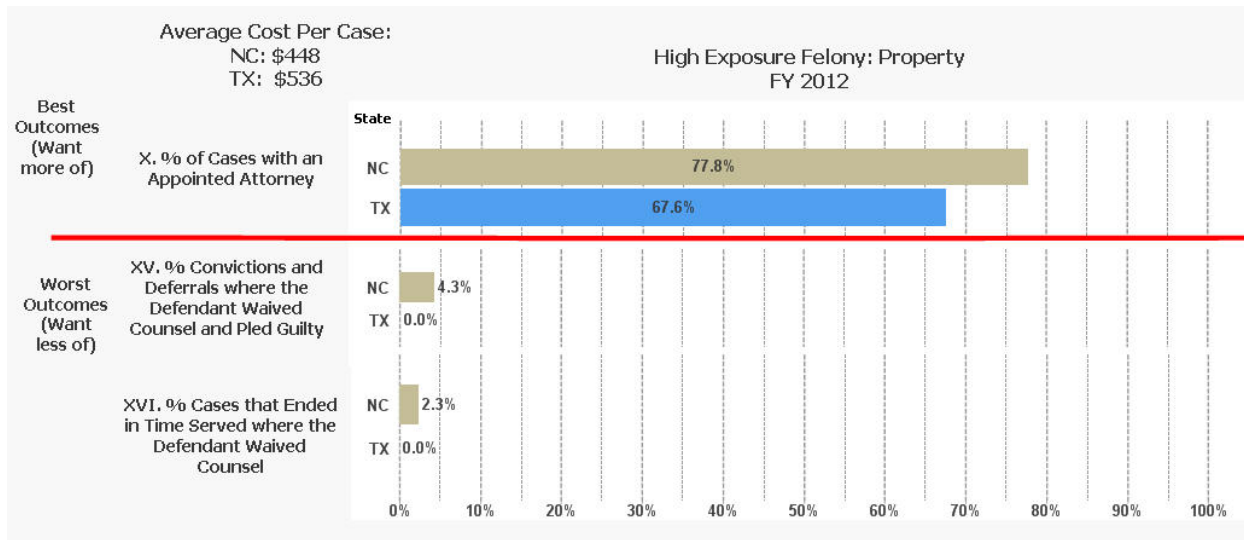
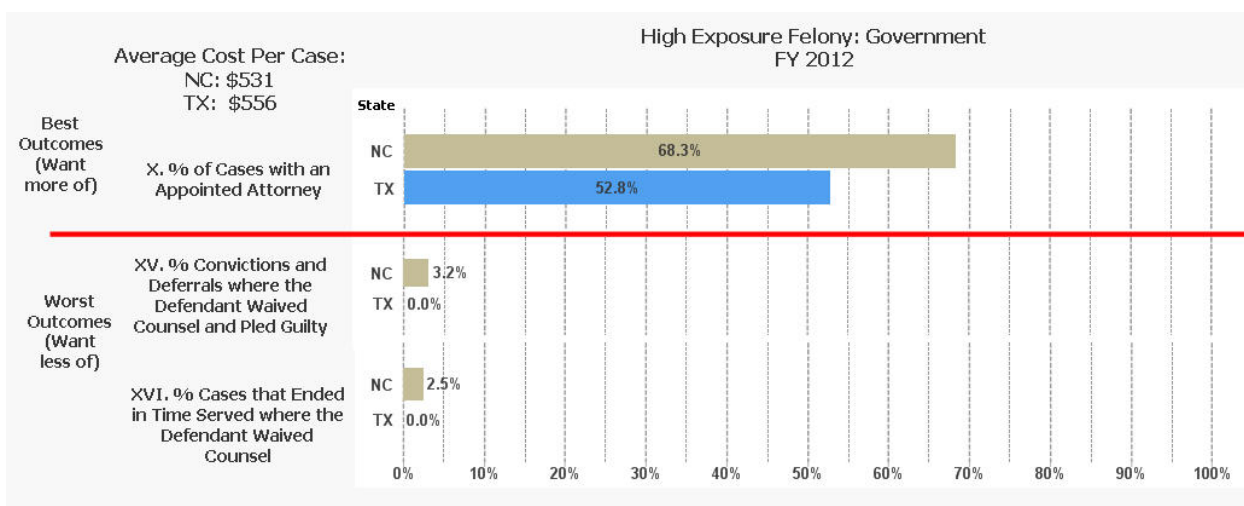
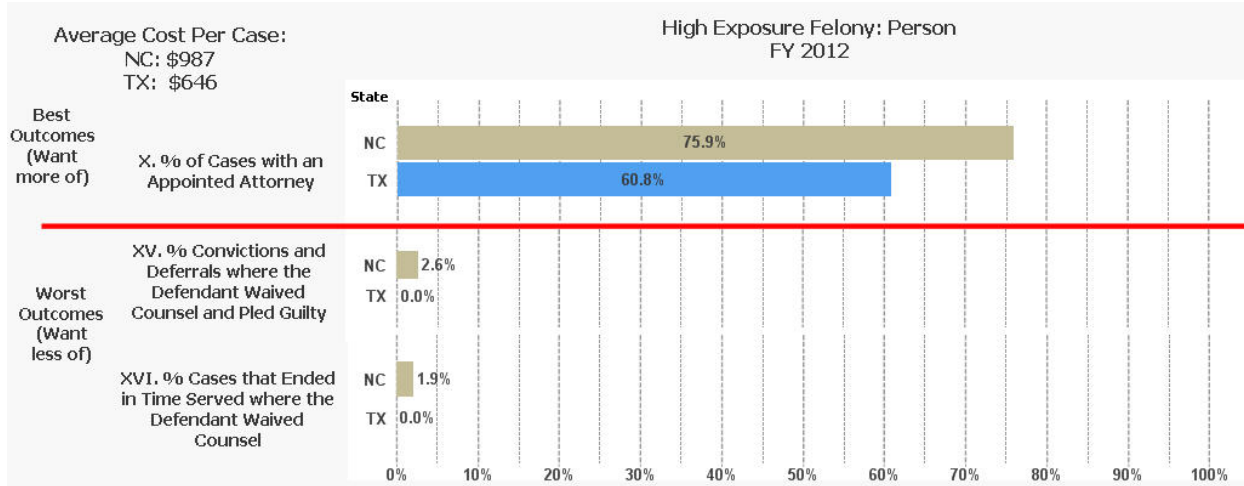
Worst  
 Outcomes  
 (Want  
 less of)

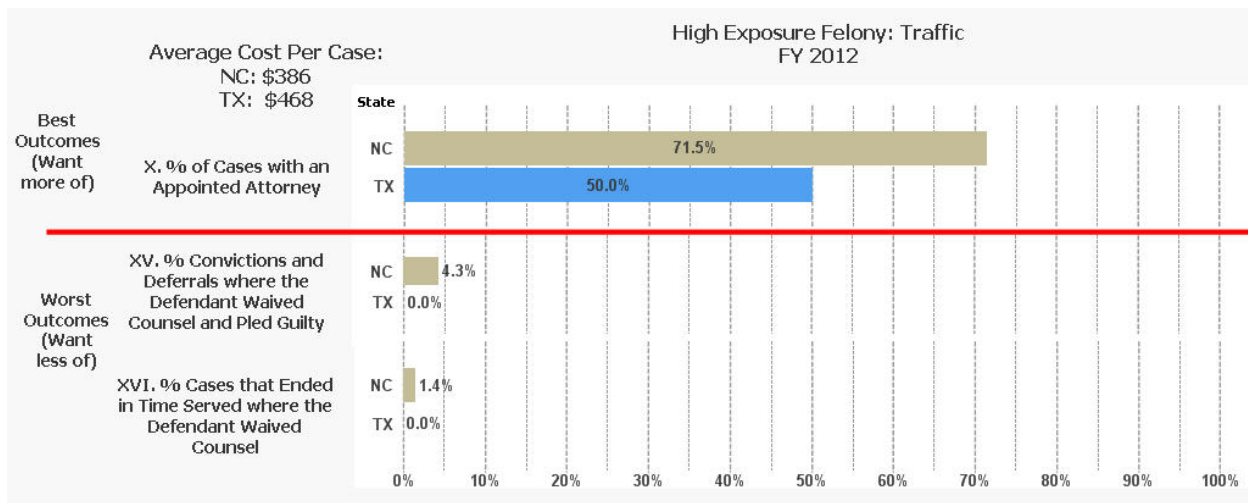
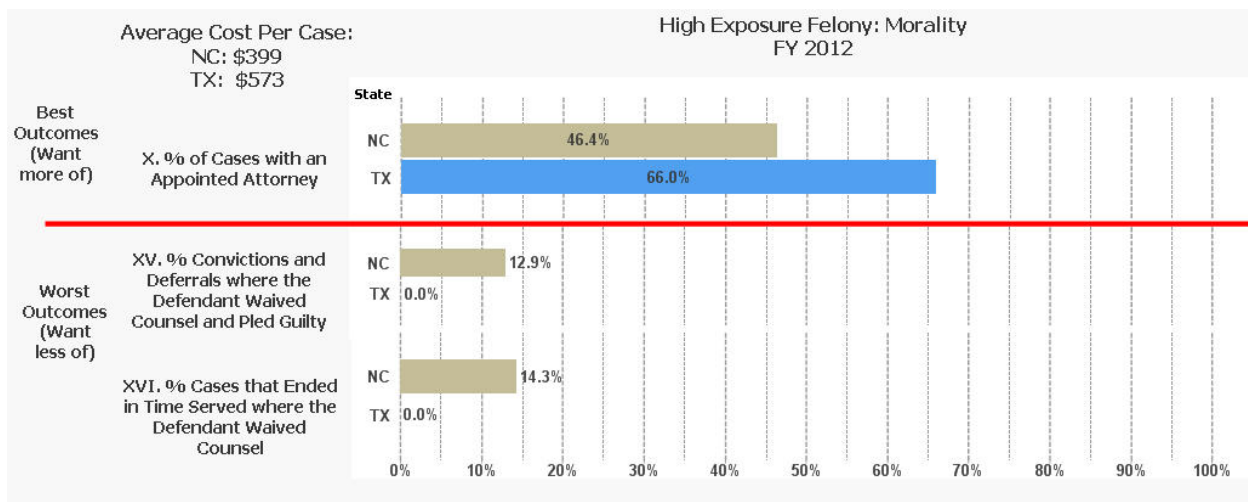
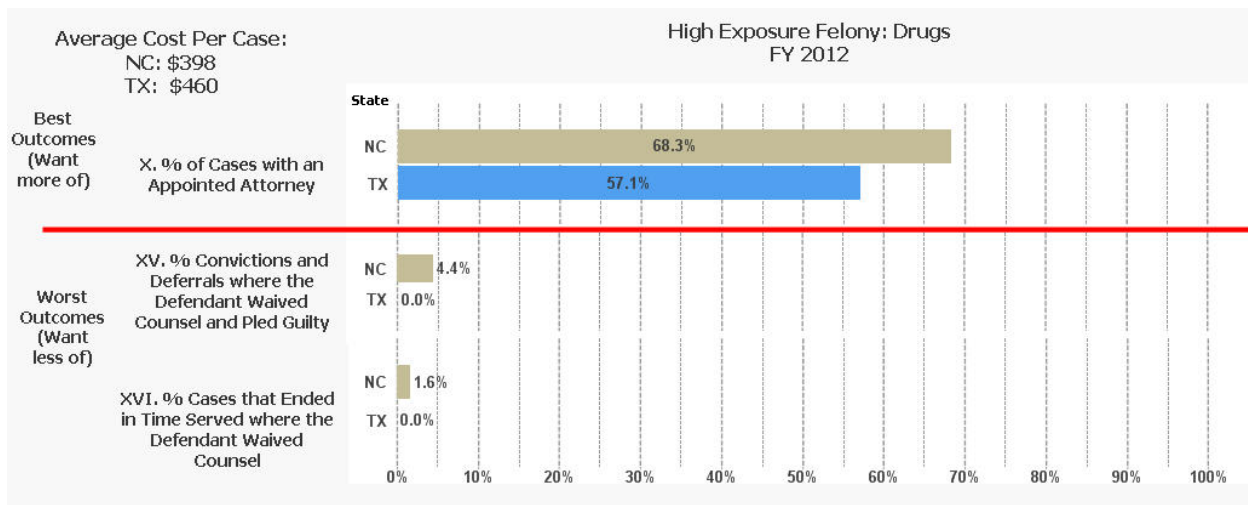
XV. % Convictions and  
 Deferrals where the  
 Defendant Waived  
 Counsel and Pled Guilty

XVI. % Cases that Ended  
 in Time Served where the  
 Defendant Waived  
 Counsel

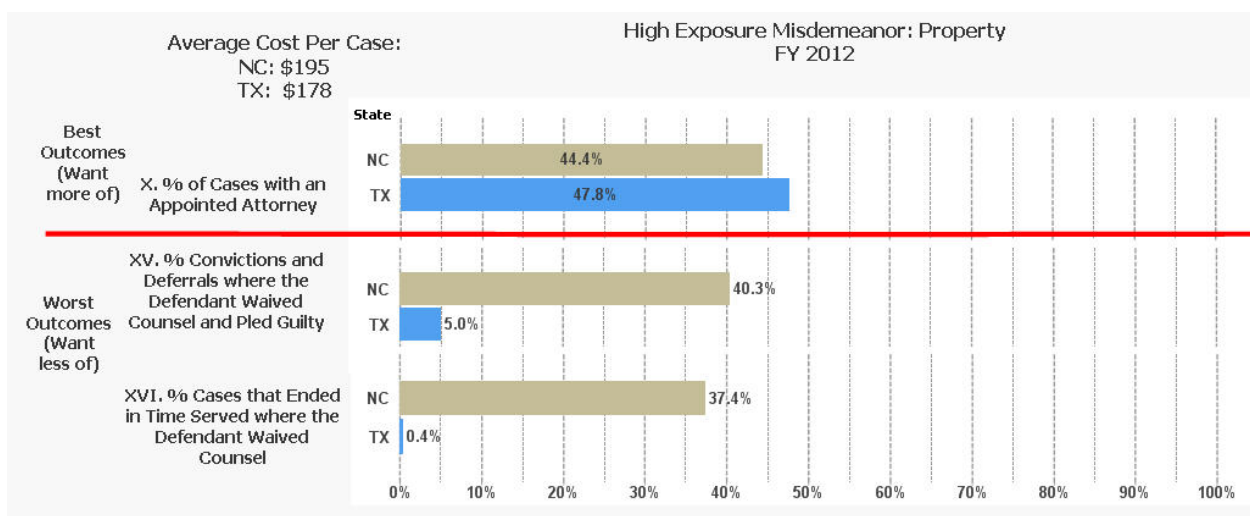
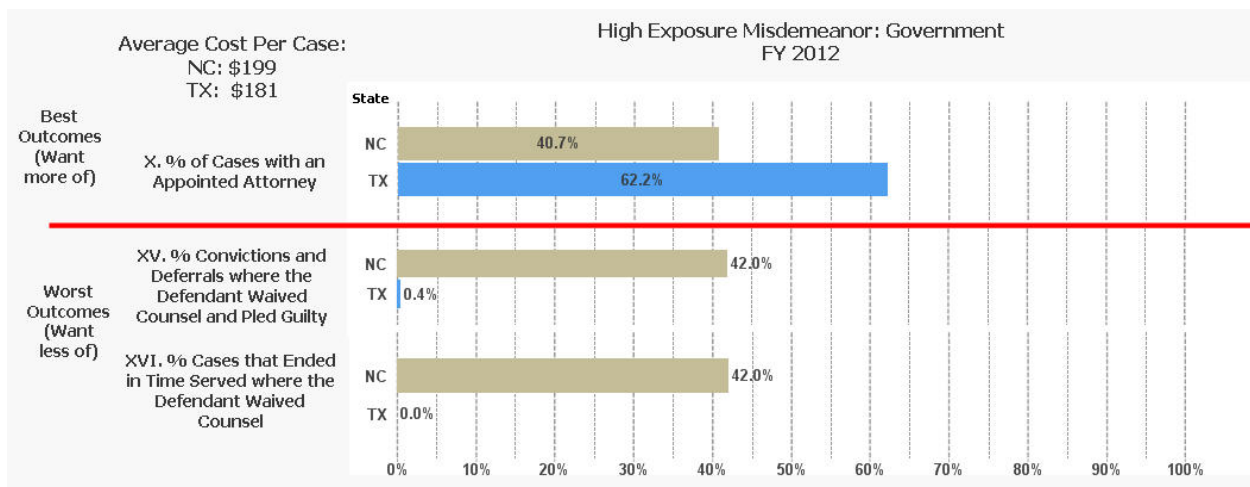
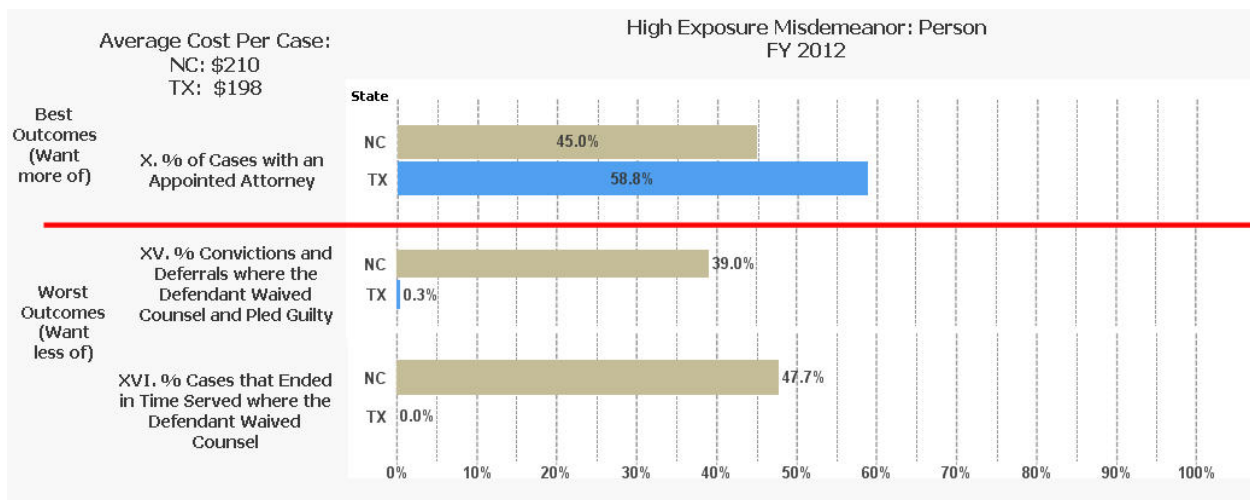


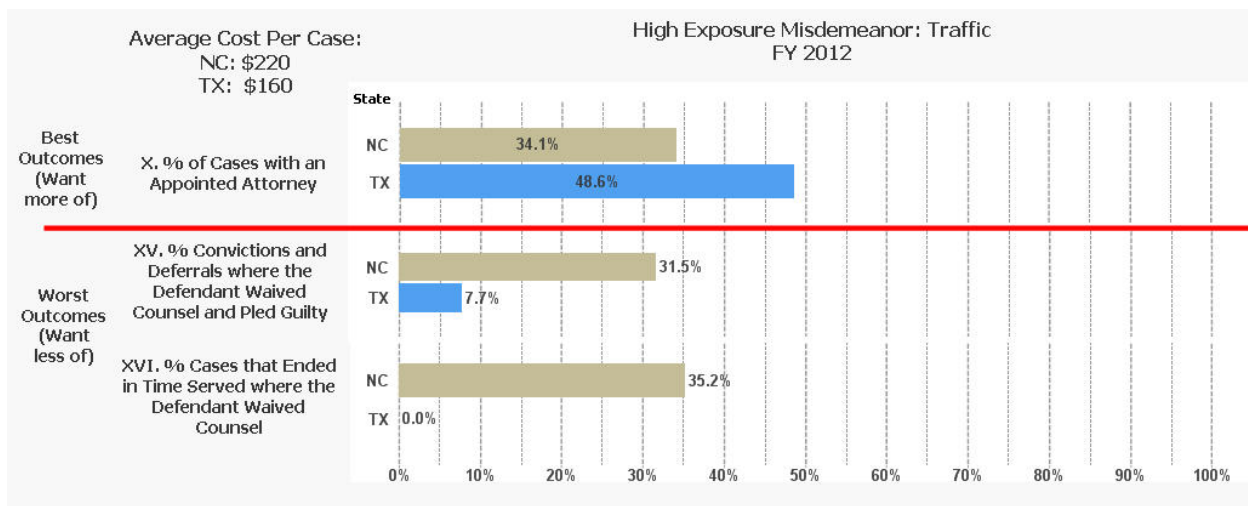
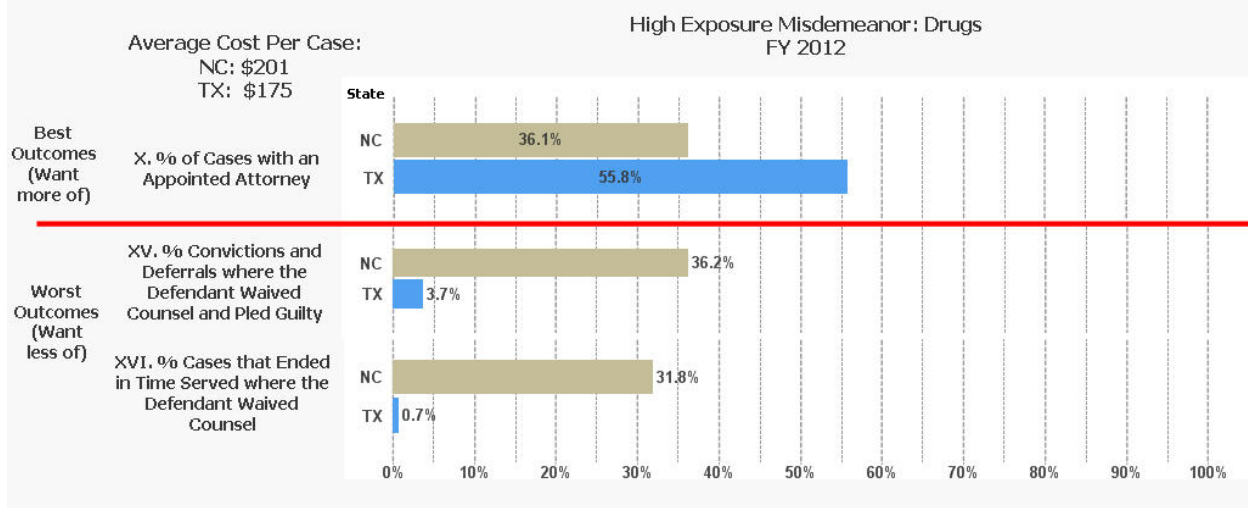
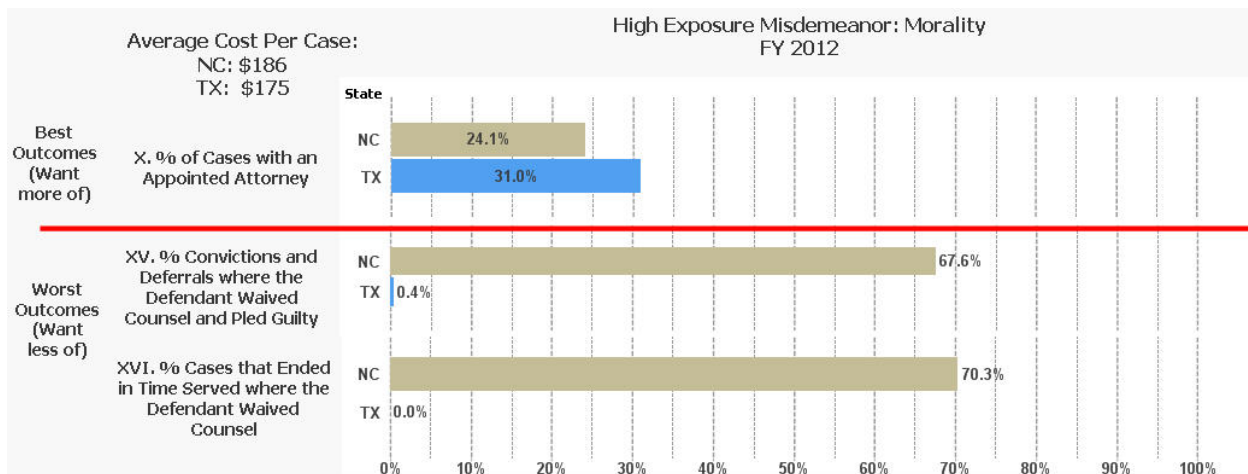






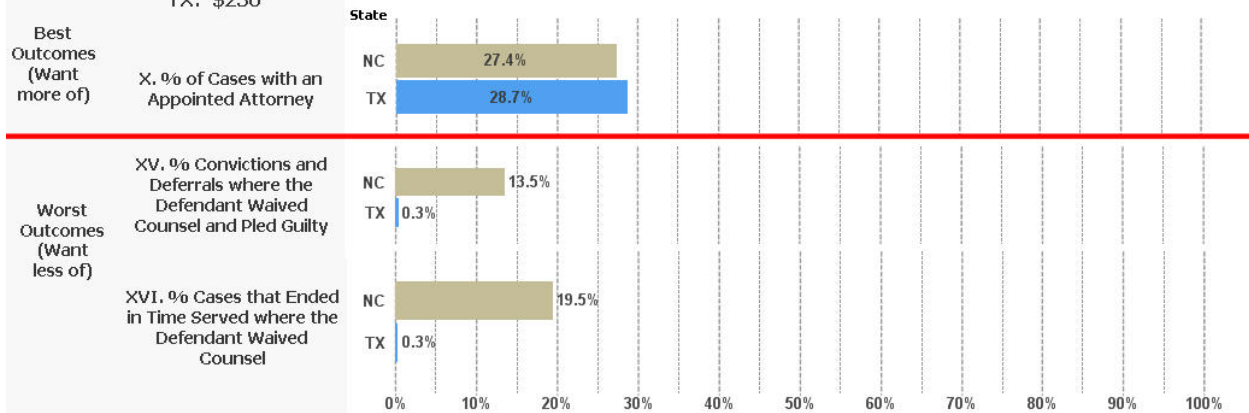






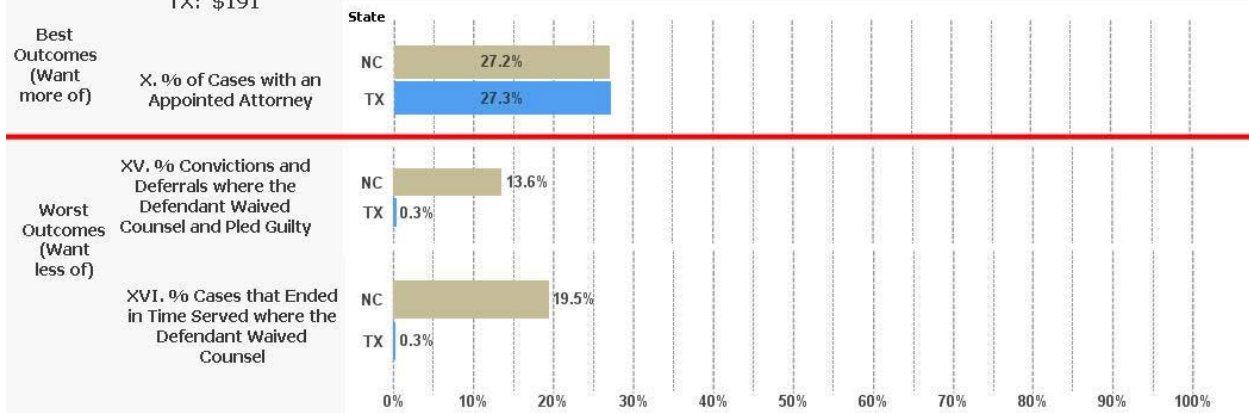
VIII. Average Cost Per Case:  
NC: \$328  
TX: \$230

#### High Exposure DWI & DWI Related FY 2012



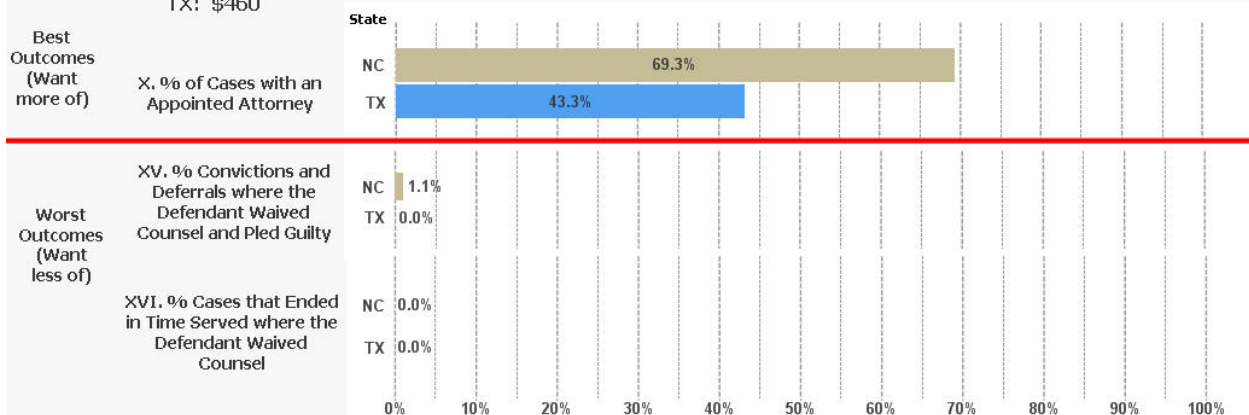
VIII. Average Cost Per Case:  
NC: \$322  
TX: \$191

#### High Exposure Misdemeanor: DWI & DWI Related FY 2012



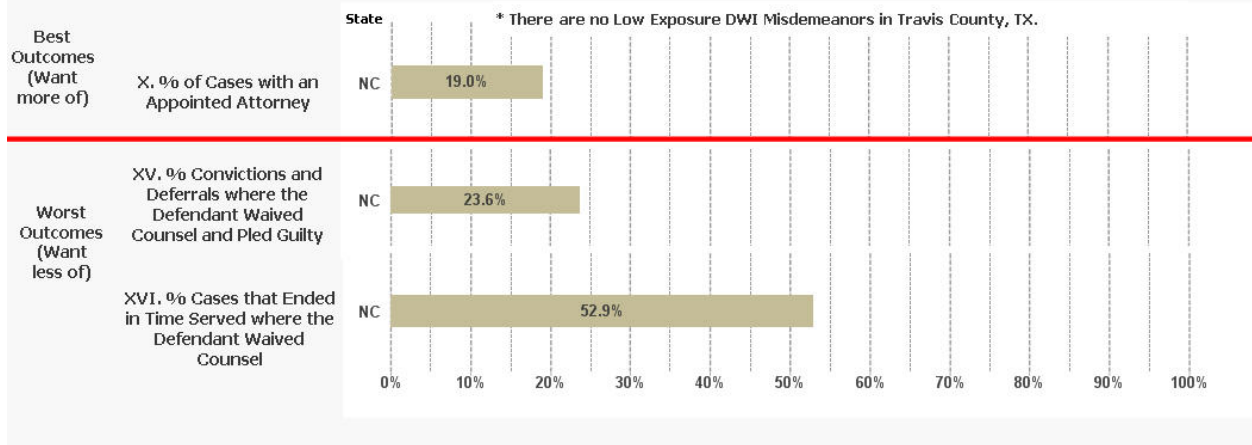
VIII. Average Cost Per Case:  
NC: \$789  
TX: \$460

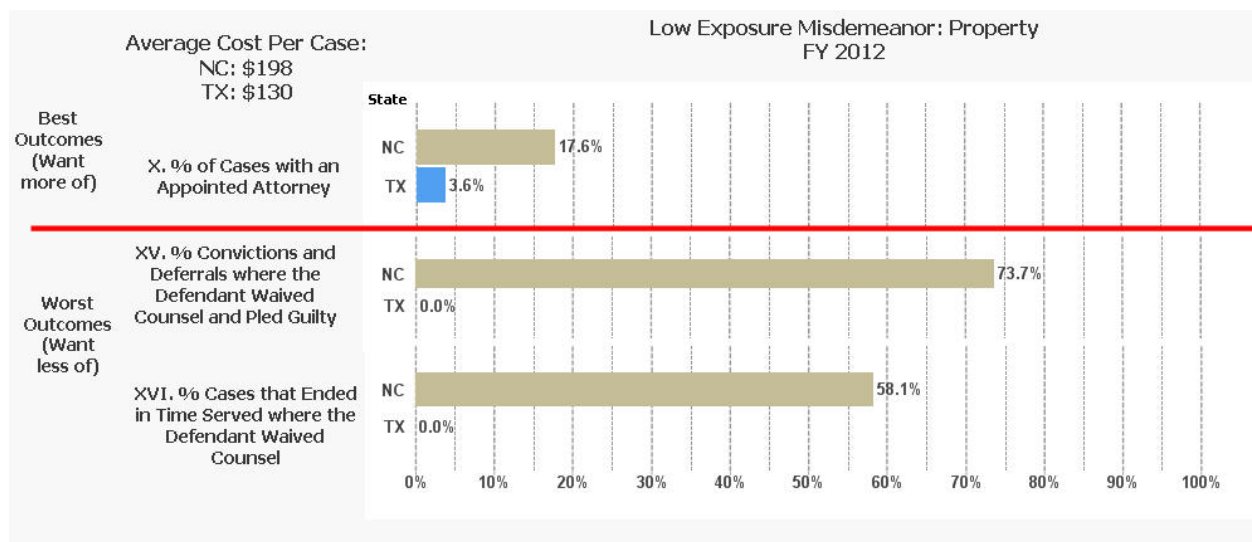
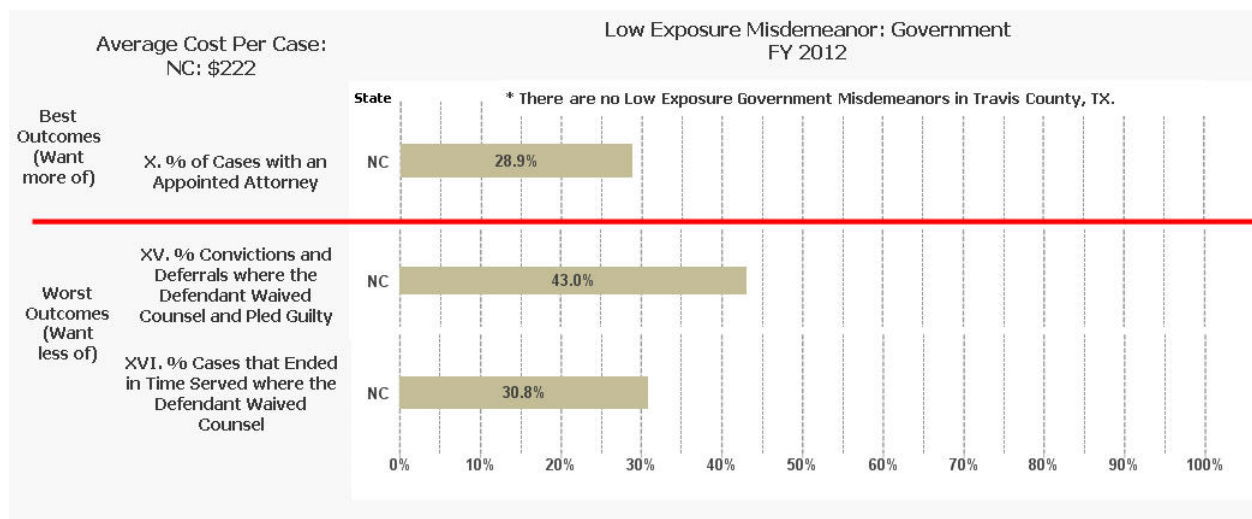
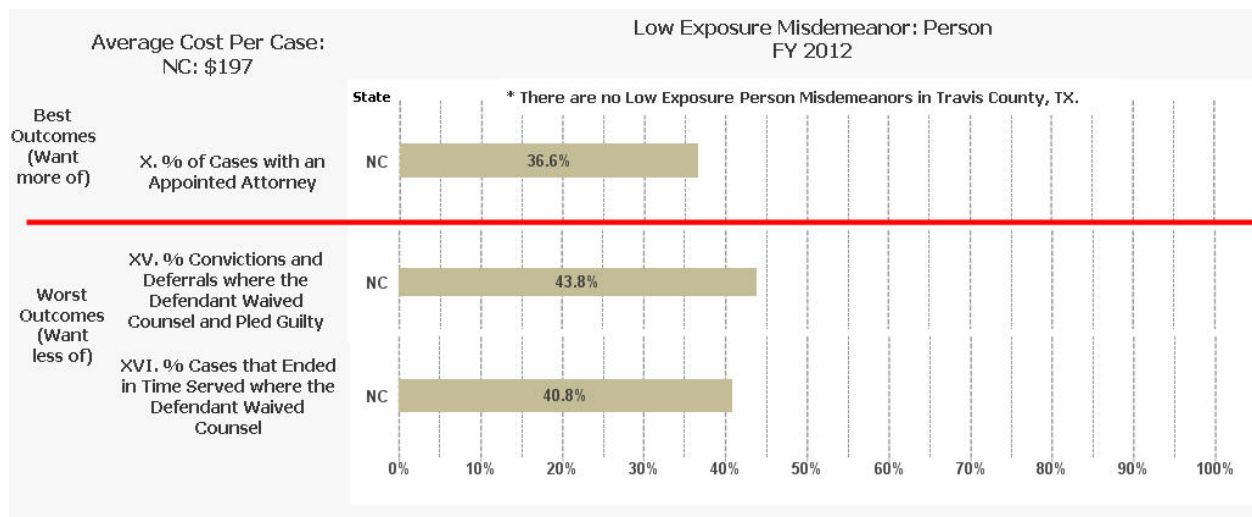
#### High Exposure Felony: DWI & DWI Related FY 2012



Average Cost Per Case:  
NC: \$232

Low Exposure Misdemeanor: DWI  
FY 2012





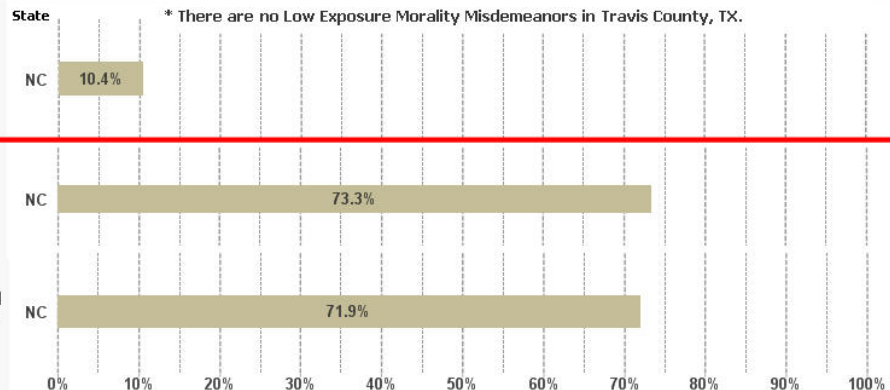


Average Cost Per Case:  
NC: \$189

### Low Exposure Misdemeanor: Morality FY 2012

Best  
Outcomes  
(Want  
more of)

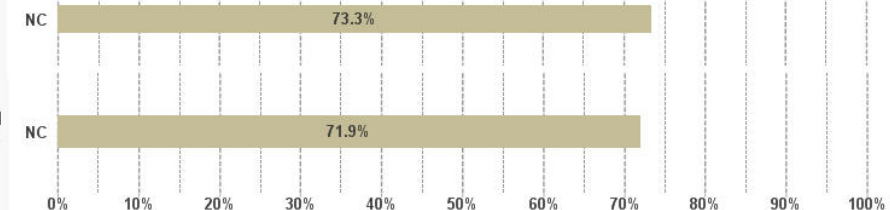
X. % of Cases with an  
Appointed Attorney



Worst  
Outcomes  
(Want  
less of)

XV. % Convictions and  
Deferrals where the  
Defendant Waived  
Counsel and Pled Guilty

XVI. % Cases that Ended  
in Time Served where the  
Defendant Waived  
Counsel

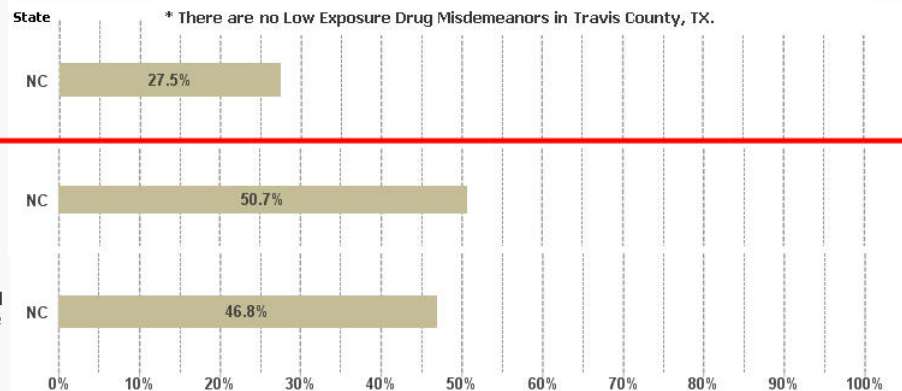


Average Cost Per Case:  
NC: \$191

### Low Exposure Misdemeanor: Drugs FY 2012

Best  
Outcomes  
(Want  
more of)

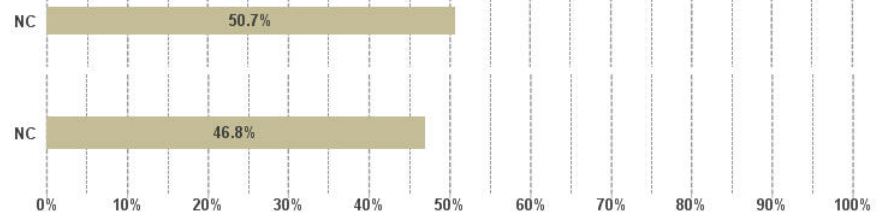
X. % of Cases with an  
Appointed Attorney



Worst  
Outcomes  
(Want  
less of)

XV. % Convictions and  
Deferrals where the  
Defendant Waived  
Counsel and Pled Guilty

XVI. % Cases that Ended  
in Time Served where the  
Defendant Waived  
Counsel

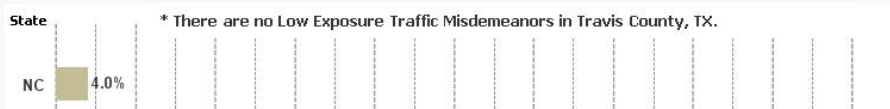


Average Cost Per Case:  
NC: \$190

### Low Exposure Misdemeanor: Traffic FY 2012

Best  
Outcomes  
(Want  
more of)

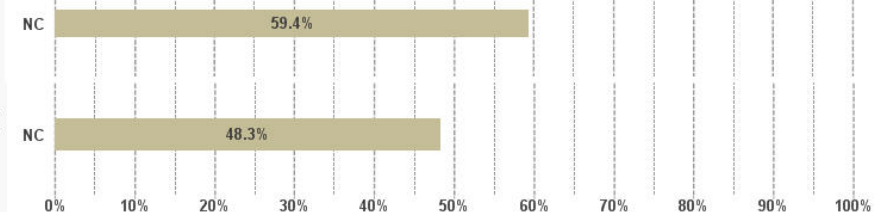
X. % of Cases with an  
Appointed Attorney



Worst  
Outcomes  
(Want  
less of)

XV. % Convictions and  
Deferrals where the  
Defendant Waived  
Counsel and Pled Guilty

XVI. % Cases that Ended  
in Time Served where the  
Defendant Waived  
Counsel



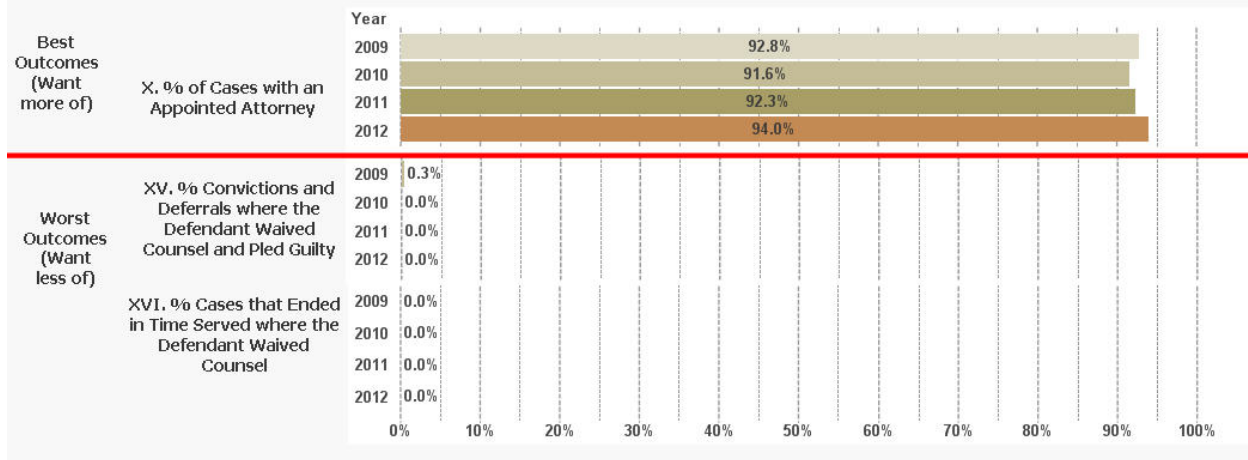
**NCSEP Access to Attorney Selected Key Performance Indicators (KPIs)**  
**U.S. States At-a-Glance: Access to Counsel at Initial Bail Determinations**  
**& First Appearances Before a Judge**

FY14	KPI XIII: The Proportion of Initial Bail Determinations Where the Indigent Defense System Provided Access to Counsel in Adult Criminal Cases.*				KPI XIV: The Proportion of First Appearance Court Sessions Before a Judge Where the Indigent Defense System Provided Access to Counsel to Qualified Defendants in Adult Criminal Cases.			
U.S. States	All	At Least 50%	Less than 50%	None	All	At Least 50%	Less than 50%	None
Alabama								
Alaska								
Arizona								
Arkansas								
California								
Colorado								
Connecticut				●	●			
Delaware								
District of Columbia								
Florida								
Georgia								
Hawaii								
Idaho								
Illinois								
Indiana								
Iowa								
Kansas								
Kentucky								
Louisiana								
Maine								
Maryland								
Massachusetts								
Michigan								
Minnesota								
Mississippi								
Missouri								
Montana								
Nebraska								
Nevada								
New Hampshire								
New Jersey								
New Mexico								
New York								
North Carolina				●			●	
North Dakota								
Ohio								
Oklahoma								
Oregon								
Pennsylvania								
Rhode Island								
South Carolina								
South Dakota								
Tennessee								
Knox County, TN				●		●		
Texas								
Travis County, TX				●	●			
Utah								
Vermont								
Virginia								
Washington								
West Virginia								
Wisconsin								
Wyoming								

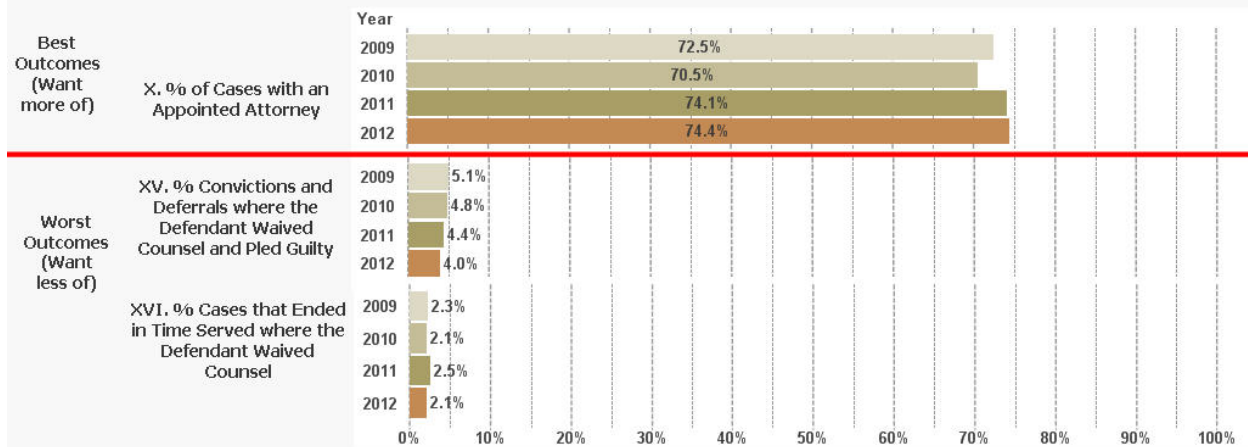
\* Includes any initial bail determinations where the defendant had the opportunity to consult with an attorney, regardless of whether the defendant actually took advantage of the opportunity.



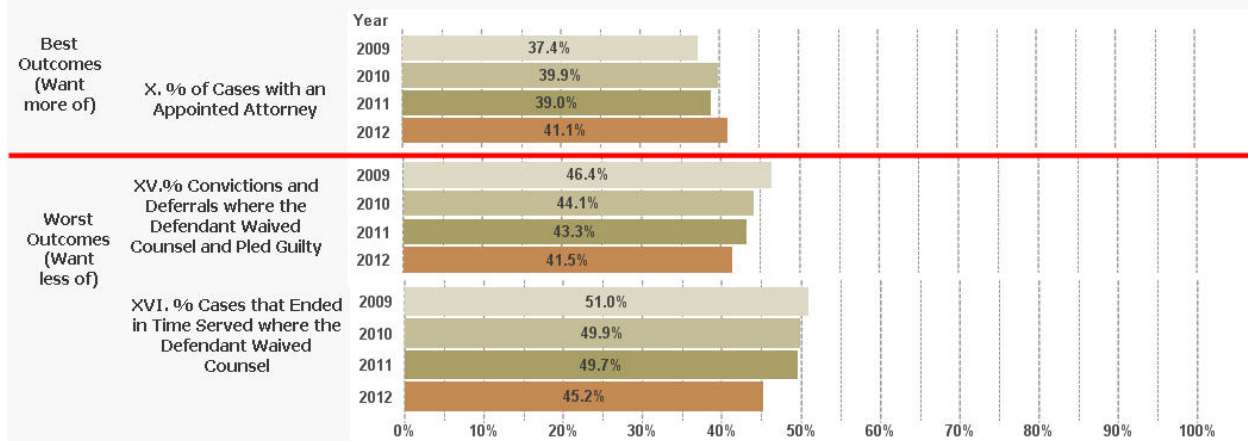
First Degree Murder and LWOP: North Carolina  
FY 2009 - FY 2012



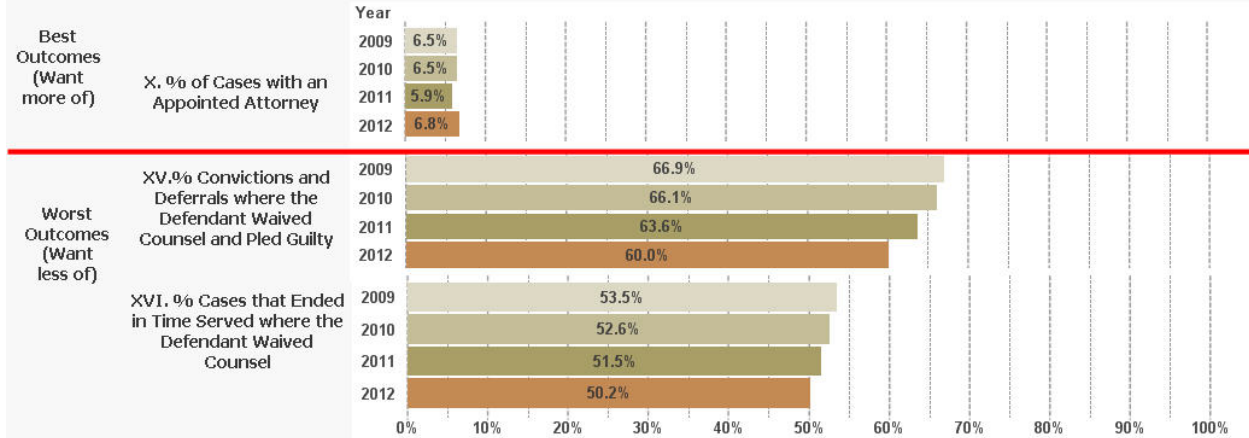
High Exposure Felony: North Carolina  
FY 2009 - 2012



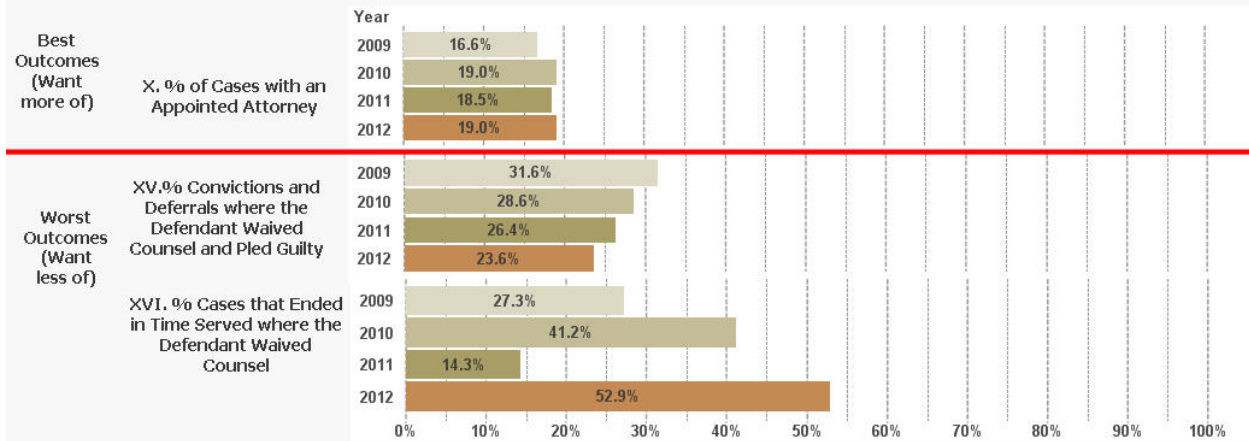
High Exposure Misdemeanor: North Carolina  
FY 2009 - 2012



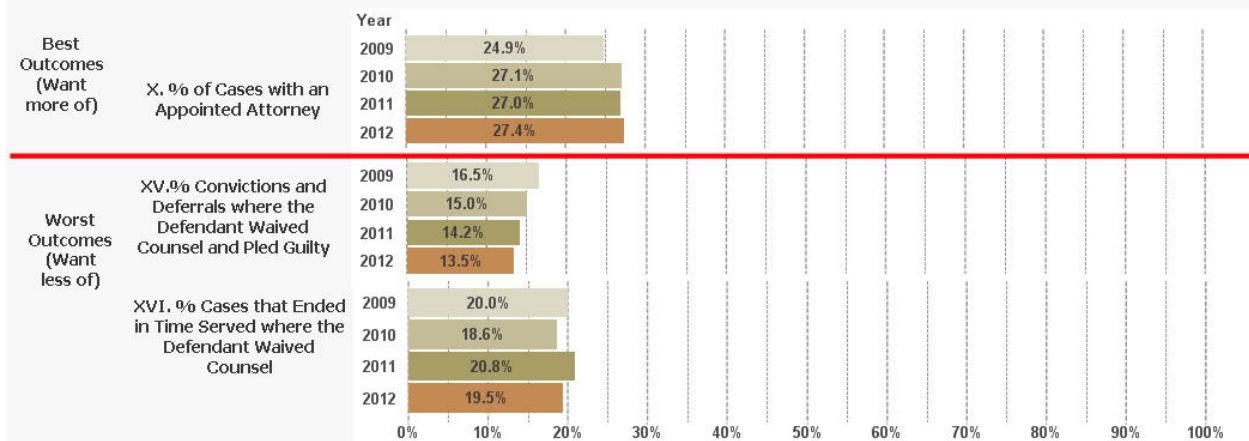
Low Exposure Misdemeanor: North Carolina  
FY 2009 - 2012



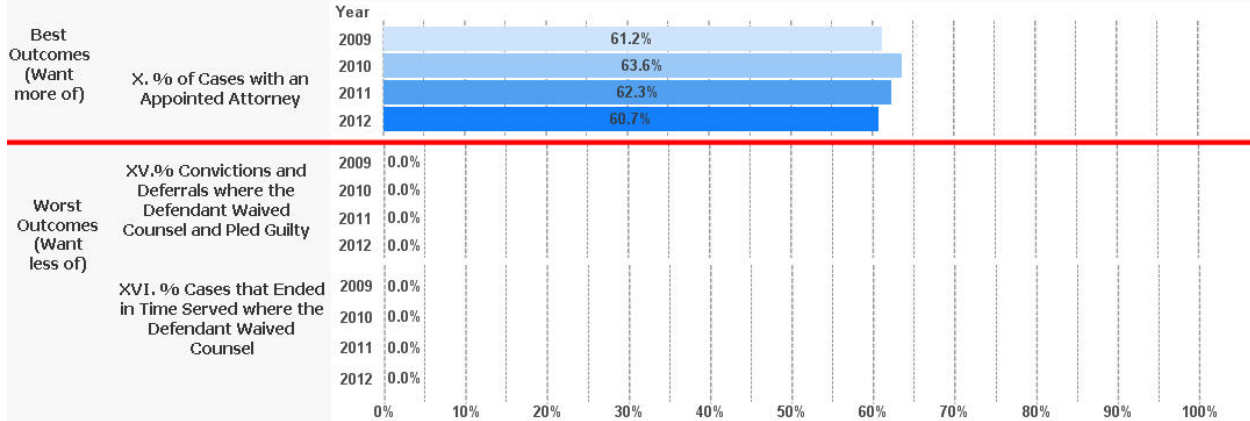
Low Exposure DWI: North Carolina  
FY 2009 - 2012



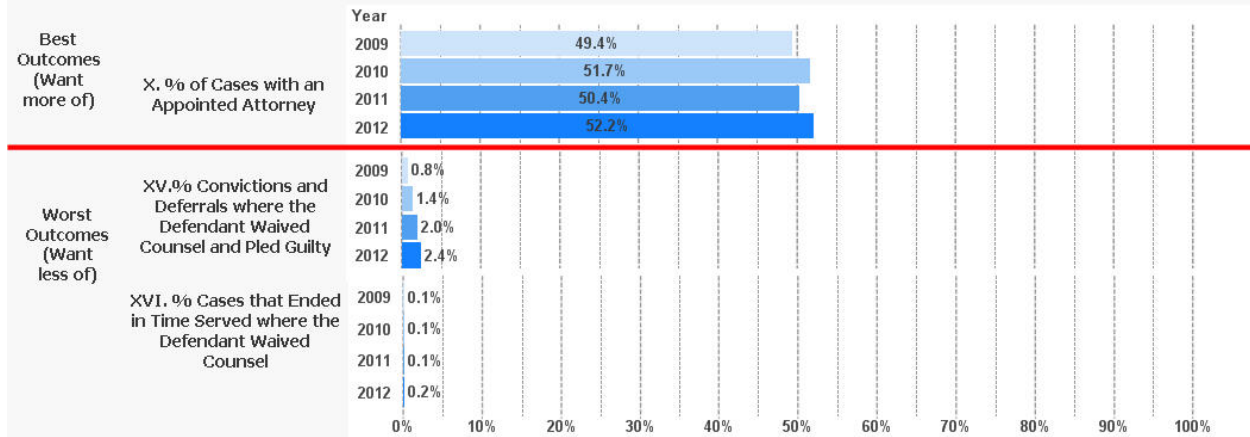
High Exposure DWI: North Carolina  
FY 2009 - 2012



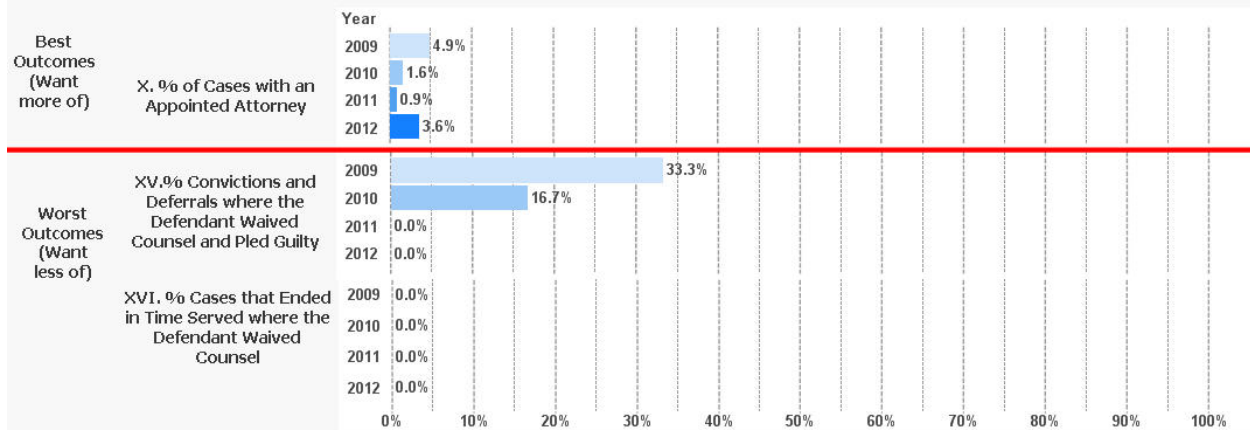
### High Exposure Felony: Travis County, TX FY 2009 - 2012



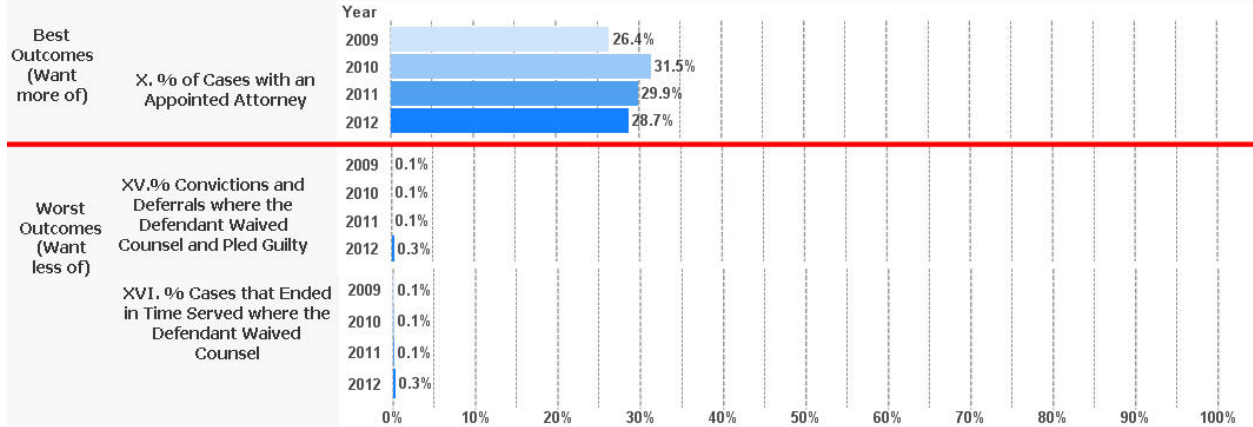
### High Exposure Misdemeanor: Travis County, TX FY 2009 - 2012



### Low Exposure Misdemeanor: Travis County, TX FY 2009 - 2012



High Exposure DWI and DWI Related: Travis County, TX  
FY 2009 - 2012



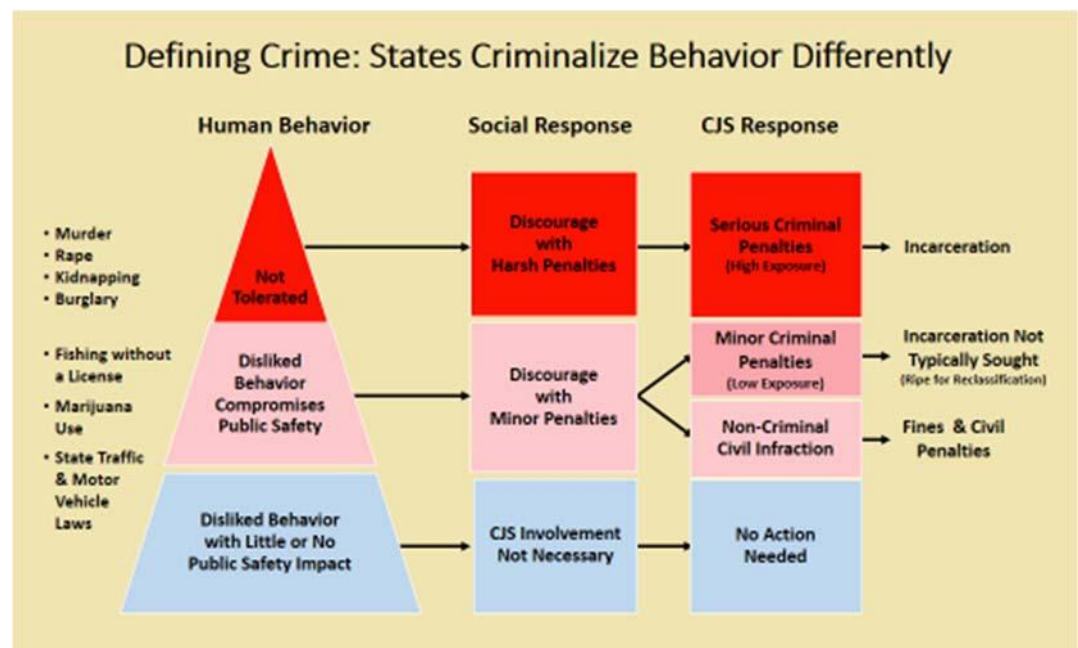
## Appendix C

### Low Exposure and High Exposure Cases: Comparing Case Outcomes across Jurisdictions

Human beings live and operate within a social compact. When individuals break that social compact and behave in unacceptable ways, state and local government step in to protect public safety by way of the criminal justice system. The more serious the transgression, the more serious the criminal justice system response. Minor transgressions are considered civil infractions and result in tickets and a fine, but not incarceration. More serious transgressions are considered criminal offenses and are punishable by incarceration. However, the definition of what is “criminal” is not universal across states. State legislatures and local governments have considerable latitude in defining crime and punishment. What is considered criminal versus what is considered a civil infraction will vary by state. There are offenses,

such as murder, rape, robbery, and assault, which are consistently defined as “criminal” across all states, and committing these offenses typically results in a custodial or jail sentence. There are, however, large numbers of less serious offenses where states vary on whether the offense is considered criminal.

In sum, an act that is considered criminal in one state, may be considered a civil infraction in another state, and neither criminal nor a civil infraction in another.



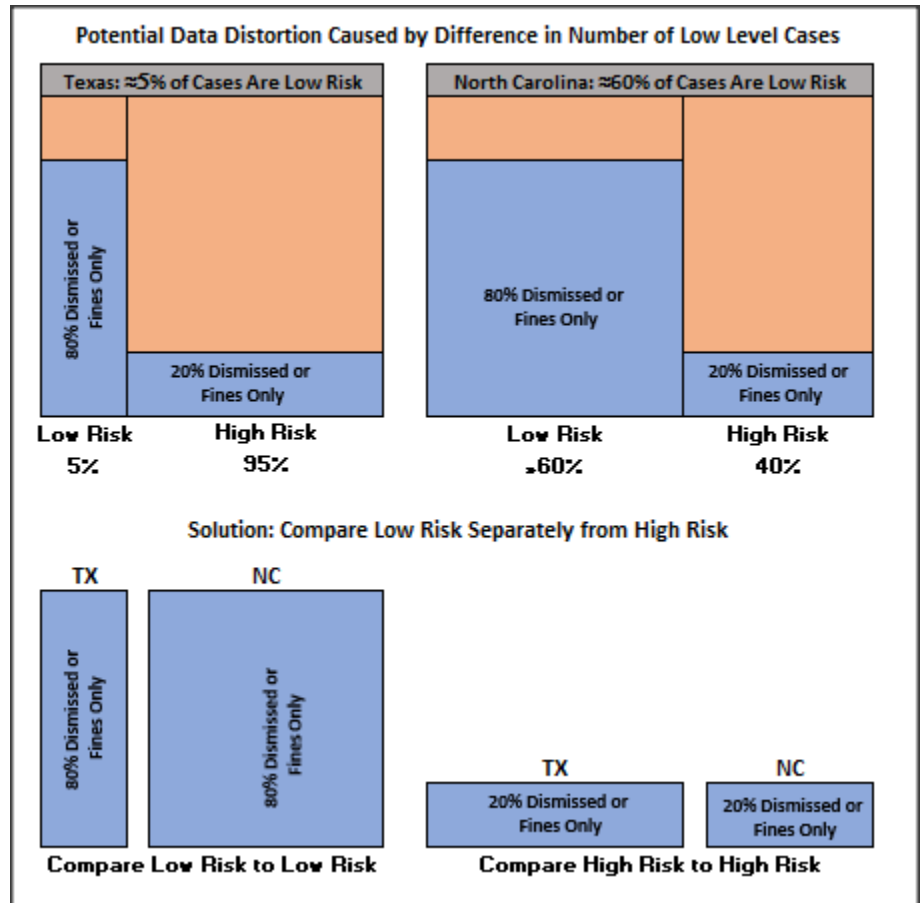
What is significant about these less serious offenses, in terms of research, is the fact that when states do opt to criminalize them, states tend to punish them less seriously in that these cases typically result in dismissals and/or fees and fines, and not in custodial sentences. This variation across states becomes a problem when we compare case outcomes across states. States with high numbers of offenses that rarely result in incarceration will produce indigent defense systems with high dismissal rates. States with low numbers of these offenses will produce indigent defense systems with low dismissal rates. Consequently, a cross-state comparison would reveal more about the states’ statutory constructions than it would about the quality of the respective indigent defense systems.



Figure 2 illustrates graphically how this dynamic plays out in cross-jurisdiction comparisons. In Texas, less serious offenses are legislated as civil infractions, while in North Carolina these same offenses are considered criminal. Consequently, Texas has only a small number of offenses that rarely result in incarceration (5% of cases annually), compared to North Carolina's much larger number (60% of cases annually). As a result, in a cross-jurisdictional comparison, North Carolina's dismissal rate will be much higher than Texas's, making North Carolina's indigent defense system appear to have better client outcomes than Texas, although North Carolina just has a higher number of these less serious criminal offenses that are punished less severely.

To avoid skewed cross-jurisdictional comparison, the case outcome methodology distinguishes offenses that often result in custodial sentences from offenses that rarely do and compares them separately across jurisdictions (see Figure 2). To implement this methodology, each jurisdiction classified every criminal offense as either "High Exposure" or "Low Exposure," based on how often they result or do not result in custodial sentences (see below for operational definition). Then, once classified, High Exposure cases outcomes are compared across jurisdictions and Low Exposure case outcomes are compared across jurisdictions (See Figure 2).

Figure 2



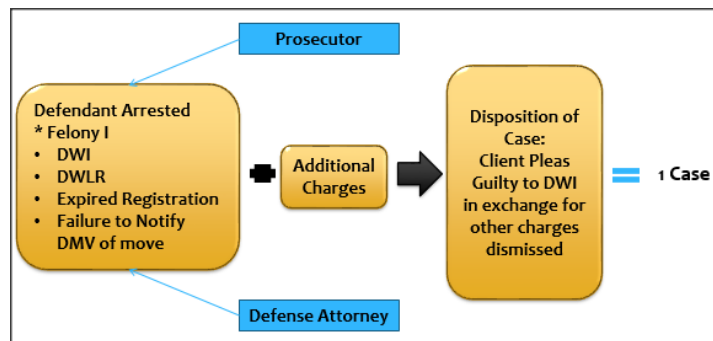
## Appendix D

### Defining a Case

One of the main achievements of the NCSEP Pilot Site Project was the development of a uniform definition of a case across the four states. Currently, the definition of a case varies widely across the country. Case definitions range from defining a case as a single charge, to all charges contained in a docket or file number, or all charges that share the same offense date, and even, simply, the number of defendants. The project's first task was to develop a uniform, valid, research-based definition of a case.

For the defendant, the court system operates on a “case” basis. Defendants face one or more charges arising from a criminal incident. A prosecuting attorney and a defense attorney are assigned to a case and the charges are investigated and, typically, resolved together as a unit, e.g., a defendant may plead guilty to one offense in exchange for the dismissal of another offense.

A valid case definition needs to group all charges that resulted in a single outcome or sentence for the defendant, e.g., contain the number and type of charges the defendant faced, the number and type of charges he was convicted of, and the sentence he received for those convictions.



**Important Note:** Research showed that a docket or file number does not meet the above criteria. It is quite common for multiple docket numbers to be handled by a single defense attorney and be disposed together. For example, in North Carolina there was a defendant who had 400 file numbers, each containing a single worthless check charge. All 400 file numbers, handled by a single attorney, were disposed together on one court date. The defendant received a deferred prosecution outcome and the attorney disposed of the case in three hours.


In theory, since a case consists of all charges that are disposed together, one could group all charges for a single defendant disposed on the same day. However, defense agencies need the ability to track pending cases and caseloads, as well as closed cases, and the idea of maintaining separate data infrastructures, one for open charges and one for closed charges, is neither feasible nor desirable. Consequently, the pilot sites needed a case definition that could be applied to open cases that would approximate the true number of disposed cases as closely as possible.



Alternative case definitions were investigated, including using the offense date to group charges into a cases. The investigation revealed that when a *felony* offense was involved and a defendant received new charges within 21 days or had outstanding misdemeanor charges within 21 days of the felony offense, the additional charges were handled by the same attorney and were disposed with the original felony charge the majority of the time. Consequently, the pilot sites defined a case as all charges where:

1. If file or docket number includes a felony offense, include all file or docket numbers (felony and misdemeanor) with warrant served dates 21 days before or after the warrant served date that contained the felony offense. The pilot sites found adding this window significantly increased accuracy.
2. For misdemeanor charges that are not included in a felony case, all File or Docket numbers with the same warrant served date are contained in one case.
3. “Returning” cases, such as probation violations, which may or may not have the same warrant served date are grouped into separate cases in order to capture the outcome of these cases.

*Example of Multiple Charges Grouped into Cases*



	A	B	C	D	E	F	G
	CaseID	FileNo.	Type and Class of Charge	Charge Description	Date Disposed	Disposition of Charge	Disposition of Case
1	40007F0030145-000	07CRS90404	Felony Class H	INDEC EXPOSURE DEF>=18 VIC<16	6/24/2008	Non-Custodial Sentence, Unsupervised Probation	Non-Custodial Sentence, Unsupervised Probation
2	40007F0030155-000	10CR736654	Misdemeanor Class 3	SECOND DEGREE TRESPASS	8/30/2011	Deferred Prosecution	Deferred Prosecution
3	40007F0030193-000	07CRS92469	Felony Class D	ROBBERY WITH DANGEROUS WEAPON	3/24/2008	Consolidated for Judgment	Flat Time/Straight Sentence
4	40007F0030193-000	07CRS92469	Felony Class D	ROBBERY WITH DANGEROUS WEAPON	3/24/2008	Flat Time/Straight Sentence	Flat Time/Straight Sentence
5	40007F0030604-000	10CR71900	Misdemeanor Class 1	MAINTN VEH/DWELL/PLACE CS (M)	1/13/2011	Deferred Prosecution	Deferred Prosecution
6	40007F0031052-000	10CRS97359	Felony Class H	LARCENY AFTER BREAK/ENTER	5/3/2011	Dismissal w/o Leave	Split Sentence
7	40007F0031052-000	10CRS97359	Felony Class H	BREAKING AND OR ENTERING (F)	5/3/2011	Dismissal w/o Leave	Split Sentence
8	40007F0031052-000	10CRS97359	Felony Class H	BREAKING AND OR ENTERING (F)	5/3/2011	Split Sentence	Split Sentence
9	40007F0031052-000	10CRS97359	Felony Class H	LARCENY AFTER BREAK/ENTER	5/3/2011	Dismissal w/o Leave	Split Sentence
10	40007F0031247-000	11CR79034	Felony Class H	SOLICIT GANG ACTIVITY	7/7/2011	Dismissal w/o Leave	Dismissal w/o Leave
11	40007F0031307-000	09CRS98655	Felony Class H	OBTAIN PROPERTY FALSE PRETENSE	6/17/2010	Flat Time/Straight Sentence	Flat Time/Straight Sentence
12	40007F0031307-000	09CRS98655	Misdemeanor Class 2	RESISTING PUBLIC OFFICER	6/17/2010	Dismissal w/o Leave	Flat Time/Straight Sentence
13	40007F0031307-000	09CRS98655	Felony Class H	LARCENY AFTER BREAK/ENTER	6/17/2010	Consolidated for Judgment	Flat Time/Straight Sentence
14	40007F0031738-000	09CRS101383	Misdemeanor Class 1	POSSESS DRUG PARAPHERNALIA	6/1/2010	Dismissal w/o Leave	Flat Time/Straight Sentence
15	40007F0031738-000	09CRS101383	Felony Class D	ROBBERY WITH DANGEROUS WEAPON	6/1/2010	Flat Time/Straight Sentence	Flat Time/Straight Sentence
16	40007F0031765-000	11CRS93619	Felony Class H	POSS STOLEN GOODS/PROP (F)	2/16/2012	Dismissal w/o Leave	Flat Time/Straight Sentence
17	40007F0031765-000	11CRS93619	Felony Class H	BREAKING AND OR ENTERING (F)	2/16/2012	Flat Time/Straight Sentence	Flat Time/Straight Sentence
18	40007F0030121-000	07CR88298	Felony Class I	UTTERING FORGED ENDORSEMENT	4/13/2012	Non-Custodial Sentence, Supervised Probation	Non-Custodial Sentence, Supervised Probation
19	40007F0030121-001	07CR88298	Felony Probation Violator	Probation Violation	8/15/2012	Probation Modified	Probation Modified
20	40007F0030121-002	07CR88298	Felony Probation Violator	Probation Violation	1/4/2013	Probation Revoked	Flat Time/Straight Sentence

After investigating and comparing alternative case definitions, NCSEP found that the above definition produced the lowest error rate—approximately 6%. Cases were considered “errors” if, 1) the case contained charges that were disposed separately, or 2) split charges disposed together into separate cases. In contrast, the next best definition, which grouped charges into cases using the offense date, produced a significantly higher error rate—almost 20%. This “offense date” case definition often artificially split charges that were disposed together into separate cases—at a rate of 1 in every 5 cases.

**Important Note:** Identifying cases correctly is vital since a review of data from Connecticut, North Carolina, Tennessee, and Texas revealed that the majority of defendants convicted of multiple charges received a concurrent sentence. In North Carolina, only approximately 3% of Flat Time/Straight Sentences contained consecutive sentences. Failing to group charges into cases correctly would distort research results in that it would overstate the amount of punishment when sentences were concurrent and/or overstate the number of cases that result in a dismissal, when in fact the dismissal was actually pursuant to a plea to another charge.

In addition to the case definition, NCSEP developed a CaselD format that would maximize the utility of the variable. The CaselD was designed to indicate: 1) the county where the case was prosecuted, 2) the year the case opened, 3) whether the case included a felony charge, and 4) whether the case was an “original” or a “returning” criminal case.

NCSEP CaselD:

County	Year	Felony	ID No.	Orig. or Ret.	
400	07	F	0030121	-000	Original Case
400	07	F	0030121	-001	Returning Case
400	07	F	0030121	-002	Returning Case

↓

CaselDBase: Indicates Criminal Offense as it moves through phases in the system

Formatting the CaselD in this way allows NCSEP to track related cases as they occur in adult criminal court, which enables future analysis, such as the percentage of criminal cases that have an associated probation violation case, the average number of probation violation cases or “events” by type of crime, etc.

### Addressing Specialized Issues to Improve CaselD Accuracy

Once offenses were grouped into cases using the operational definition described above, the pilot sites then identified additional data cleaning strategies that would improve the accuracy of defined cases:

1. *Consolidated Judgments*: The data records when multiple dispositions are “consolidated for judgment.” NCSEP developed a program that combined CaselDs when they were consolidated for judgment.
2. *Habitual Offenses*: North Carolina can bring a “Habitual” charge against repeat offenders. Often, the Habitual Charge occurs later and has a later warrant served date. The case with the triggering criminal offense and the case with “Habitual” charge need to be consolidated into a single case.
3. *Change of Venue*: The data indicates when a case is transferred to another venue, which reopens the case under a different docket or file number. To avoid double-counting these cases, NCSEP identified case that ended in a “Change of Venue” disposition. (See section on identifying the most serious disposition).
4. *Correcting CaselDs with Offense and Disposition Date*: Two CaselDs that have the *same* offense and disposition dates should be consolidated, even if they have different warrant served dates.

#### Example

Case	Charge Description	Offense Date	Warrant Date	Disp Date
1	Driving While Impaired	10/17/08	10/17/08	4/23/09
2	Drive w/ License Revoked	10/17/08	10/18/08	4/23/09

5. *Re-indictments*: After investigation, the pilot sites agreed that the existence of the following conditions identified cases involving re-indictments, and the cases should be consolidated.

When offenses in two different cases have:

1. The same offense date
2. Different warrant served dates
3. The earlier offense is dismissed without leave in the lower court
4. The later offense(s) has a new file number

Note: The offense listed in the re-indictment may or may not be the same.

Example

Case	File Number	Charge Description	Offense Date	Warrant Date	Disp Date	Disposition
75	08CR51319	Attempt 1 <sup>st</sup> Deg Murder	5/17/08	5/19/08	10/1/08	Dismiss w/o Leave
76	08CRS2280	AWDW Serious Injury	5/17/08	12/8/08	4/22/09	Active Punishment
76	08CRS2280	Assault Serious Bodily Injury	5/17/08	12/8/08	4/22/09	Dismiss w/o Leave

# Appendix E

Sample Case Outcome Toolkit screenshots.



## The North Carolina Court System Office of Indigent Defense Services

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#### Case Outcome Data and KPI Toolkit

Welcome to the Case Outcome Data and KPI Toolkit. The toolkit walks you through the steps to create comparable case outcome data and KPIs for your jurisdiction. Each link below represents a step in the process, which begins with a cover page for that step. Each cover page details the end product and provides links to any downloadable documents, sample datasets, tools, and programs provided to help you complete that step. Each step builds on the previous step, so it is best to complete steps in the order presented below. If you skip a step, you may miss key information.

1. [Introduction to Case Outcome Data and KPIs](#)
2. [Project Equipment and Staffing](#)
3. [Getting Data from the Court System Lessons Learned](#)
4. [Obtaining Technical Assistance](#)
5. [Data Dictionary](#)
6. [Creating a Case Flow Chart](#)
7. [Defining a Case](#)
8. [Identify Case Type](#)
9. [Identify Most Serious Disposition](#)
10. [Identify Determination of Guilt](#)
11. [Identify Method of Disposition](#)
12. [Identify Minimum and Maximum Sentence](#)
13. [Identify Case Length](#)
14. [Identify Attorney Type](#)
15. [Identify Average Attorney Cost per Case](#)
16. [Identify Total Court Fees and Costs](#)
17. [Identify Category Group](#)
18. [Introduction to Key Performance Indicators \(KPIs\)](#)
19. [Developing Key Performance Indicators \(KPIs\)](#)
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## Identifying the Disposition of a Case (Most Serious Disposition)

### End Product

Identify the most serious disposition category for each case in your dataset. Since cases may contain multiple charges and each charge may have a different disposition, e.g., one charge is dismissed in exchange for a plea to another charge, the disposition of a case is defined by the “most serious disposition” of any charge in the case (similar to the way that the Case Type was defined by the highest charge in the case). The disposition categories below summarize are ranked from most to least serious. The NCSEP pilot sites designed the disposition categories to apply uniformly across jurisdictions, which allows jurisdictions to compare case outcomes at home with outcomes in jurisdictions across the nation. The added benefit of a cross-jurisdictional approach is increased transparency. The pilot sites were forced to develop a lexicon of terms that were more self-explanatory, thus avoiding acronyms, abbreviations, and legal terminology understood only within a local context.

- Flat Time/Straight Sentence
- Split Sentence
- Time Served
- Non-Custodial Sentence, Supervised Probation
- Non-Custodial Sentence, No Supervised Probation
- Financial and/or Civil Penalties Only
- Adjudication/Judgment Withheld
- Deferred Prosecution
- Dismissal with Leave/Inactive
- Non-Criminal Responsible
- Dismissed without Leave
- Probation Revoked
- Probation Modified/Unchanged
- Unknown

### Key Variables

- CaselD
- Disposition Fields in Dataset
- Disposition\_Charge
- Disposition\_Case

### Downloadable Tools

- [Sample Dataset - Identifying Most Serious Disposition](#)
- [Coding Protocols for Most Serious Dispositions](#)

### Downloadable Programs

- [SPSS Syntax: Most Serious Disposition Programs](#)

### Operational Definitions:

1. *Disposition*: The disposition reveals what happened to the *client*, i.e., did the defendant receive jail time, probation, a deferral, etc., at the end of the case. There is only one “most serious disposition” assigned to each case. The disposition is not a record of the outcome in each court the case may pass through. If a defendant appeals the disposition of a lower *trial* court to a higher *trial* court, the lower trial court disposition is an *interim* disposition and the higher trial court disposition the disposition of the case because it reveals what happened to client.

2. *Time Served*: Time Served captures cases where the defendant served their sentence pretrial and they were released upon disposition of the case. Time Served cases exclude split sentences that include *supervised* probation. Time Served dispositions that *include* supervised probation are coded as "Split Sentence."
3. *Adjudication/Judgment Withheld*: This category includes dispositions where the defendant was convicted of an offense, but the judgment was withheld or not imposed, either temporarily or permanently, depending on whether the defendant was able to meet the conditions set by the court.
4. *Deferred Prosecution*: This category includes dispositions where the prosecution was deferred with the expectation of a dismissal upon the defendant meeting the agreed upon conditions set forth by the court. Deferred prosecutions are not convictions.
5. *Mistrial*: Mistrial dispositions are coded as Dismissal with Leave/Inactive, since there is no "sentence" at this point in the case and the prosecutor has the option to dismiss the case.
6. *Non-Criminal Responsible*: This category includes dispositions where the defendant pled responsible to an infraction or other non-criminal charge and there was no criminal conviction.
7. *Diversion Revoked, Et Al.*: Diversion revoked and similar dispositions are a secondary result in the case. The actual outcome of the case was diversion. Whether the client was successful at diversion is a different and secondary outcome that can be analyzed within a later study. Code these dispositions as "Administrative/Procedural."
8. *Administrative/Procedural*: In the list of coding protocols for type, class, and category, you will find "Administrative/Procedural." Court system databases may contain records that document procedural events that occur, such as motion hearings. NCSEP handled this issue by coding these records as "Administrative/Procedural" so they would not be identified as additional charges or offenses. This coding strategy is also convenient when developing statistical programs, i.e., records can be "filtered out" when necessary.
9. *Texas Dismissals with Leave*: Most dismissals in Texas are technically dismissals with leave, because the State can bring back the charges if there are changes to the evidence. However, in reality, this almost never occurs. Therefore, we code all dismissals as dismissals without leave.
10. *Probation Violation Dispositions*: The NCSEP pilot site case outcome study was hampered by data limitations in North Carolina. The only dispositional information recorded for probation violation charges in North Carolina was a single field with two coding options: 1) probation revoked and 2) probation modified or unchanged. Consequently, the pilot sites were constrained to two disposition categories for probation violation cases: 1) Probation Revoked and 2) Probation Modified/Unchanged. However, the three other pilot sites had more nuanced disposition information for probation violation and they developed additional coding protocols, which are presented above, as a study bonus.

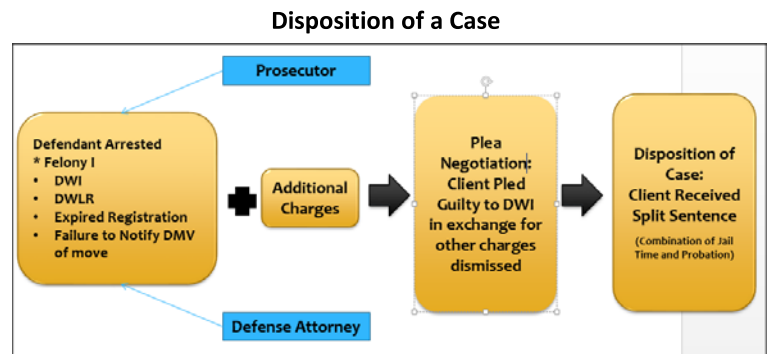
Coding Protocols for Probation Violations for the Case Outcomes Study			
All Sites Dispositions	CT, TN Probation Violation	CT, TN, TX (Study Bonus)	All Sites (Study)
Probation Revoked (CT, NC, TN, TX)	Probation Revoked	Probation Revoked	Probation Revoked
Probation Extended (CT, TN)	Probation Extended	Probation Amended	Probation Modified/Unchanged
Probation Modified (CT, TN)	Probation Modified	Probation Amended	Probation Modified/Unchanged
Probation Modified/Unchanged (NC)	N/A	N/A	Probation Modified/Unchanged
Probation Amended (TX)	N/A	Probation Amended	Probation Modified/Unchanged
Probation Continued (CT)	Probation Continued	Probation Continued	Probation Modified/Unchanged
Probation Terminated (TX)	Probation Terminated	Probation Terminated	Probation Modified/Unchanged
Probation Terminated (CT, TN)	Probation Terminated	Probation Terminated	Probation Modified/Unchanged
Probation Unsatisfactorily Completed (TX)	Probation Terminated	Probation Terminated	Probation Modified/Unchanged
Early Discharge (TX)	Non-Trial Level (excluded from study)	Non-Trial Level (excluded from study)	Non-Trial Level (excluded from study)
Probation Complete (TN, TX)	Non-Trial Level (excluded from study)	Non-Trial Level (excluded from study)	Non-Trial Level (excluded from study)
Probation Review (CT)	Non-Trial Level (excluded from study)	Non-Trial Level (excluded from study)	Non-Trial Level (excluded from study)



## Identifying Disposition of a Case: Overview

The disposition of a case identifies what happened to the defendant upon the resolution of the case. The Disposition of a case captures the most serious sentence the defendant received, e.g., did the defendant receive jail time, probation, financial penalties, etc. Since the vast majority of sentences run concurrently when a defendant is convicted of multiple charges<sup>1</sup> the most serious disposition in a case is key.

Reviewing disposition codes across the four NCSEP pilot sites, there were over 110 unique disposition outcomes, too many to report effectively, so similar dispositions were grouped into the disposition “categories” listed above and ranked from most to least serious.



### Examples

Case	Charge Description	Disposition
Charge 1	Wrongfully Enter Bldg.	Dismissed without Leave
Charge 2	<b>Breaking &amp; Entering</b>	<b>Split Sentence</b>
Charge 3	Aid & Abet Larceny	Dismissed without Leave

➔ **Split Sentence**

Case	Charge Description	Disposition
Charge 1	2 <sup>nd</sup> Deg. Kidnapping	Dismissed without Leave
Charge 2	<b>2<sup>nd</sup> Deg. Sex Offense</b>	<b>Flat Time/Straight Sentence</b>
Charge 3	<b>Manuf. Methamphetamine</b>	<b>Flat Time/Straight Sentence</b>

➔ **Flat Time/Straight Sentence**

Case	Charge Description	Disposition
Charge 1	Fail to Wear Seat Belt - Driver	Dismissed without Leave
Charge 3	<b>No Operators License</b>	<b>Non-Criminal Responsible</b>

➔ **Non-Criminal Responsible**

## How to Identify the Disposition of a Case

In North Carolina, the court system database was designed to indicate the disposition of each charge, but does not identify the disposition of a case, which appears to be typical of many court data-collection systems. The technique NCSEP used was to classify the disposition of each charge and then identify the case disposition by identifying the most serious disposition (see examples on the previous page).

In North Carolina, no single court variable contains disposition information. Instead, charge disposition can be determined only by looking across a combination of many variables. For example, if a defendant received active time the minimum and maximum sentence fields have a data entry. If a defendant received probation the minimum and maximum probation fields have a data entry and the type of probation (supervised, unsupervised,

<sup>1</sup> In North Carolina, approximately 97% of defendants who are convicted of multiple charges that result in a jail sentence have those jail sentences run concurrently.

or community service) is recorded in another field. Likewise, if the defendant received jail credit for time-served, that information also was recorded in another field. NCSEP identified all fields containing dispositional information, then created a flow chart that identified which combination of fields was needed to code the disposition category correctly. Next we created an excel spreadsheet of every variable and what values equaled which disposition. Finally, we created a program to code each charge with the correct disposition. Once every charge had a disposition, the most serious disposition was identified for the case.

**Important Note:** As you create your data, be careful to ensure you are capturing the final disposition in a charge or case, which may be more complicated than at first glance. There are different points in the life of a charge or case that may result in a disposition that is amended or overturned at a later stage in the case. For example, in North Carolina misdemeanor cases disposed in lower trial court can be appealed to a higher trial court, which may render a different disposition. In this situation the lower trial court disposition becomes null and the higher trial court disposition the actual disposition. However, the appeal to the higher trial court could be withdrawn by the defendant. In this circumstance, the lower trial court disposition would be the final disposition. You will have to identify the various points in your court system where this type of situation occurs and develop coding protocols accordingly.

**Tip:** Download the *Coding Protocols for Most Serious Dispositions* spreadsheet provided to view how the NCSEP pilot sites mapped every disposition to a disposition category.

**Tip:** NCSEP recommends that as you code each record in your dataset to ensure there are no “null” or “blank” fields. Blank fields create confusion; it is impossible to determine whether a blank entry was intentional or an oversight without a lot of labor. Again, if your dataset is similar to NCSEP, you may have records that document procedural events, such as motion hearings, etc. NCSEP coded these records as “Administrative/Procedural” to avoid having any null or blank values.

## Identifying Disposition of a Case: Addressing Specialized Issues

Individual jurisdictions may have oddities that are not common to most jurisdictions. Below describes protocols developed by the NCSEP pilot sites to address unique situations that arose in one of the pilot sites.

1. *Interim Dispositions:* North Carolina's criminal code contains "habitual" offenses. NCSEP will employ the following protocols for identifying Case Type when Habitual charges are present:
2. *Never to Be Served:* In North Carolina, there are cases disposed as “Never to Be Served.” These are cases in court database where a warrant was served but before the case had a first appearance in court the defendant made restitution and the case was dropped. Indigent defense counsel are never appointed to these cases because they are resolved before first appearance occurs, which is where appointment of state counsel is made. Typically, these cases involve simple worthless check charges where the defendant repays the merchant before the first court date. These cases are not included in the study.
3. *Interim Dispositions:* Dispositions rendered by a lower court that are later overturned in a higher court are interim dispositions. Code these dispositions as *Administrative/Procedural* so they can be easily identified and “filtered out” when identifying the most serious disposition in a case.

4. *Non-Trial Level Dispositions*: A number of pilot sites encountered disposition information about defendant outcomes subsequent to the trial level case. For example, early discharge, probation complete, and probation review reference what happened to clients during probation. These are considered non-trial level dispositions because they do not involve a criminal case. They are not outcomes of a criminal charge and there is no prosecutor, defense counsel, or court sentence involved.
5. *Pending Cases*: If your dataset includes open or pending cases, code the most serious disposition as “Pending.” The study will not include pending cases, so you will need to “filter out” these cases before analyzing the data.

**Tip:** NCSEP created a date—1/1/1940—to signify when charges or cases were pending, eliminating null values which are problematic to work with when developing programs.

# Appendix F

## Travis County, TX Case Outcome Report

# NCSEP CASE OUTCOMES STUDY

TRAVIS COUNTY, TX PILOT SITE



9/25/2014



Project Design and Preliminary Results

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## ACKNOWLEDGEMENTS

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# NCSEP Case Outcomes Study: Travis County, TX

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## SECTION 1: INTRODUCTION

Evidence based practices are the gold standard in developing criminal justice policy. Practitioners want to know what works. Legislatures want cost effective programs. The public wants to know that its tax dollars are being used efficiently. In order to prove the effectiveness of policies, we must be able to measure the outcomes of potential programs. Unfortunately, indigent defense has lagged behind other criminal justice programs in implementing empirical tools and evidence based studies. In an effort to expand the use of data driven decisions, the North Carolina Systems Evaluation Project (NCSEP) has undertaken the enormous task of developing easy to use and understand data standards, empirical measures, and an accompanying toolkit for use by indigent defense systems across the country. With the development of such measures, the indigent defense community will be able to compare programs and achievements in a systematic way leading to reforms that are driven by fact, not anecdote.

The NCSEP pilot site project is a nationwide collaboration that seeks to develop easy to understand metrics which can be used by a wide range of jurisdictions. In addition to North Carolina Indigent Defense Services, three additional sites were chosen to participate: Connecticut Division of Public Defender Services, Knox County, TN Public Defenders Office, and Travis County, TX Court Administration. The pilot sites represent different styles of indigent defense provision, along with differing administration and judicial structures. With the goal of creating a methodology that can be applied in many jurisdictions, these differences are the key to developing a comprehensive plan. The pilot sites worked together to define and categorize the data elements needed to create comparable statistics. The result of the collaboration is a comprehensive taxonomy of standardized case and outcome categories. Using these categories, nine key indicators were then developed to identify the best and worst outcomes for defendants. These measures, when applied within a jurisdiction to several delivery systems will show the differences in client outcomes and point to potential policy improvements. When applied to similar systems across jurisdictions, it may highlight outcome differences, showing where potential problems or solutions may be found.

The use of quantitative measures for court and judicial system outcomes is relatively new, particularly in the area of indigent defense. For the most part, legislatures and local governments have been satisfied by meeting the statutory requirements for representation of the poor, with varying success. Policy researchers and indigent defense advocates have focused on measuring inputs to compare systems. But neither the statutory requirements nor input based analysis will answer the most important question: What are the best practices for providing indigent defense? With the 50<sup>th</sup> anniversary of *Gideon v. Wainwright*, there has been a renewed push to improve indigent defense. By using standardized, empirical measures of case outcomes, comparison of alternate delivery methods becomes possible.

There are two major hurdles when developing these types of metrics. The first is the complexity and variance of court and indigent defense practices and definitions across the country. Consider a criminal case. The definition of a case varies across jurisdictions. A case may be defined as a single charge against a single defendant or it could be all charges against a person brought at the same time. If we don't control for the definition of a case, then any comparisons we make will be misleading. In addition to case definition, charges need to be categorized and dispositions and sentences standardized to be able to make interagency comparisons. The pilot sites have taken all of the possible outcomes and case types and distilled them into easy to use and understand categories. Using this system of coding, we can compare similar cases across very different systems.

But what should we measure? There are countless statistics that can be constructed. We can measure the percent of cases where there is a conviction, active jail time, probation, or pre-trial diversion. So which are the most useful and instructive? The pilot sites spend a large amount of time on determining the

## NCSEP Case Outcomes Study: Travis County, TX

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measures that would be easy to understand and policy relevant. We have distilled the list to nine Key Performance Indicators measuring the best and worst outcomes for indigent defendants. These measures will serve to inform us of the effects of policy changes.

Below, we detail the classification system that has been developed, and explain the theory and practice behind the Key Indicators which were chosen. We provide the mapping from the outcomes to our categories and the rationale for our decisions. We then show in detail, the construction and interpretation of the case outcome key indicators. The key indicators are then computed for North Carolina and Travis County, Texas. The other pilot sites are not included because reliable data was not available. Finally, we discuss potential policy studies for which these measures would be well suited.

### Travis County, Texas

Travis County is the home to Austin, the capital of Texas. Travis County has long been dedicated to innovative criminal justice practices and empirical program and system evaluation. Travis County joined this collaboration because of this commitment and their interest in altering their indigent defense delivery method. In Texas, indigent defense is administered at the county level. Each county is free to experiment with different indigent defense methods. While providing competent legal counsel to indigent defendants has always been a high priority for Travis County, the use of data has been limited to measuring inputs such as attorney case loads and cost per case. When the opportunity to participate in the NCSEP presented itself, the County was excited to be able to further development of their data systems and analysis capacity. In addition, the timing was perfect because Travis County is in the process of modifying its indigent defense delivery system.

Currently, indigent defense in Travis County is provided by a private assigned counsel (PAC) model. Private attorneys who meet the standards set forth by the courts are put on a list and assignments are made by rotating through this list. One of the major drawbacks of such a system is the judiciary is responsible for determining who is on the list and approving payments to the defense counsel. Thus, the defense function is not truly independent of the judiciary, creating a perception or potential for a conflict of interest. To provide the desired independence of the defense function from the judiciary, Travis County has undertaken the task of creating a managed assigned counsel (MAC) office to disentangle the judges from the onerous task of supervising the assigned counsel, managing the lists, and approving payments. The MAC will be an independent office supervised by a lead attorney responsible for managing the assigned counsel lists and authorizing payments to attorneys and specialists. The hope is this office would not only create a separation between the judiciary and the defense bar, but would also raise the quality of representation provided to indigent defendants in Travis County. In addition to providing independence, the MAC office will evaluate performance, provide support, and aid in attorney development. There are only a handful of Managed Assigned Counsel offices in the country, and little is known empirically about their effect on the quality of representation. Using the metrics developed for this project, Travis County will be able to quantitatively measure the change in case outcomes when moving from a private assigned counsel to a managed assigned counsel delivery system.

Because Travis County is committed to understanding their indigent defense system and they value the development of robust empirical measures for the court systems, Travis County volunteered to be a pilot site with the support of the Texas Indigent Defense Commission and the Governor's Office. The Governor's office has provided Travis County with a grant to participate in the program and develop new and innovative data systems to help with reporting and analysis. This grant allowed Travis County to hire a full time researcher and purchase new hardware and software for data analysis and visualization. This has allowed Travis County to not only participate in the project, but also augment their existing internal data

analysis and current indigent defense practices. As part of the project, Travis County has gathered experts from all parts of the indigent defense community to define the values and goals for indigent defense in the county. Connecting with judges, the defense bar, administrators, and policy makers guided the development of metrics in the county. Because of the project, Travis County has been able to invest in their data and analysis systems and lead to a deeper understanding of the available data and its use for this and future research projects.

## **SECTION 2: KEY PERFORMANCE INDICATORS**

Our goal is to measure outputs of the indigent defense function allowing for quantitative evaluation of system performance. Because the defense counsel's job and ethical requirement is to represent the best interests of the defendant, we are measuring good and bad outcomes as perceived by the defendant, not society. For our purposes, a shorter sentence for the defendant is good, even though victims and prosecutors might not agree.

We have developed nine Key Performance Indicators (KPI's) that describe the rate at which defendants receive the best outcomes and the worst outcomes. Taken together, the indicators can help identify potential problems, low performing jurisdictions, and the effect of policy changes.

### **Case Outcome Evaluation Framework: Measuring Best and Worst Performance**

In the table below, we define the nine Key Performance Indicators. The top of the chart contains the best outcomes and the bottom of the chart shows the worst outcomes. An increase in the best outcomes and a decrease in the worst outcomes signal an improving indigent defense system. While cost per case is not an outcome in the traditional sense, it is important to include this in our measures because a system that performs only slightly better, but at significant increases in cost would likely not be a system that is politically viable.

The table explains how the KPI is defined, and why we believe it is a good indicator of case outcomes. Indicator IV, % of Sentence Avoided is slightly more complex than the others, and so we describe its construction in Appendix A.

Client Outcomes	Key Indicator	Rationale
<b>Best</b>	I. Percent of cases that ended in non-conviction, disaggregated by dismissal without leave, non-criminal responsible, and deferred prosecution	Measures how often the best outcome occurs: <ul style="list-style-type: none"> <li>• No conviction on any charge in the case</li> <li>• No criminal record or a chance for no criminal record</li> </ul> Non-convictions are disaggregated by type of non-conviction to increase the indicator's functionality.
<b>Best</b>	II. Percent of convictions that result in an alternative to incarceration**	Measures how often indigent defense is able to achieve avoiding a jail or prison sentence, which is highly desirable outcome to a defendant and his or her family. Benefits may also include not losing a job, retained ability to care for children and dependents, and, in the community's interest, fewer social services, such as foster care, food stamps, etc. being triggered at the loss of a major source of family income.
<b>Best</b>	III. Percent of felony cases that ended in a conviction where the conviction was a non-felony*	Measures how often indigent defense was able to successfully reduce a felony to a non-felony, which indicates a serious reduction in penalties and fewer collateral consequences.
<b>Best</b>	IV. Average Percent of sentence avoided for cases that ended in a conviction and the average maximum sentence faced (months)*	Measures the relational difference between the maximum sentence faced by the defendant and the sentence received by the defendant. The maximum sentence faced corresponds to that of the lengthiest possible sentence of any one charge in the case, regardless of additional charges. Cases that ended in non-conviction are 100% sentence avoided. Cases with convictions of multiple charges where sentences are consecutive would receive a negative percent sentence avoided. For example, a defendant who faced three charges, where the highest charge carried a two-year sentence, who is convicted of two charges to be served consecutively for a total of 2.5 years, the percent of sentence avoided would be -25%. Analysis of pilot site data revealed that the overwhelming majority of cases resulted in concurrent sentences, so the occurrence of consecutive sentences is important to capture. The DWI category group is excluded from this indicator because DWI case outcomes are not comparable across jurisdictions. Additionally, the First Degree Murder category group also is excluded because "Death" and "LWOP" sentences would be controversial to quantify.
<b>Worst</b>	V. Percent of cases defendant is convicted of all charges and convicted of the highest charge and some, but not all, charges*	Measures how often the worst outcome occurs. When defendants are convicted of multiple charges, the vast majority of the time the sentences are concurrent sentences. Consequently, being convicted of the highest charge has serious consequences for defendants, regardless of whether the defendant is convicted of all charges or only some charges.
<b>Worst</b>	VI. Percent of alternative to incarceration <i>convictions</i> that ended in supervised	Measures how often sentences that do not end in incarceration result in sentences of probation where the defendant is to be supervised by a probation officer. Supervised probation is significantly more onerous, costly, and disruptive to a defendant's life than unsupervised probation. Moreover,



Client Outcomes	Key Indicator	Rationale
	probation**	studies confirm that defendants are more likely to violate probation when it is supervised.
<b>Worst</b>	VII. Percent of convictions and jail sentences that were time served*	Measures how often defendants are sentenced merely to the time they spent in jail prior to sentencing. Being convicted of a criminal offense should trigger punishment, not end it. Time-served sentences indicate the defendant was not enough of a public threat that the court system wanted to impose a jail sentence upon conviction, which raises the question of whether the defendant should have been incarcerated pretrial and was perhaps incarcerated only because the defendant was too poor to make bail.
<b>Both</b>	VIII. Average case cost (per-case attorney fees only)	Measures the cost of defending an adult criminal case. One cannot evaluate performance without knowing cost. A system that generates outcomes at \$500 per case would be evaluated differently from one that operated at \$1,000 per case. Equally, a 10% improvement in outcomes at a 10% increase in cost would be viewed differently from a 10% improvement in outcomes at a 50% increase in cost. The indicator measures just attorney costs because attorney costs are unequivocal across all states and jurisdictions. The amount of available resources for investigators and experts introduces a complexity of factors that would make data results uninformative.
<b>Both</b>	IX. Average cost of court fees and fines (excludes restitution, attorney fees)	Measures the cost to defendants of resolving their cases. One goal of a robust indigent defense system is to disentangle clients from the criminal justice system, but significant court debt signifies that the client remains entangled. Moreover, studies show that unpaid court fees and fines can often result in re-arrest, even though defendants have not committed new criminal acts.

*Note: Before indicators run exclude from data unknowns, procedural, bad case definitions, all Dismissal with Leave/Inactive.*

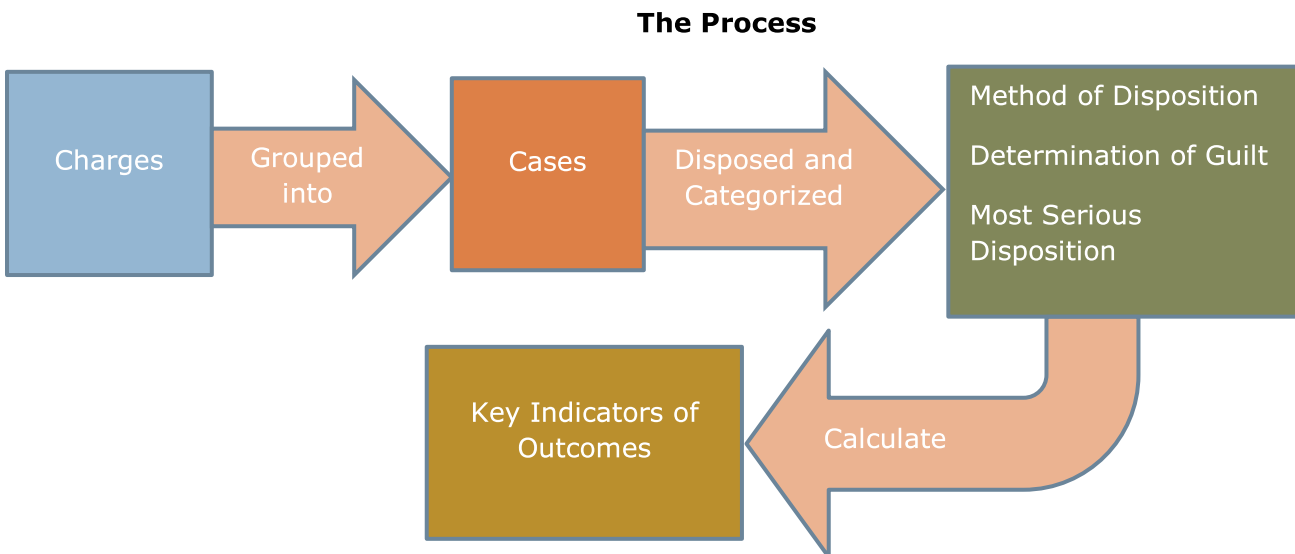
*\* Convictions include: Flat Time/Straight Sentence, Split Sentence, Time Served, Non-Custodial Sentence, Financial and/or Civil Penalties Only, Adjudication/Judgment Withheld.*

*\* Alternative to incarceration include: Non-Custodial Sentence, Financial and/or Civil Penalties Only, Adjudication/Judgment Withheld.*

### SECTION 3: CASE TYPES AND CRIME CATEGORIES

One of the goals of the project is to allow for inter-jurisdictional comparison. To do this, we create a strict taxonomy of cases that allows us to compare like crimes. Below, we discuss the procedure for defining a case and then assigning that case to “case type” categories. These categories describe the severity of the crime and the type of crime. In creating these categories, particular care has been placed on comprehensiveness and clarity to allow other jurisdictions to replicate the process. These categories are meant to group similar crimes so that the analysis is comparing like entities.

In addition to creating categories for severity and type of crime, we must classify the types of outcomes that may result. In particular, dispositions must be categorized to allow for all of the possible outcomes and programs that court systems have. The resulting categories are broken down into two variables. First, we determine if the crime resulted in a conviction or dismissal for each charge. For the second variable we record what type of sentence was imposed (if no conviction, then the type of dismissal/acquittal is recorded). This involves characterizing of a wide variety of sentences including specialty programs like boot camp or home detention. The size and type of these programs varies substantially between jurisdictions, meaning that particular care needs to be taken to ensure a correct and comprehensive classification system.



**Figure 1: Shows the primary steps in going from charges to Key Indicators.**

#### Case Definition

While it may be easy to define a case in each jurisdiction, developing a common definition of a criminal case is not all that easy. For some jurisdictions, there is a criminal case for each charge that is filed. In other jurisdictions, all charges that occur from the same incident are a case. If we simply take the case definition from each jurisdiction, then the same outcome will result in different measures. Since we wish to compare jurisdictions, we need a common measure of case.

The ideal case definition would group all charges that a defense attorney works on at the same time and are disposed together. For the most part, the investigation and preparation for defending against charges brought together is done concurrently, and thus represents a single work product. One option would be to wait until disposition and then group all charges disposed together as a case. For this particular study that could work because we are only looking at disposed cases. However, a definition that captures all of the charges and can be applied at the beginning of a case would be more flexible. Therefore, we adopted a

systematic definition of “case” that will allow us to group charges into cases ex-ante (before disposition occurs), allowing for the analysis of non-disposed cases.

In order to operationalize the definition of case, for this study we will include all charges where:

1. Both Felonies and Misdemeanors where the warrant served dates are within 21 days of each other
2. All misdemeanor cases that have the same warrant served date.
3. Charges with the same offense date where one of the charges is dismissed-refiled.

There are two types of errors that can occur with this type of case definition. The first is where multiple cases are disposed of on the same day. The second is where charges within the same case are disposed on multiple days.

## Case Type

In order to make meaningful comparisons, it is ideal to compare cases with similar potential outcomes. Therefore, we need to group cases where similar outcomes are likely. Case Type is a group of 4 variables that determines the severity and type of crime in the case. Comparing outcomes for driving without a license and aggravated assault will not illuminate the system performance as well as comparing like crimes. Therefore, we separate cases by severity of high charge, and the type of crime. This gives us case groups that allow for more accurate comparisons.

Most court systems differentiate between felony and misdemeanors (we call this type) in addition to dividing each type by class (i.e. Felony 1). In addition, the severity and possibility of different sentences vary by the type of crime. A guilty verdict or plea for a non-violent crime is more likely to result in a non-custodial sentence. So, we need to control not only for the class and level of the charge, but the category of charge. We approach this problem by first assigning charges to 40 categories of crime. In order to make the data more digestible to the average user, we then aggregate these 40 categories into 8 major crime categories. We characterize a case, which may have multiple charges associated, by the highest charge in the case.

It turns out that for certain charges, no one ever receives an active sentence and the vast majority of these cases result in fines and fees only or dismissal. Because of this, we categorize these separately.

Below is a detailed discussion of the choices that were made and the resulting mappings from charge to crime type.

### Determining Highest Charge in a Case or “Case Type”

Many cases have multiple charges, leading to many possibilities for categorizing them. Because the highest charge is generally the major focus of bargaining and the defense, we categorize cases by the highest charge that the client faces.

Four variables will be used to determine the highest charge in a case or the “case type.”

Highest Charge in Case/Case Type = Category + Type + Class.

## Type and Class



## NCSEP Case Outcomes Study: Travis County, TX

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Type and Class are the primary determinants of the highest charge in a case. Felonies are higher than misdemeanors. For example, Felony H is higher than Misdemeanor 2, Felony C is higher than Felony D, and Misdemeanor 1 is higher than Misdemeanor 2.

In Travis County, we have Capital Murder, Felony 1, 2, and 3, State Jail Felony, and Misdemeanor A and B.

### Case Category

When there is more than one offense with the same Type and Class in a case, the Category will determine the highest charge. The North Carolina Systems Evaluation Project (NCSEP) pilot sites have adopted and expanded the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) categories to define the category and ranked them from most serious to least serious (see the "Category" column in the table *Identifying Case Type or the HighestChargeCase for Each Case* in Appendix A).

For detailed instructions on how to allocate criminal offenses to the appropriate category, read the section *How to Determine the Category of a Charge* in Appendix A. Additionally, the section entitled *NC Offense Codes by Case Category* details how North Carolina categorized 1,800 criminal offenses (also in Appendix A).

The FBI National Incident-Based Reporting System (NIBRS) (formerly UCR) classifies types of crime into three groups.

- Crimes against Persons
- Crimes Against Property
- Crimes Against Society

NCSEP expanded the NIBRS "category groups" to create the following NCSEP *Category Groups* for the case outcome study.

- First Degree Murder
- Persons
- Government
- DWI & DWI Related
- Property
- Morality
- Drugs
- Traffic
- Probation Violation
- Unknown

Next, NCSEP pilot sites agreed to disaggregate these category groups by case type, i.e., felony or misdemeanor, to create 19 summary *Category Groups* for data analysis of system performance.

- First Degree Murder
- Persons: Felony
- Persons: Misdemeanor
- Government: Felony
- Government: Misdemeanor
- DWI & DWI Related: Felony
- DWI & DWI Related: Misdemeanor
- Property: Felony

- Property: Misdemeanor
- Morality: Felony
- Morality: Misdemeanor
- Drugs: Felony
- Drugs: Misdemeanor
- Traffic: Felony
- Traffic: Misdemeanor
- Category Group Unknown: Felony
- Category Group Unknown: Misdemeanor
- Probation Violation: Felony
- Probation Violation: Misdemeanor

Finally, NCSEP pilot sites mapped each previously defined case *Category* into the appropriate *Category Group* (see Appendix A).

### Aggregating Data by "High Exposure" and "Low Exposure" Cases

After reviewing the case outcome data presented by NCSEP pilot sites, it became apparent that our methodology needed to address the fact that the justice system, practices what could be described as a two-tiered approach for treating criminal offenses. For lack of better terminology, the NCSEP pilot sites will refer to crimes in this two-tiered approach as either "High Exposure" or "Low Exposure" crimes, because they result in distinctly different criminal justice system outcomes. Moreover, the failure to incorporate this understanding into the evaluation methodology would seriously distort evaluation results.

The distinction between High Exposure and Low Exposure crimes has its origins in the fact that the definition of what constitutes a "crime" is not a universal truth, but a human determination that varies from state to state as defined by the criminal statute codes of each state. Certain acts, such as murder, rape, robbery, and assault, are serious enough that they are consistently defined as "criminal" across all states. However, there are large numbers of wrongful acts, such as failure to comply with a state's motor vehicle or environmental conservation policies, where the determination of whether the wrongful act rises to the level of "criminal," punishable by incarceration, or remains "civil," punishable by monetary damages only, is determined by each state on a case by case basis and varies significantly across states. For example, North Carolina has determined that it is a criminal offense, punishable by a jail sentence, to not inform the Department of Motor Vehicles of a change of address, speed more than 15 miles over the speed limit, fish without a license, or have an animal unattended or not leashed in a park. There are criminal statutes that address each of these in North Carolina's criminal code. In other states, such as Texas or Tennessee, these same acts are not considered criminal offenses, but civil infractions, punishable by a ticket and monetary fines only, and other states may not even consider some or all of these acts to be even civil infractions. What is a criminal act is defined by each state's legislature and often changes over time as well as across jurisdictions.

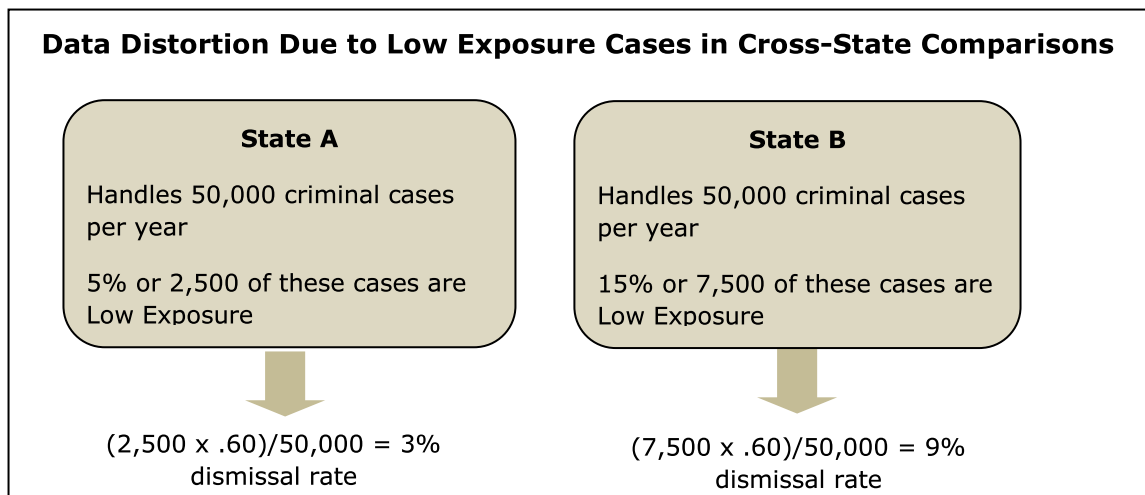
The difference between a criminal offense and a civil infraction is a distinction with serious ramifications. Criminal offenses are punishable by incarceration and an individual may be incarcerated even before a determination of guilt is made if the court requires a bond and he or she cannot afford the bail amount required by the court to obtain pretrial release. In contrast, civil infractions are punishable by monetary damages only. Even more serious is the fact that a criminal conviction results in a criminal record, which has long-term consequences that seriously affect employment, housing, and financial opportunities among other negative collateral consequences, while civil infractions do not. But either determination, "criminal" or "civil infraction," represents the State exercising its power over citizens to regulate behavior.

Distinguishing between "High Exposure" and "Low Exposure" crimes is necessary because the state often has no interest in incarcerating offenders who commit these minor offenses even though the state has designated them "criminal." As a result, these "Low Exposure" cases overwhelmingly result in dismissals

## NCSEP Case Outcomes Study: Travis County, TX

or monetary fines but not incarceration. NCSEP case outcome study results revealed that every state has some number of offenses codified as “criminal” and therefore handled by the criminal courts, but which in practice the state almost never incarcerates defendants who commit them.

The NCSEP pilot sites recognized that our evaluation methodology needed to address Low Exposure crimes to avoid seriously distorting outcome results. States with high numbers of Low Exposure crimes would have significantly higher “Dismissal” rates than states with fewer Low Exposure crimes, which would make them appear to have better client outcomes when in fact that state simply has more crimes that rarely result in incarceration. If we did not adjust for Low Exposure cases, comparing indigent defense case outcomes across states would reveal more about a state’s inclination to punish wrongful acts criminally rather than civilly than it would about the quality of the indigent defense representation. This data distortion is depicted in the graphic below.



To avoid distorting evaluation results, NCSEP pilot sites agreed that we needed to identify High and Low Exposure crimes and quantify case outcomes for each separately.

### Operational Definition of "High Exposure" and "Low Exposure" Offenses

After reviewing preliminary data, NCSEP pilot sites agreed on the following methodology for identifying Low Exposure and High Exposure crimes. Client outcomes by statute of the highest offense in the case will be aggregated and designated High or Low Exposure based on the following four criteria. Statutes must meet all four low exposure criteria listed below to be designated as “Low Exposure.” Statutes that fail to meet all low exposure criteria are identified as “High Exposure” crimes.

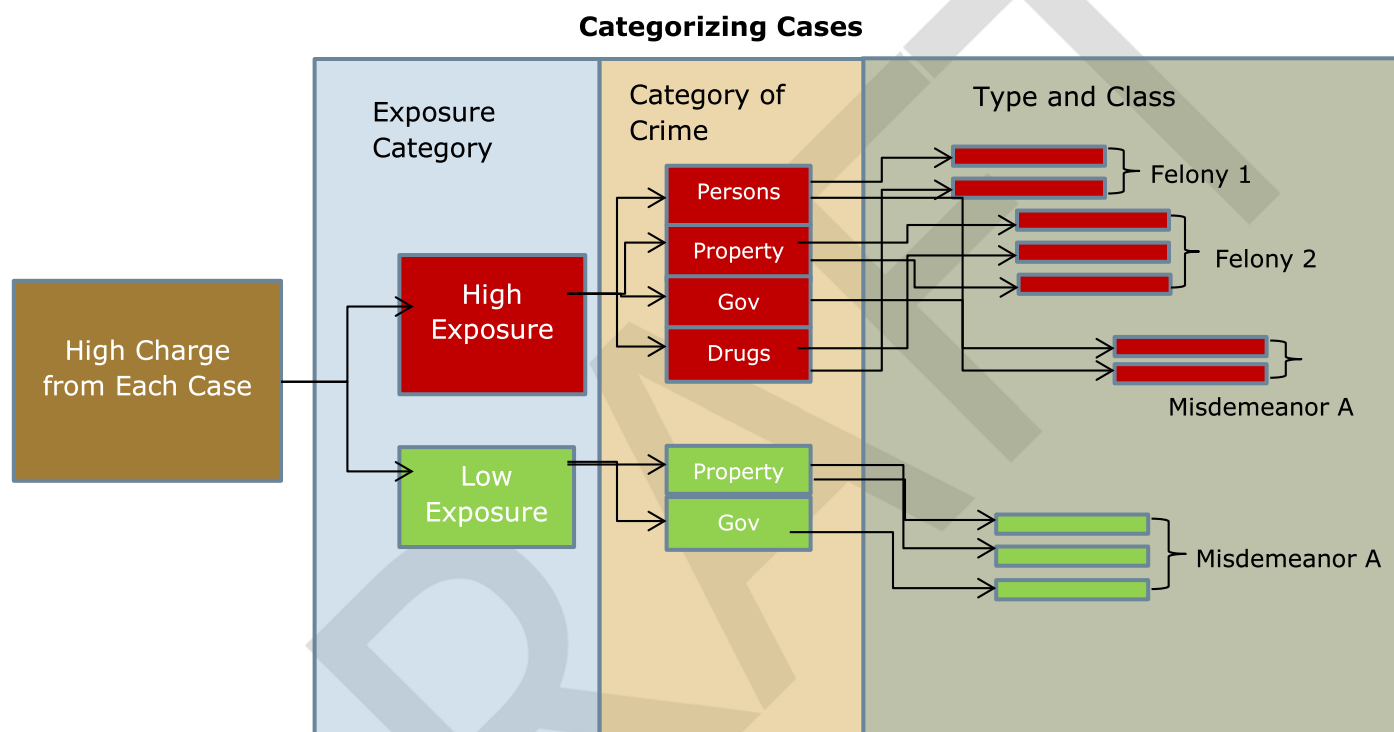
**Low Exposure Crimes:** Criminal statutes that result in dismissal or fines only for the vast majority of cases.

1. **Non-felony Offense:** Offense cannot have additional penalties, such as the lifelong denial of the right to vote.
2. **Eighty-Percent Rule:** Statutes where 80% or more of cases result in unsupervised probation, financial penalties, or dismissal without leave.
3. **Five-Percent Rule:** Statutes where less than 5% of the cases result in an Active or Split Sentence, excluding “Time-served” sentences.
4. **Active Time Limit:** Active or Split Sentence length cannot exceed 120 days.

*High Exposure Crimes:* Criminal statutes that result in a custodial or non-custodial sentence, i.e., active, split, or probationary sentence, the majority of the time or for which the defendant can be sentenced to more than 120 days active time. High Exposure crimes include all statutes that do not meet all four low exposure crime criteria detailed above.

Note that cases resulting in "Inactive," "Failure to Appear," "Dismissal with Leave" dispositions will be excluded from the analysis before determining whether a statute is "High" or "Low" Exposure.

We have now categorized cases into "Case Type". Next, we will explain the method we will use to define outcomes for each case.



**Figure 2: Using the high charge from each case, the case is then categorized by exposure, category, type, and class of this high charge.**

## Case Outcomes

We next turn to the standardization of case outcomes. Unfortunately, the outcomes of cases can be quite complex considering the number of ways in most systems that a case can be dismissed, the number of diversion programs, and all the regular ways that a defendant can be punished.

## Determination of Guilt

The Determination of Guilt variable categorizes various outcomes of a criminal case. Because there may be many charges in a single case, it is not simply enough to record acquittals, dismissals, and convictions. We will record if the defendant is convicted of all charges or only some, and if those convictions include the high charge.

There are also alternative punishments, including diversion programs. Some diversion programs impose punitive sanctions and then dismiss the charge. This is not really a dismissal or a conviction. There is a punishment, but the collateral consequences will be different than someone who is found guilty and has a criminal record after the end of the case. We therefore classify these separately from other convictions as deferred prosecution.

The following are the final categories for the *Determination of Guilt* variable.

- Probation Revoked
- Probation Modified/Unchanged
- Convicted of All Offenses – Highest Charge
- Convicted of All Offenses – Lesser Charge
- Convicted of Some Offenses – Highest Charge
- Convicted of Some Offenses – Lesser Charge
- Adjudication/Judgment Withheld
- Deferred Prosecution
- Dismissal with Leave/Inactive
- Dismissed without Leave
- Unknown

The table in Appendix B is a list of dispositions and coding protocols for the *Determination of Guilt* Variable. The number of charges ending in a conviction relative to the number of charges alleged determines whether the *Determination of Guilt* is Convicted of All Offenses – Highest Charge, Convicted of All Offenses – Lesser Charge, Convicted of Some Offenses – Highest Charge, or Convicted of Some Offenses – Lesser Charge. All other disposition codes only have one option for coding.

For the purposes of NCSEP, dispositions of "responsible" or "responsible to lesser" to infractions are not convictions. Clients who plead to an infraction are not convicted of a criminal charge. Therefore, "responsible" and "responsible to lesser" are to be coded as Dismissed without Leave.

Other Non-Study Determination of Guilt Categories which will not be included in SEP analyses.

- Pending (if your dataset includes pending cases)
- Procedural
- Non-Trial Level Dispositions (Excluded)

### **Most Serious Disposition**

The Most Serious Disposition variable categorizes the range of dispositions that are possible in a criminal case. The Most Serious Disposition variable is meant to capture the seriousness of the punishment that the defendant receives.

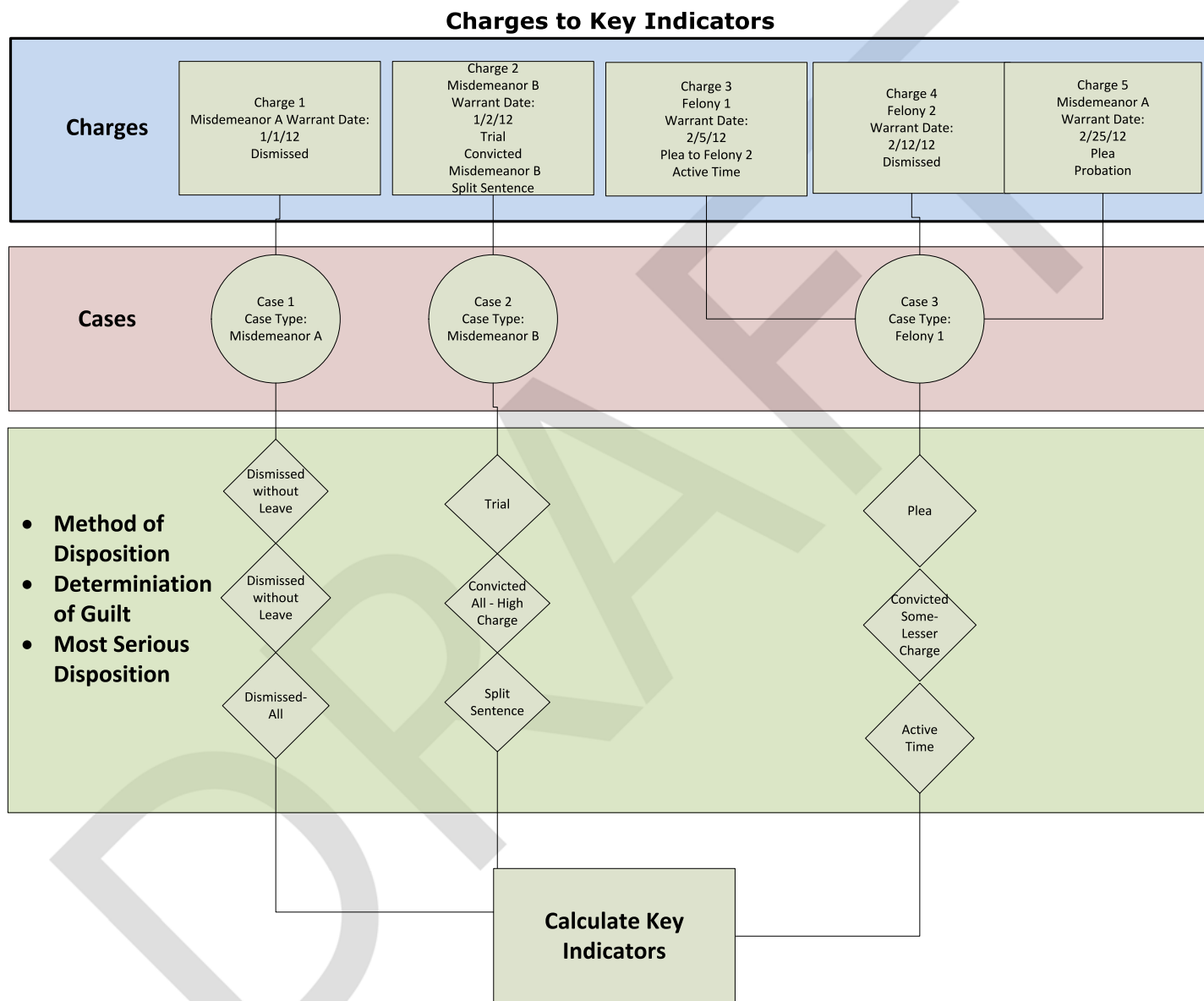
The following categories will be used to code the *Most Serious Disposition* variable.

- Probation Revoked
- Probation Modified/Unchanged
- Flat Time/Straight Sentence
- Split Sentence
- Alternative to Incarceration
- Financial and/or Civil Penalties Only
- Non-Criminal Responsible
- Adjudication/Judgment Withheld
- Deferred Prosecution
- Dismissal with Leave/Inactive
- Dismissed without Leave
- Unknown

The table on the following page lists dispositions and coding protocols for the *Most Serious Disposition* variable. A number of these categories need sentence information as well to determine if the Most Serious Disposition is Flat Time/Straight Sentence, Split Sentence, Alternative to Incarceration, or Financial and/or Civil Penalties Only. All other disposition codes only have one option for coding. Other Non-Study Disposition Categories which will not be included in SEP analyses.

- Pending (if dataset includes pending cases)
- Procedural
- Non-Trial Level Dispositions (Excluded)

Below is a diagram that shows how charges are aggregated to cases, and then how case types and outcomes are determined. Finally, all of this information is used to calculate the Key Indicators.



**Figure 3: Charges are grouped into cases, which are then organized by type, class, category and exposure. For each case, the method of disposition, determination of guilt and most serious disposition are determined. Finally, Key Indicators are calculated for each case type.**

We have now grouped cases by case type and categorized the possible methods of disposition and types of disposition. These groups allow us to compare similar groups of cases. The more similar the groups are, the more insight any analysis of the data will give us. Failure to control for differences in cases could lead to patterns in the data that are not real differences in outcomes, simply differences in the cases themselves.



## NCSEP Case Outcomes Study: Travis County, TX

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Below are the data comparisons for each type and class of case. The numbers are the percent of the total cases. We start with First Degree Murder and then report the measures for each "High Exposure" case type. At the end, we present the results for our single "Low Exposure" category. Because we are concerned with the quality of indigent defense, we present each measure for both hired and appointed counsel.

### SECTION 4: DATA AND PILOT SITE COMPARISONS

The data from Travis County are the universe of cases that were disposed in Fiscal Years 2009-2012. Travis County's fiscal year is from October 1<sup>st</sup> until September 30<sup>th</sup>. In each of those years, just over 13,000 felony cases were disposed and around 25,000 misdemeanor cases disposed. Felony cases are heard in one of 7 District Courts and Misdemeanors are heard in one of 6 County Courts-at-Law. One big exception is that one of the County Courts hears most of the family violence cases, both felony and misdemeanor. In addition to the family violence court, Travis County maintains several specialty dockets, including a Mental Health Docket, Drug Court, Pre-Trial Intervention, Youthful Offender, DWI court, and Veteran's Court. There are five levels of Felony (Capital, Felony 1, 2, 3 and State Jail Felonies) and two Levels of Misdemeanors (A and B) heard in the County's Courts.

Defendants in Travis County who meet indigency standards are appointed a private attorney from a list of attorneys qualified to take the case. Travis County appoints attorneys to approximately 64% of felony cases and 49% of misdemeanor cases.

We present the data sliced in a variety of ways. We begin by splitting the cases into First Degree Murder and Life without Parole, Felony, Misdemeanor, and DWI and DWI Related categories. We split out First Degree Murder and Life without Parole because the sentencing in these cases is much, much different, and percent sentence avoided is not easily calculated. We also split out DWI and DWI related cases because in North Carolina, percent sentence avoided cannot be calculated. (It is also that the case DWI cases are a common topic of policy debates.) We exclude low exposure cases because Travis County has very few low exposure crimes, all in the property category, and most related to "Hot Check" statutes.

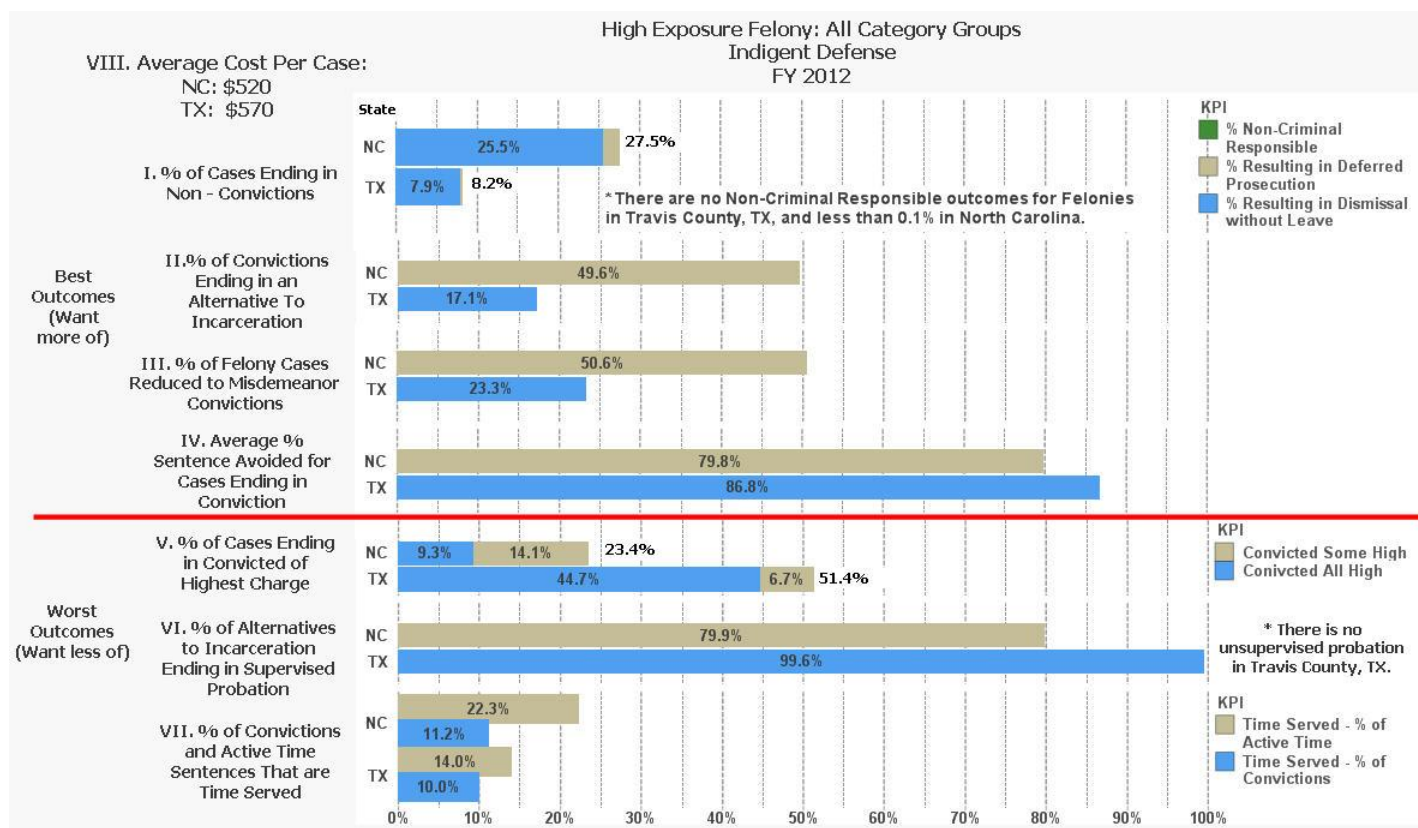
We will also present the KPIs for each category group (i.e. Person Felony) for both indigent and retained attorneys. We think it is important to look at both indigent and retained counsel because it helps control for jurisdiction specific characteristics that are not related to the quality of indigent defense. Finally, we present the outcomes for Travis County from FY2009-FY2012 for Felony, High Exposure Misdemeanor, and High Exposure DWI. We do this for both retained and indigent defense cases.

Below, we present and describe the Felony indicators and KPI's. We show how we can use the different presentations of the data to analyze the Travis County Indigent defense system.

We begin our analysis by looking at the KPI's for North Carolina and Travis County for Felony cases. Please note that we do not report court fines and fees because North Carolina did not have access to this data. For Misdemeanors, there is no indicator for reduction from Felony to Misdemeanor (Indicator III) because all of the cases start as a misdemeanor. Finally, for DWI cases, we do not report average sentence avoided for North Carolina because they do not have the appropriate data to compute it.



**Felony:**



The above chart shows the KPI's for Felony cases. Everything above the red line is a good outcome for the client. Below are bad outcomes for the client. In the upper left hand corner, we report the average attorney fees per case in each jurisdiction.

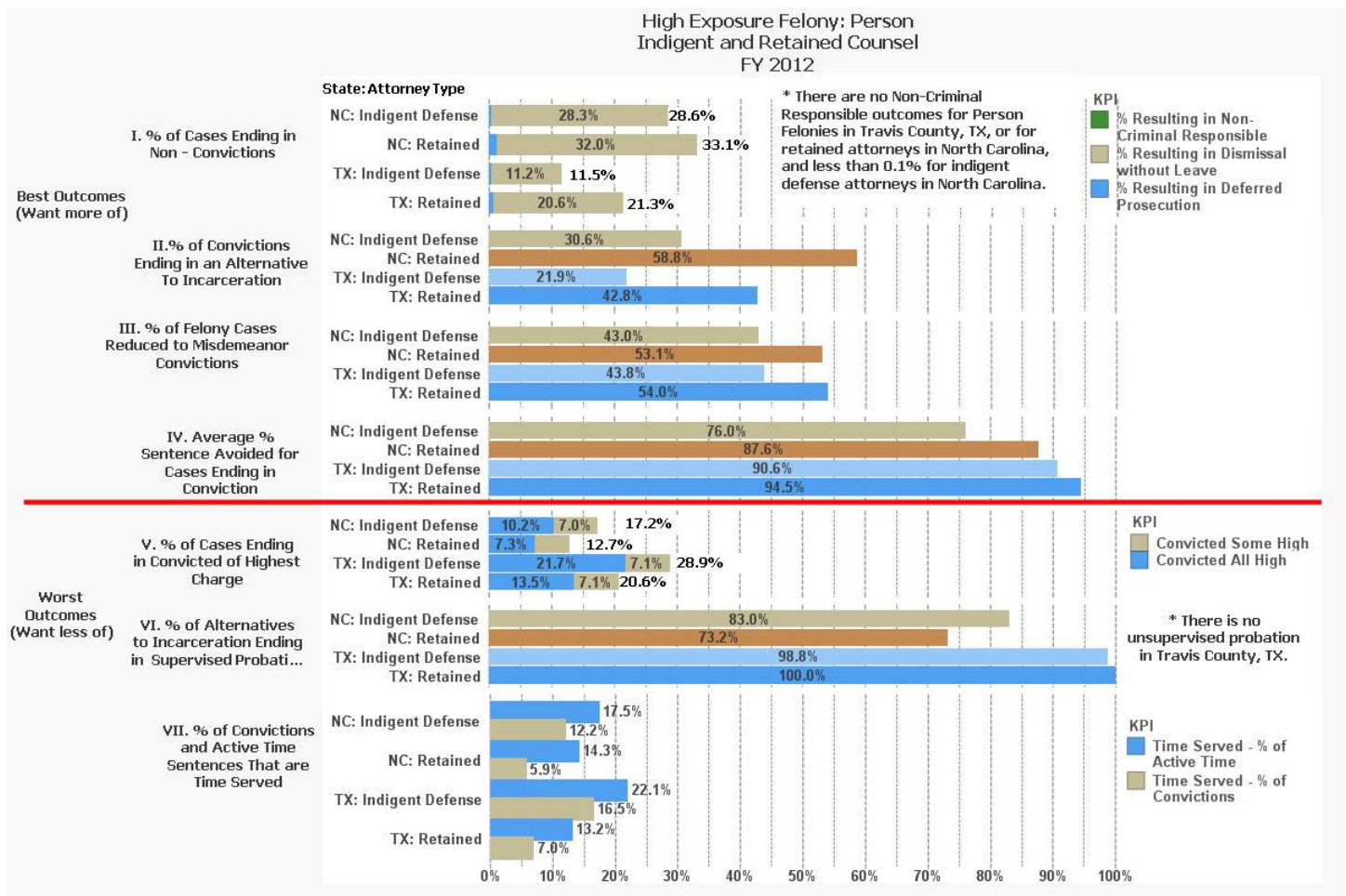
Below are the same charts for High Exposure Misdemeanors and High Exposure DWI and DWI related cases.

When looking at the comparison between North Carolina and Travis County, TX, we observe that North Carolina generally has "better" outcomes. It is impossible to tell from this data what is driving those differences. There are many factors other than attorney quality that will influence dispositions and sentences. For example, the charging practices of the jurisdiction can have a big effect on the rate of dismissals and reductions. In a jurisdiction where defendants are over-charged to begin with, it may be easier to get a dismissal.

One can begin to untangle the interconnected forces of attorney quality and system specific characteristics. One way to understand how well the indigent defense system is working is to compare their outcomes to retained attorney outcomes. Both groups operate in the same system and by looking at retained case outcomes, we can start to understand how the system is influencing the magnitude of the KPI's. With this method, we will not control for differences in client characteristics or systemic discrimination against the poor that may have an effect on outcomes. However, it does allow us to better understand the local practices that can influence outcomes.

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Below is a chart that shows the outcomes for both indigent and retained attorneys for Person Felonies (all felonies are high exposure):



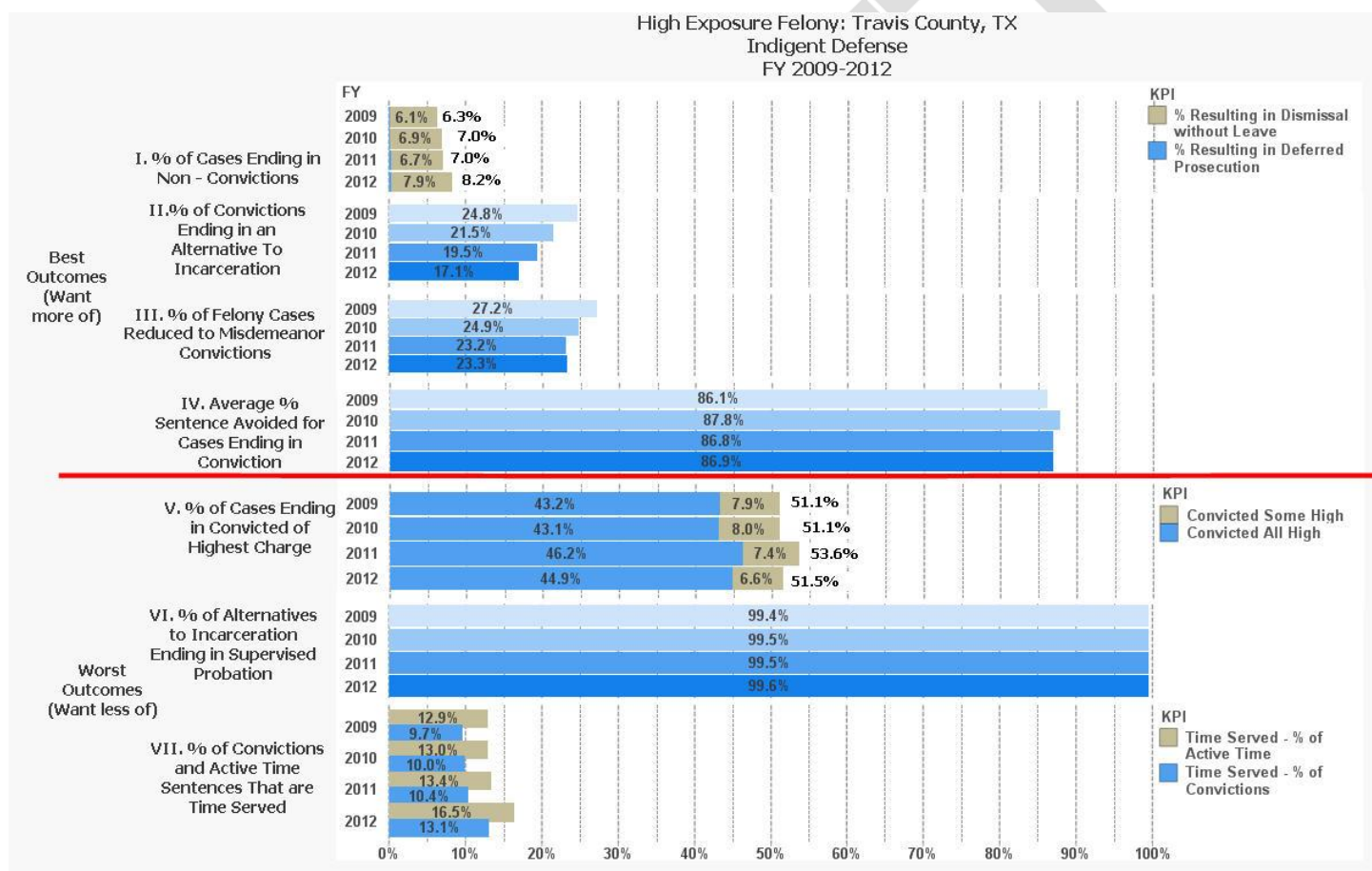
Many people notice one thing right away: retained attorneys in both jurisdictions get better outcomes for their clients. There are two “legitimate” reasons this may occur, better lawyers or better clients. Indigent defendants are fundamentally different than retained clients, and any patterns we observe in the data will be influenced by this. (Non-legitimate reasons would include racial disparities and systematic bias against poor).

We also notice that North Carolina retained attorneys have better outcomes than Travis County retained attorneys, just as we saw with indigent attorneys. Remember, what we really care about is measuring the quality of indigent representation in each jurisdiction. One way to control for system differences is to look at the difference between retained and appointed attorneys. This gap can tell us something about the differences between the quality of appointed and retained attorneys, but it will also pick up any differences in clients and other (including non-legitimate) differences between retained and appointed cases/clients.

We see the biggest gap for both jurisdictions is for Alternatives to Incarceration. This isn’t too surprising as being granted an Alternative to Incarceration often depends on having a permanent address, a job, and the ability to pay the fines. Defendants who can hire an attorney are also more likely to have a job, a permanent address and the ability to pay the fines. These would fall under differences in client

characteristics that can drive the outcomes. But we also see a difference in the rates of dismissals. We would expect that dismissals would occur at roughly the same rate, as long as there was no systematic bias in arrests. In addition, a good lawyer will influence dismissal rates by investigating and being a strong negotiator.

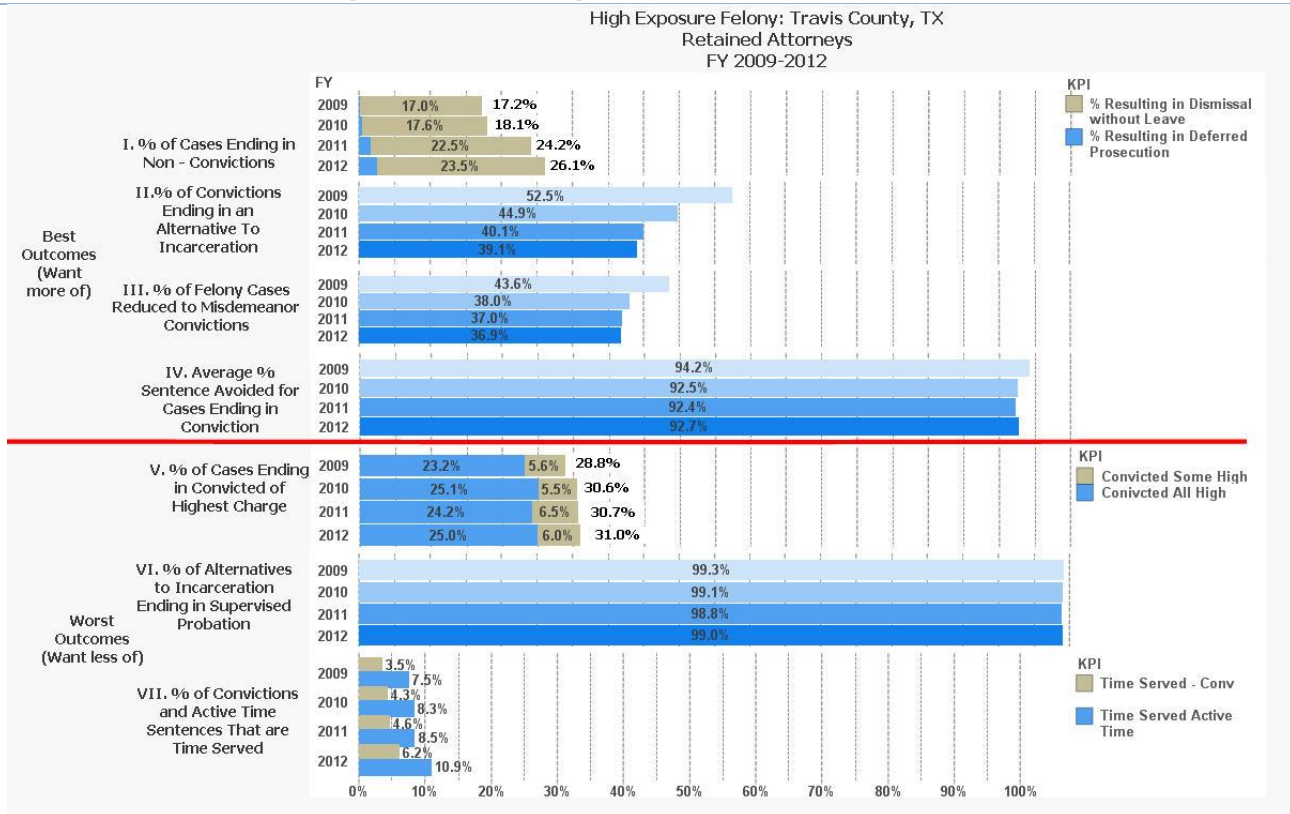
Ultimately, in Travis County, we will use the data and KPI's to assess the changes in Indigent defense from a change in policy. Travis County is transitioning in January 2015 from a Private Assigned Counsel delivery system to a Managed Assigned Counsel (MAC) system. The main goal of the new Office is to provide independence between the defense function and the judiciary; we are also hoping that the leadership, new attorney qualifications, and the mentorship program will lead to an increase in the quality of representation. We plan to measure any quality change by looking at the change in the difference between retained and indigent clients. In order to do this, we will observe changes in the measures from before and after the introduction of the MAC office. Below, we show the indicator over time.



Here we see that there are some changes over time. Given that the measures may change in response to things other than a change in indigent defense delivery system, it would be nice to be able to control for those changes. We will do this by looking at the change in retained case outcomes. Below we present the outcomes for retained attorneys over time.



## NCSEP Case Outcomes Study: Travis County, TX



We see the general patterns observed for indigent defense also appear in retained cases. In particular, dismissals are increasing for both. (Deferred prosecutions are increasing for retained cases, but not for indigent cases.) Convictions ending in alternatives to incarceration are decreasing for both, as are % of Felony Cases Reduced to Misdemeanor Convictions. The rest are generally stable. By tracking changes in the retained outcomes, we can better identify any changes in KPI's that result from the change in indigent defense delivery systems.

The rest of the data is contained in Appendix B.

## SECTION 5: LESSONS LEARNED AND THE FUTURE

### Lessons Learned

The acquisition and manipulation of the data to get it to a place where the statistics can be created as described is the most time intensive portion of the data analysis. For some places, just obtaining the data from a third party provider or other state or county agency will be hurdle in itself. For others, with in-house data capabilities the challenges will lie in shaping the data in a way that it can be easily summarized. In Travis County, we have in-county data storage and access, so our challenges were to match the data elements we had to the data elements we need and to then extract that information.

In court systems, data is often gathered for the purposes of smoothing the business process. This means that the data gathered may not be organized and stored in a way that is conducive to data analysis. We have found that when working with the courts data for policy questions, it is vital to understand the business process and the data input procedures and standards. When first approaching the data, find out who inputs each of the data elements, and any definitions and standards that they have developed in their office. Often there is very little data documentation. When you begin your project, make sure you document everything.

Another common occurrence is that the only data available is that which is legally mandated. In Texas, there are several data elements that are legally mandated to be reported to the Office of Court Administration (OCA). The data that is legally mandated is often (though not always) readily available. Other data may be harder to access.

### Data Limitations

Travis County has a robust data collection and storage system, but even here, there are some data limitations and challenges. One of the biggest challenges is that some data is stored in different departments and was not generated or stored with an eye toward analysis. There are also data elements, while somewhere in the electronic world of the county, which are not easily downloadable or useable.

The biggest challenge that we have faced in Travis County is inconsistent or non-standardized use of coding protocols. For instance, some courts may make an entry whenever a jury is selected, and others may only make the entry once the case has been disposed.

### Future Uses and Projects

Travis County is currently engaged in developing a Managed Assigned Counsel (MAC) Office. The purpose of this office is to create more independence between the judiciary and the assigned counsel and increase the effectiveness of indigent defense in Travis County. One of the primary goals of the office is to use data driven analysis to quantify the effectiveness of a MAC when compared to the current assigned counsel system.

These data begin to paint a picture of the outcomes that different indigent defense delivery systems achieve. But that is just the start. The true power of these data is the information they convey about many interesting policy questions.

## NCSEP Case Outcomes Study: Travis County, TX

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In Travis County, TX, the indigent defense system is a private appointed counsel model. Currently, the judges decide who is on the appointments list and what level of cases they are qualified to take. But the judges don't like having to manage the assignments list. In addition, the ABA advocates independence from the bench in providing indigent defense services. In order to meet the twin goals of removing the burden of supervision from the judges and independence of the public defense function, Travis County is considering the idea of implementing a Managed Assigned Counsel (MAC) system. One of the greatest benefits for Travis County of this project will be to allow us to compare pre-MAC outcomes to post-MAC outcomes. We envision other jurisdictions being able to assess the efficacy of policy changes using a similar method. This will be as simple as asking what happens to our measures when the policies change.

In addition to policy changes, the measures that have been constructed can help us to understand other aspects of the system and identify problem areas. One area of great concern is that of caseloads for indigent defenders. Is there an optimal case load that attorneys should be allowed to carry? If so, what is it? By looking at the difference in outcomes for attorneys with different case loads, we can investigate the possibility that caseload variations do affect outcomes.

Examples like this are numerous, and the implementation of data collection and analysis by the indigent defense community is a game changer. By being able to use outcome data to highlight programs that work and those that do not, the indigent defense community can target their limited dollars to programs that offer the maximum effectiveness to the community.

## SECTION 6: CONCLUSION

The introduction of quantitative measures for analyzing the indigent defense system in the United States is long overdue. The NCSEP pilot site project has brought together four jurisdictions from across the country to develop a comprehensive system to categorize cases and analyze the outcomes. The system the pilot sites have developed is straight forward and can be used in a wide range of jurisdictions indigent defense delivery systems.

In order to create a comprehensive categorization system, the pilot sites categorized all potential case types and outcomes. We then calculated the measures for the jurisdictions with available data. The resulting statistics are then compared both within and across sites.

Travis County currently uses a private assigned counsel (PAC) model of indigent defense delivery. Our analysis of the difference in outcomes achieved by hired and assigned counsel finds that hired counsel have better outcome measures. However, because the populations served by PAC and hired counsel are different, these outcome differences might not be driven by differences in attorney quality. On the other hand, this data will be immensely useful in analyzing changes in policy within a jurisdiction over time because the indigent community is similar across time. Looking at the outcomes for indigent defendants before and after a policy change results in comparing similar populations, allowing us to make stronger statements about the effectiveness of each policy.

While the effects of different policies can sometimes be deduced from observation, evidence based inference provides a more scientific analysis of the outcomes. As such, structured, standardized measures of court system outcomes can help policy makers determine the best approaches to providing resources and programs. The NCSEP pilot site project develops a procedure that jurisdictions can use to measure their indigent defense system performance. With these standardized, consistent measures, we can begin to evaluate programs objectively, improving quality while minimizing costs.

## APPENDIX A: CALCULATING THE PERCENT OF SENTENCE AVOIDED

**Key Indicator: Determining Percent Difference in Sentence Avoided**

The average percent difference between the maximum sentence faced and the sentence received or "Actual" sentence for High Exposure cases.

The calculation for this metric is as follows:

$$\frac{\text{Maximum Expected Sentence} - \text{Actual Sentence}}{\text{Max Expected Sentence}} = \% \text{ of Sentence Avoided}$$

Max Expected Sentence

States without mandatory sentencing will use "Expected Sentence" to avoid data distortion between states with mandatory sentencing. In non-mandatory sentencing states, judges factor in "across-the-board" sentencing discounts.

For structured sentencing states, such as North Carolina, sentencing guidelines include sentence *ranges*, with a minimum and maximum sentence face that increases or decreases if the case is either aggravated or mitigated. For this indicator, "maximum expected sentence" in mandatory sentencing states will be calculated using the average of minimum and maximum sentence faced. In addition, if a state cannot determine whether a case is aggravated or mitigated, calculations will assume the case was presumptive.

Sentencing in Texas is largely at the discretion of the judge. There is a sentencing range for each class of crime. To calculate the percent of sentence avoided, we will use the maximums as follows:

**Travis County Sentence Maximum by Class of Charge**

Class of Charge	Maximum Custodial Sentence
Capital Murder	Death
First-Degree Felony	99 years
Second-Degree Felony	20 years
Third – Degree Felony	10 years
State Jail Felony	2 years
Class A Misdemeanor	1 year
Class B Misdemeanor	180 days

In addition, Travis County Jail and Texas Department of Corrections offer some credits that reduce most inmates' actual time served. In Travis County Jail, inmates receive good time credit of 2 for 1. State Jail Felons typically serve their whole sentence. Texas Department of Corrections' prison inmates typically have to have their actual days plus any good time credit equal a quarter of their sentence to be eligible for review by the parole board. For serious offenses, inmates must usually serve half of their sentence to be eligible for review by the parole board. Review does not mean release. Controlling for standard sentence reduction will not change the percent of sentence served because the multiplicative factor will be applied to both the numerator and the denominator of the equation, canceling each other out.



## APPENDIX B: DATA COMPARISONS BY CATEGORY GROUP

FF 2012

**Best Outcomes (Want more of)**

**I. % of Cases Ending in Non - Convictions**

State	%
NC	9.1%
TX	19.4%

**II. % of Convictions Ending in an Alternative To Incarceration**

State	%
NC	1.5%

**III. % of Felony Cases Reduced to Misdemeanor Convictions**

State	%
NC	0.7%

**Worst Outcomes (Want less of)**

**IV. % of Cases Ending in Convicted of Highest Charge**

State	Convicted All High	Convicted Some High	Total
NC	9.4%	14.1%	23.5%
TX	30.0%	13.3%	43.3%

**V. % of Alternatives to Incarceration Ending in Supervised Probation**

State	%
NC	100.0%

**VII. % of Convictions and Active Time Sentences That are Time Served**

State	Time Served - % of Active Time	Time Served - % of Convictions
NC	1.9%	1.8%

**KPI**

- % Resulting in Non-Criminal Responsible
- % Resulting in Dismissal without Leave
- % Resulting in Deferred
- Convicted Some High
- Convicted All High
- Time Served - % of Active Time
- Time Served - % of Convictions

**\* There are no Non-Criminal Responsible or Deferred Prosecution outcomes for First Degree Murder cases in North Carolina or Travis County, TX.**

**\* There are no Alternative to Incarceration outcomes for First Degree Murder in Travis County, TX.**

**\* There are no Reduced to Misdemeanor outcomes for First Degree Murder in Travis County, TX.**

**\* There are no Alternative to Incarceration outcomes for First Degree Murder in Travis County, TX.**

**\* There are no Time Served outcomes for First Degree Murder in Travis County, TX.**

**State: Attorney Type**

Category	Outcome	Attorney Type	Value
Best Outcomes (Want more of)	I. % of Cases Ending in Non - Convictions	NC: Indigent Defense	9.1%
		NC: Retained	26.7%
		TX: Indigent Defense	19.4%
		TX: Retained	25.0%
	II. % of Convictions Ending in an Alternative To Incarceration	NC: Indigent Defense	1.5%
		NC: Retained	9.1%
	III. % of Felony Cases Reduced to Misdemeanor Convictions	NC: Indigent Defense	0.7%
	V. % of Cases Ending in Convicted of Highest Charge	NC: Indigent Defense	9.4%
		NC: Retained	7.7%
		TX: Indigent Defense	30.0%
Worst Outcomes (Want less of)	VI. % of Alternatives to Incarceration Ending in Supervised Probation	NC: Indigent Defense	100.0%
		NC: Retained	100.0%
	VII. % of Convictions and Active Time Sentences That are Time Served	NC: Indigent Defense	1.9%
		NC: Retained	1.8%
		NC: Retained	10.0%
		NC: Retained	9.1%

**KPI Legend:**

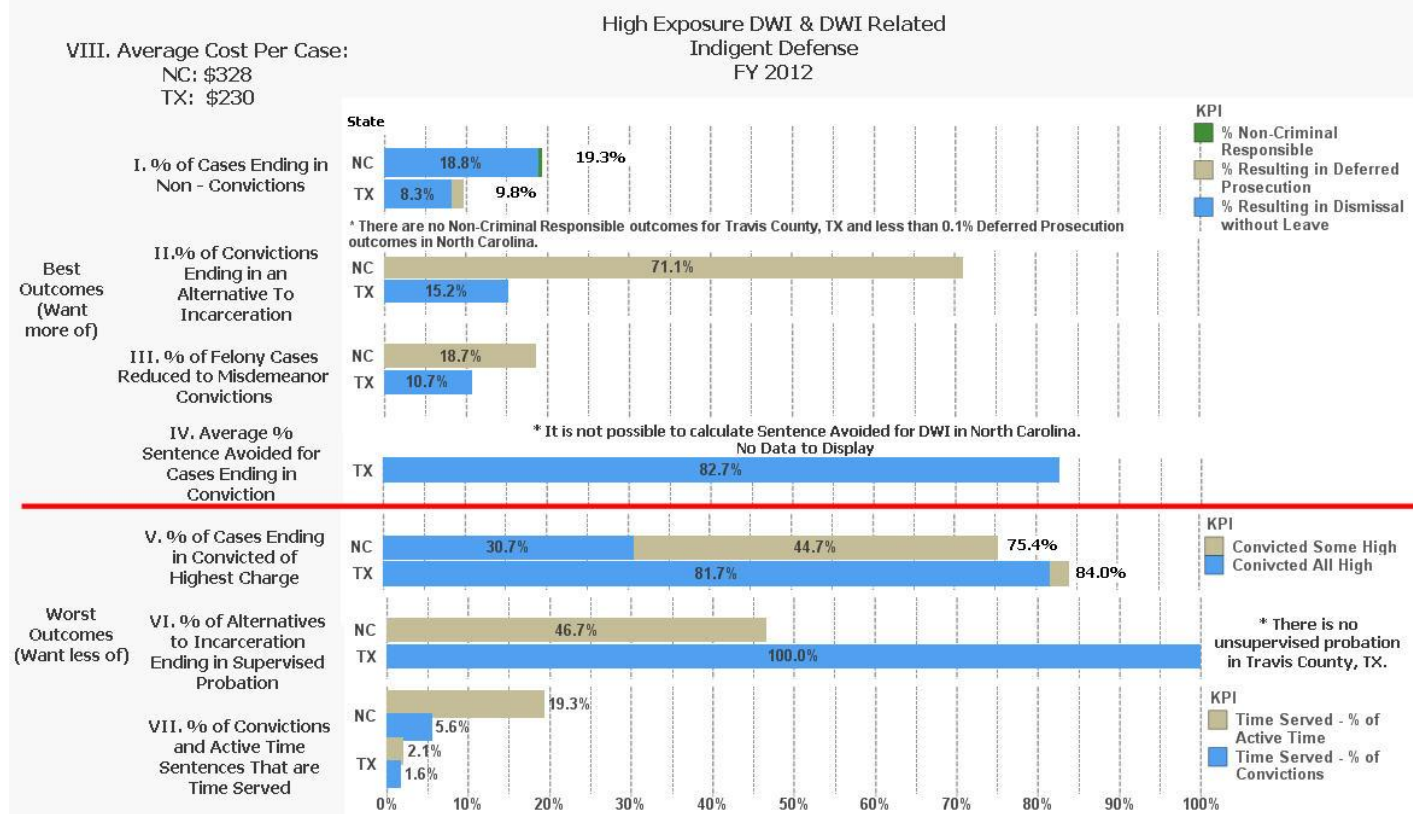
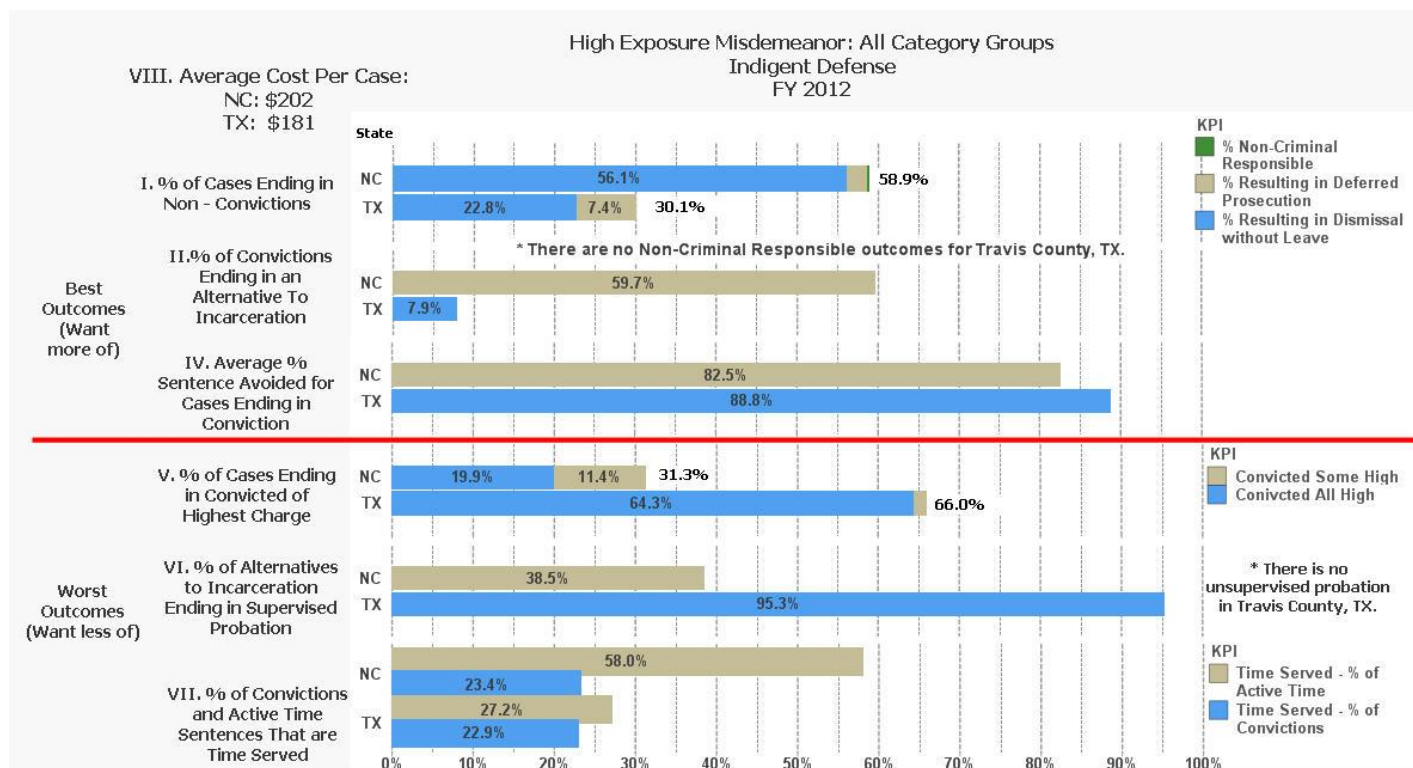
- % Resulting in Non-Criminal Responsible
- % Resulting in Dismissal without Leave
- % Resulting in Deferred Prosecution
- Convicted Some High
- Convicted All High
- Time Served - % of Active Time
- Time Served - % of Convictions

**Notes:**

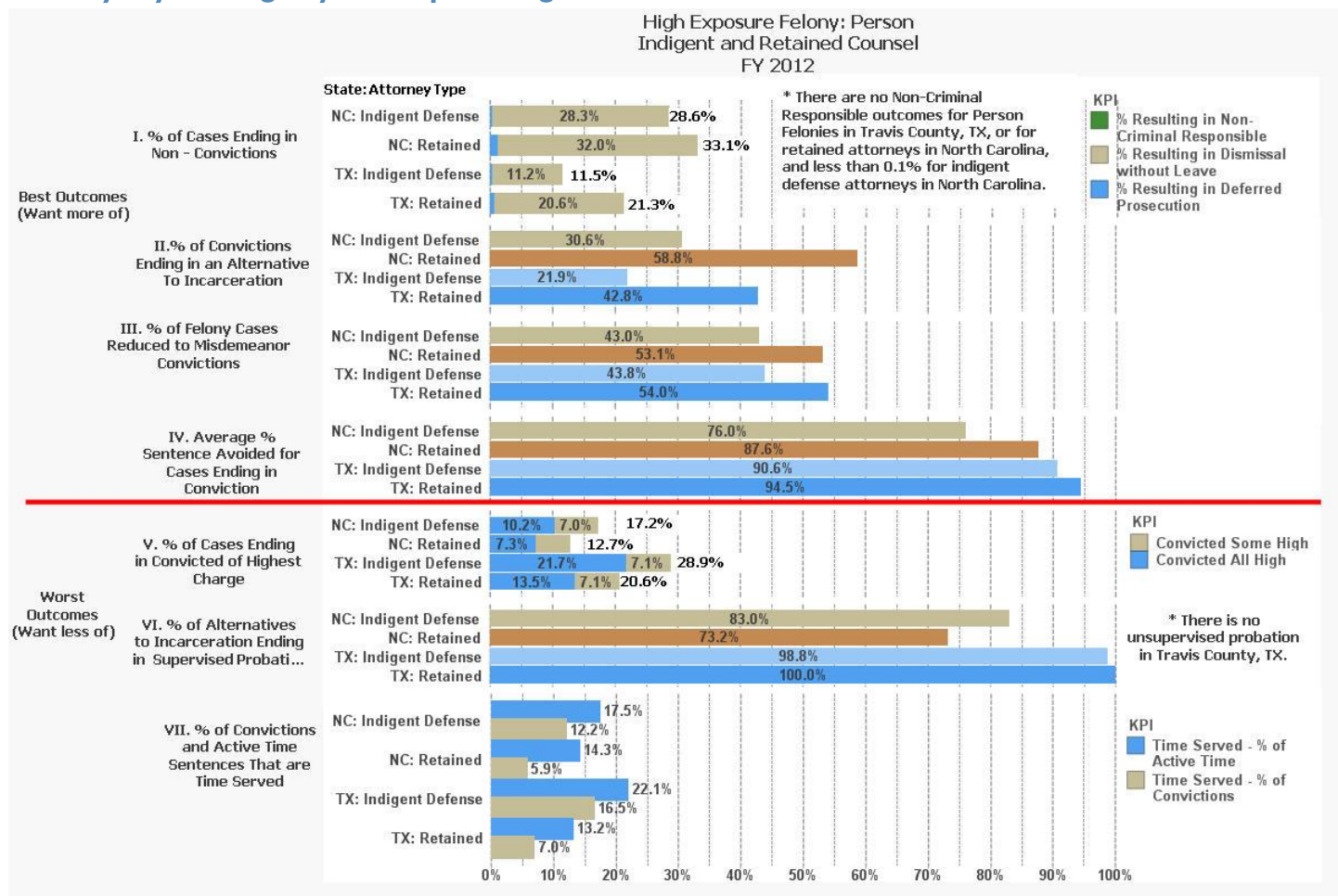
- \* There are no Non-Criminal Responsible or Deferred Prosecution outcomes for First Degree Murder Cases in North Carolina or Travis County, TX.
- \* There are no Alternatives to Incarceration for First Degree Murder in Travis County, TX.
- \* There are no reductions from Felony to Misdemeanor for First Degree Murder in Travis County, TX or for Retained Counsel in North Carolina.
- \* There are no Convicted Some High outcomes for First Degree Murder for retained attorneys in North Carolina.
- \* There are no Alternatives to Incarceration Ending in Supervised Probation for First Degree Murder in Travis County, TX.
- \* There are no time served outcomes for First Degree Murder in Travis County, TX.

## NCSEP Case Outcomes Study: Travis County, TX

### Misdemeanor and DWI: All Category Groups



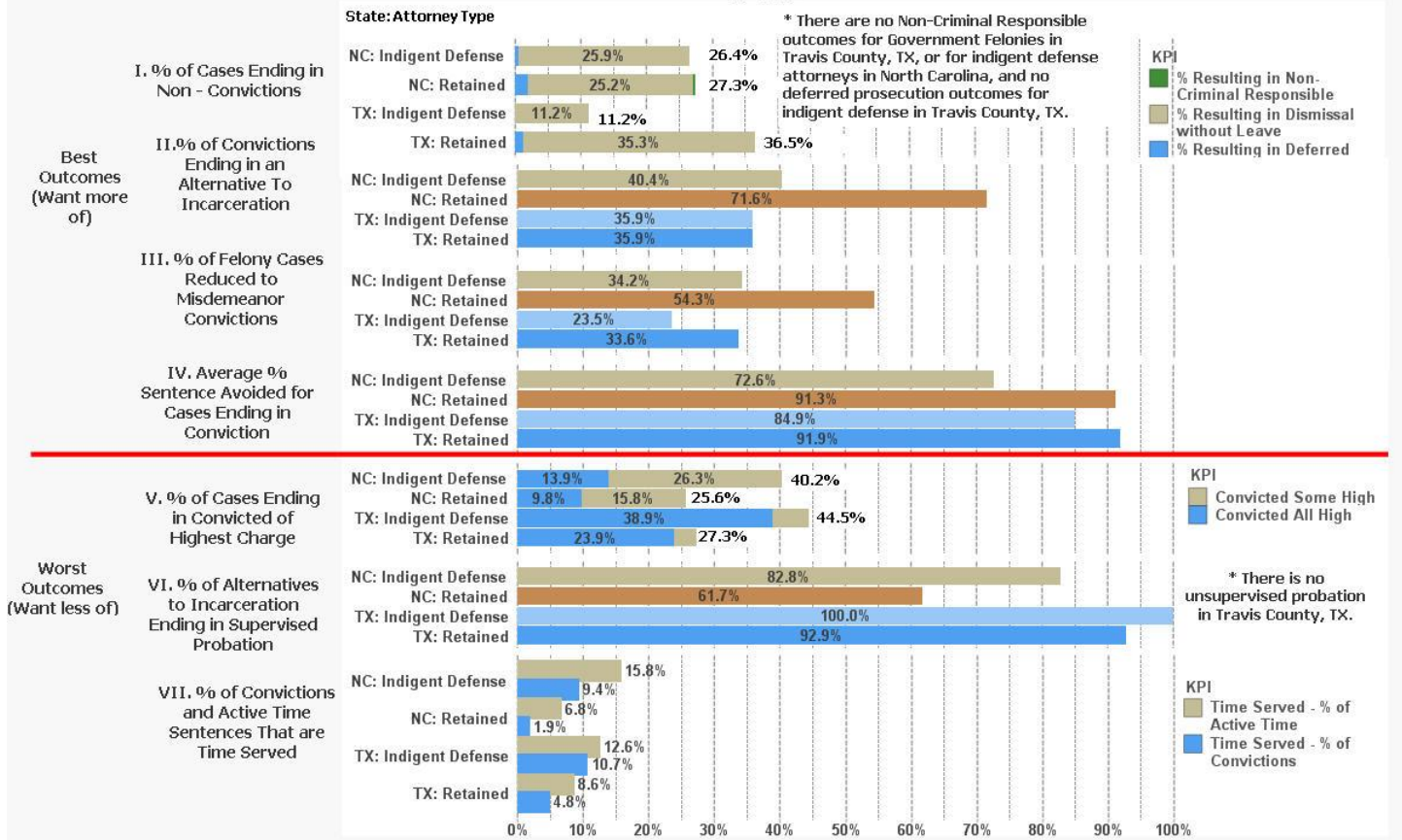
# Felony by Category Group: Indigent and Retained





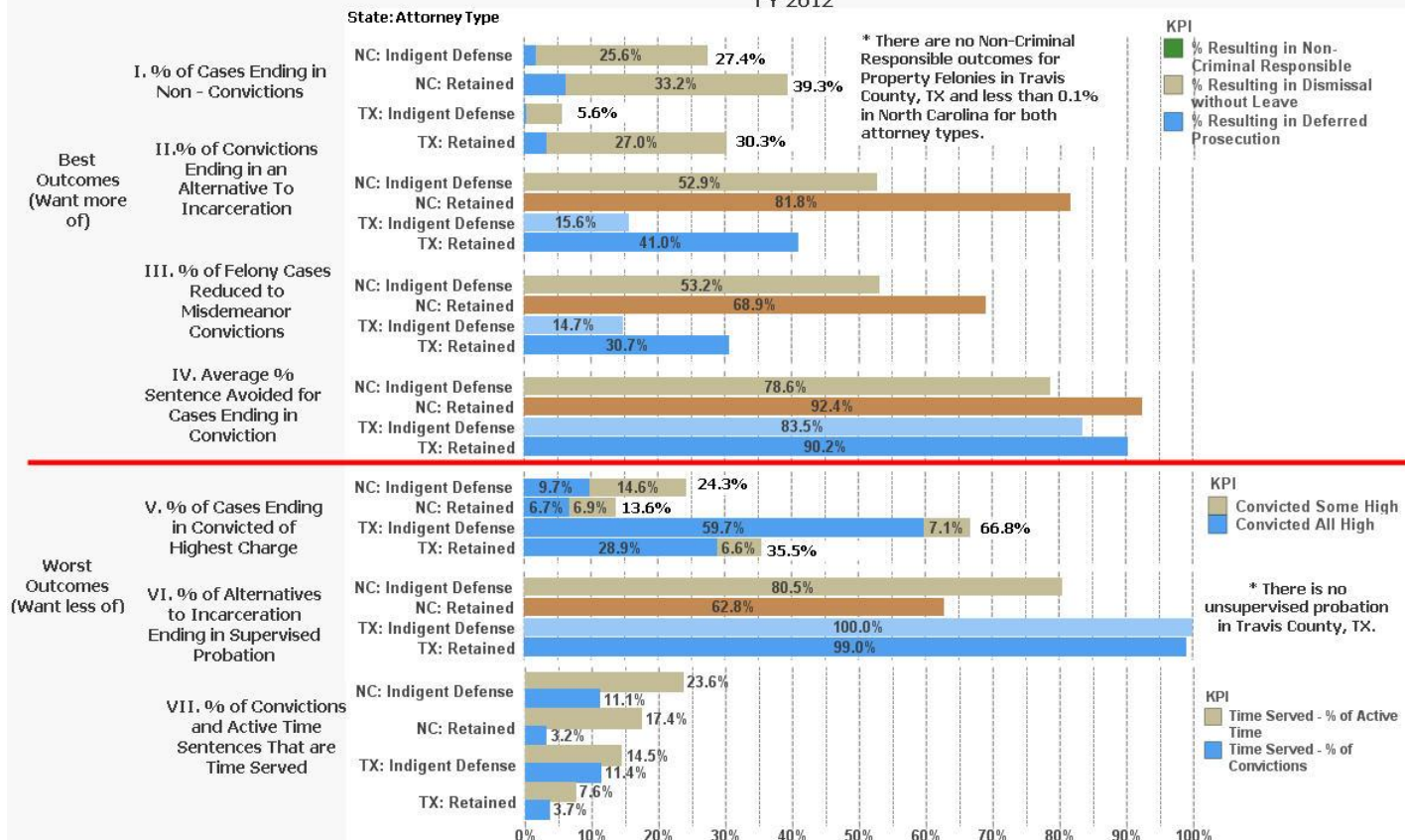
## NCSEP Case Outcomes Study: Travis County, TX

High Exposure Felony: Government  
Indigent and Retained Counsel  
FY 2012



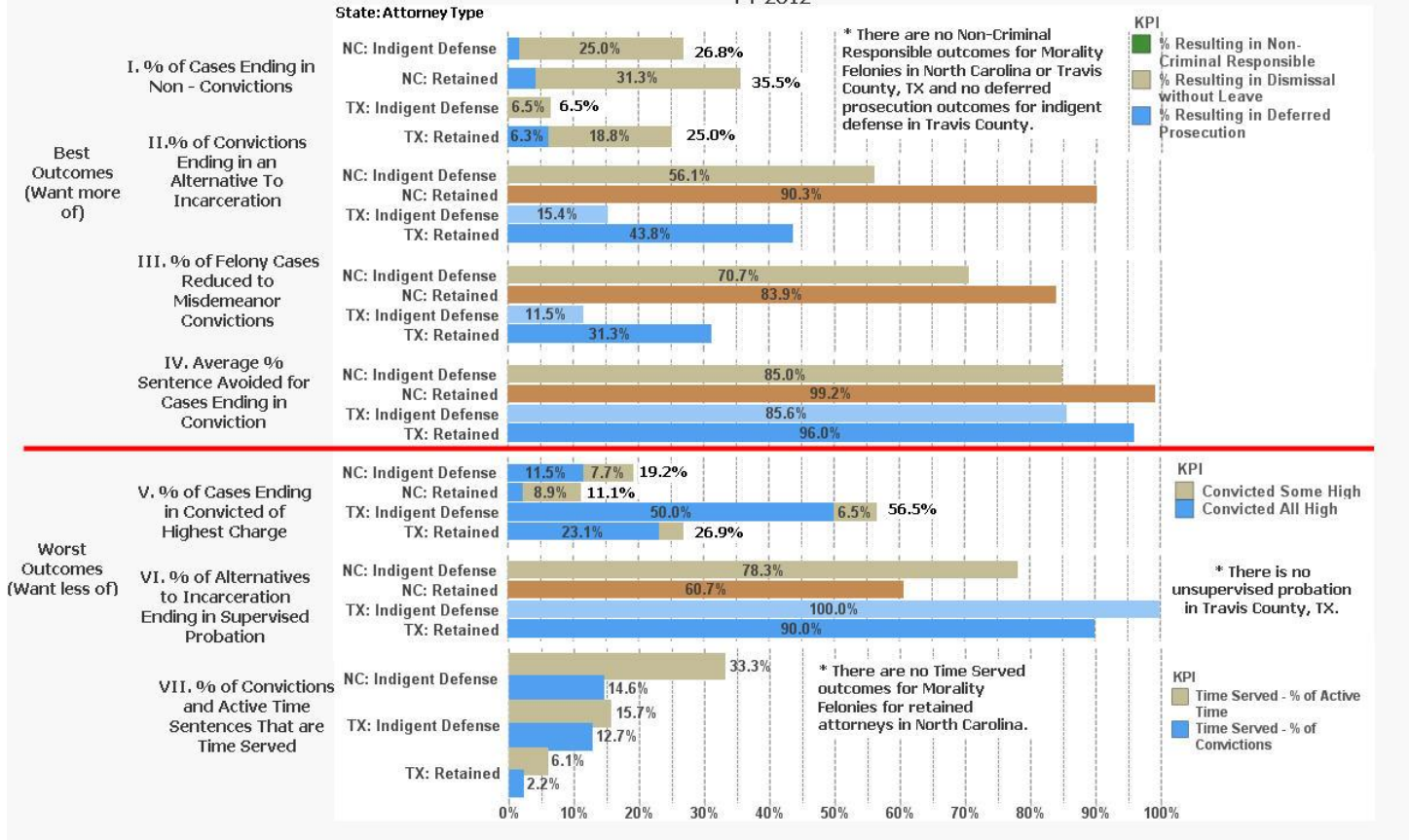
# NCSEP Case Outcomes Study: Travis County, TX

High Exposure Felony: Property  
Indigent and Retained Counsel  
FY 2012



## NCSEP Case Outcomes Study: Travis County, TX

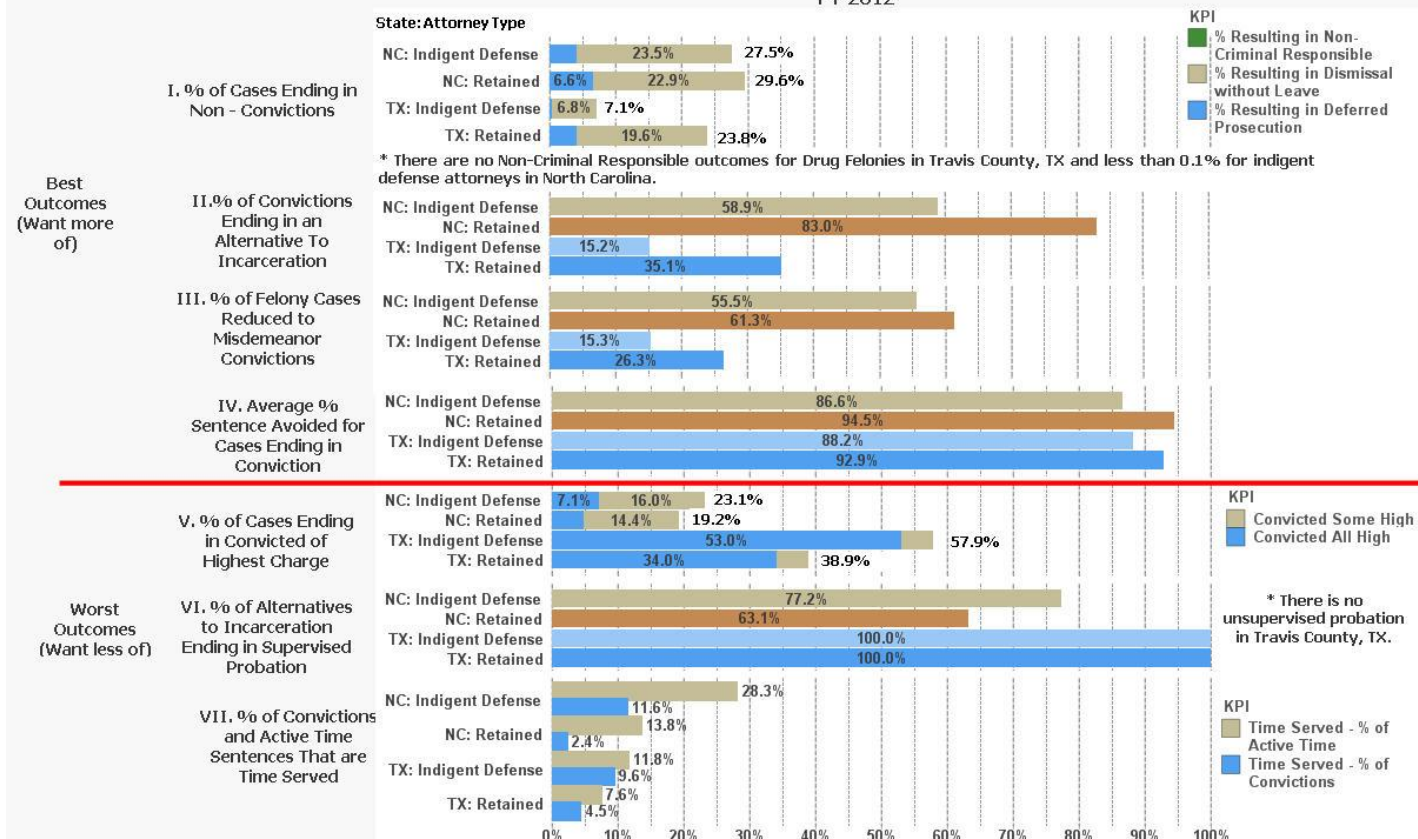
High Exposure Felony: Morality  
Indigent and Retained Counsel  
FY 2012





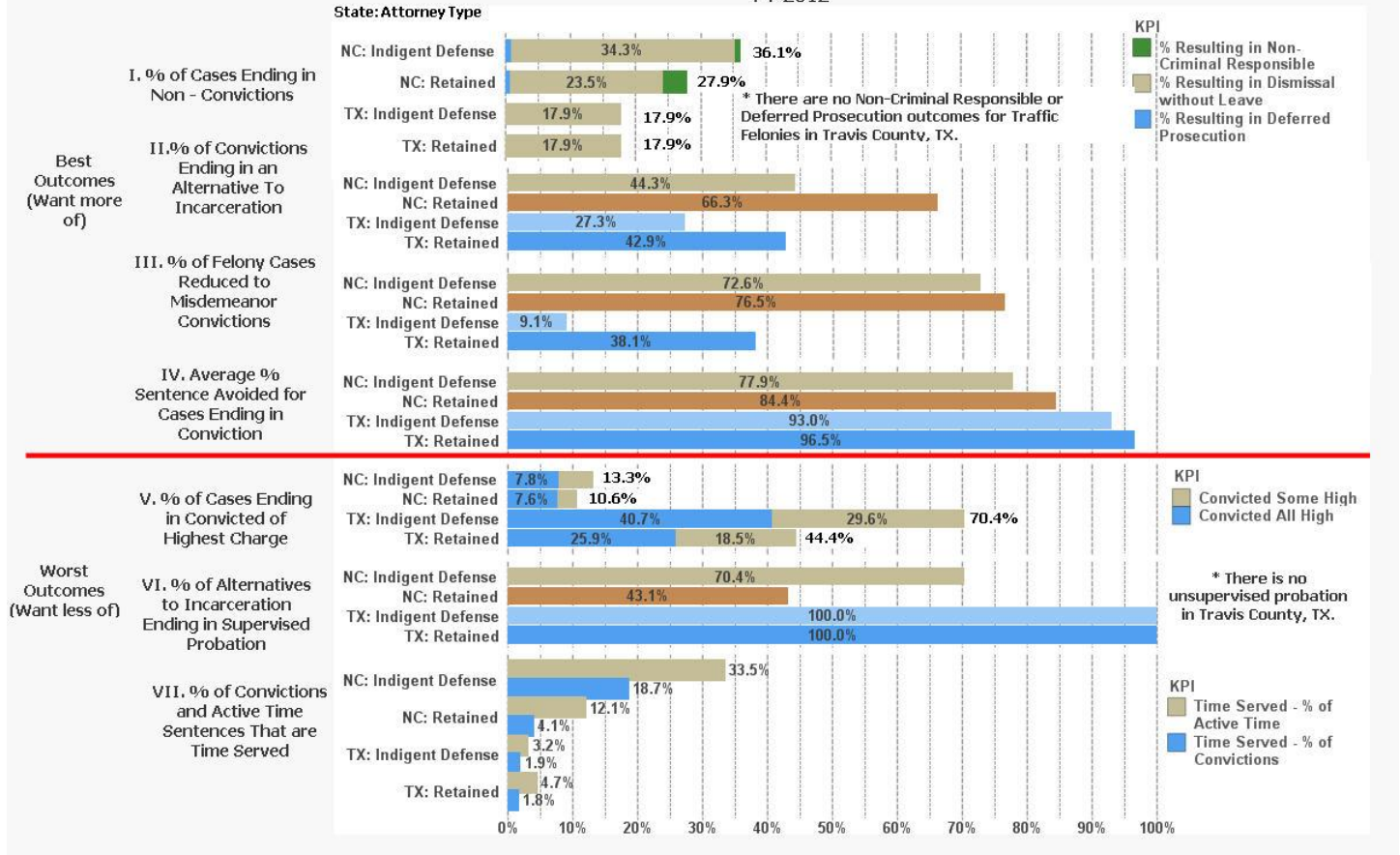
# NCSEP Case Outcomes Study: Travis County, TX

High Exposure Felony: Drugs  
Indigent and Retained Counsel  
FY 2012

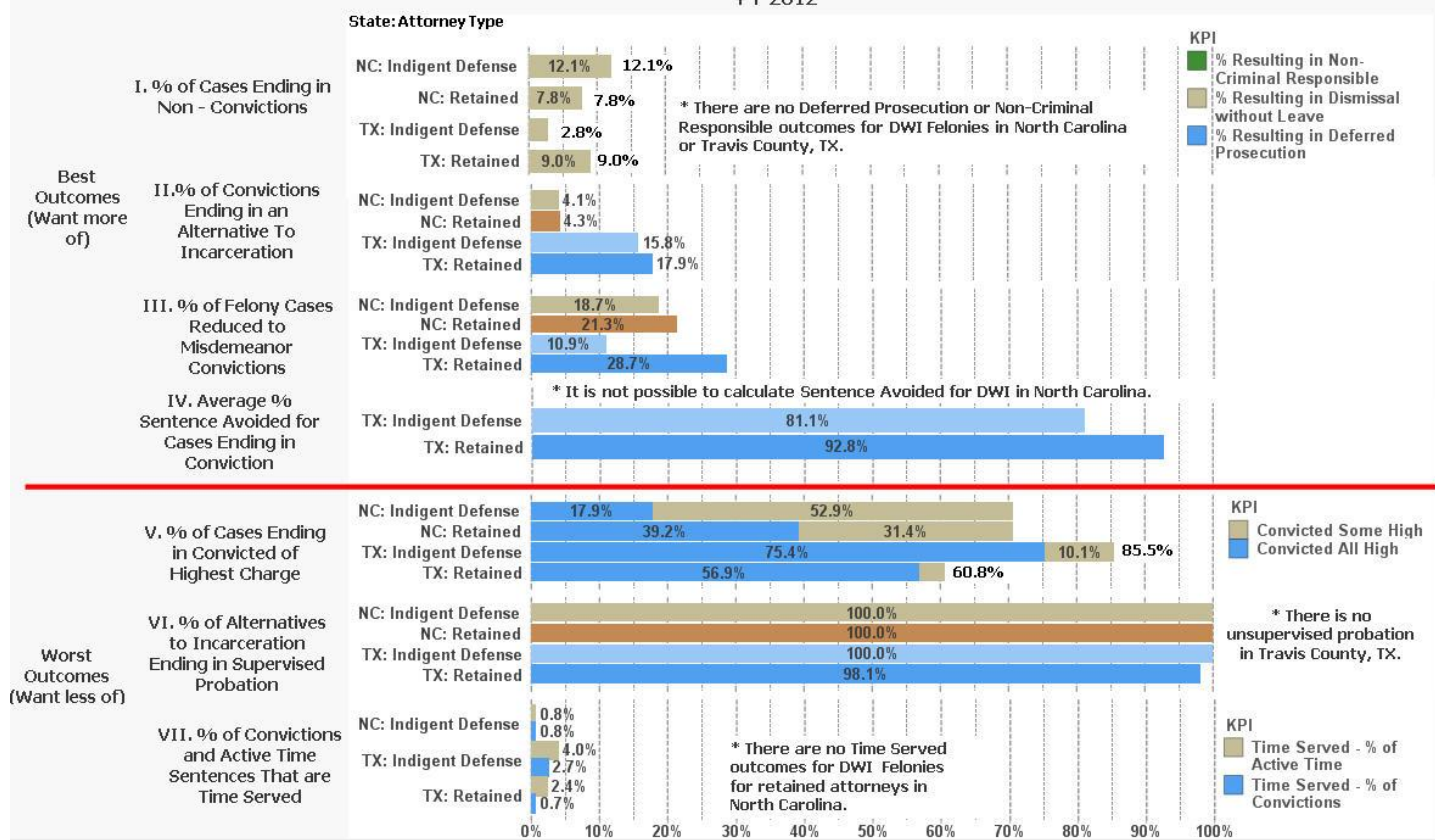


## NCSEP Case Outcomes Study: Travis County, TX

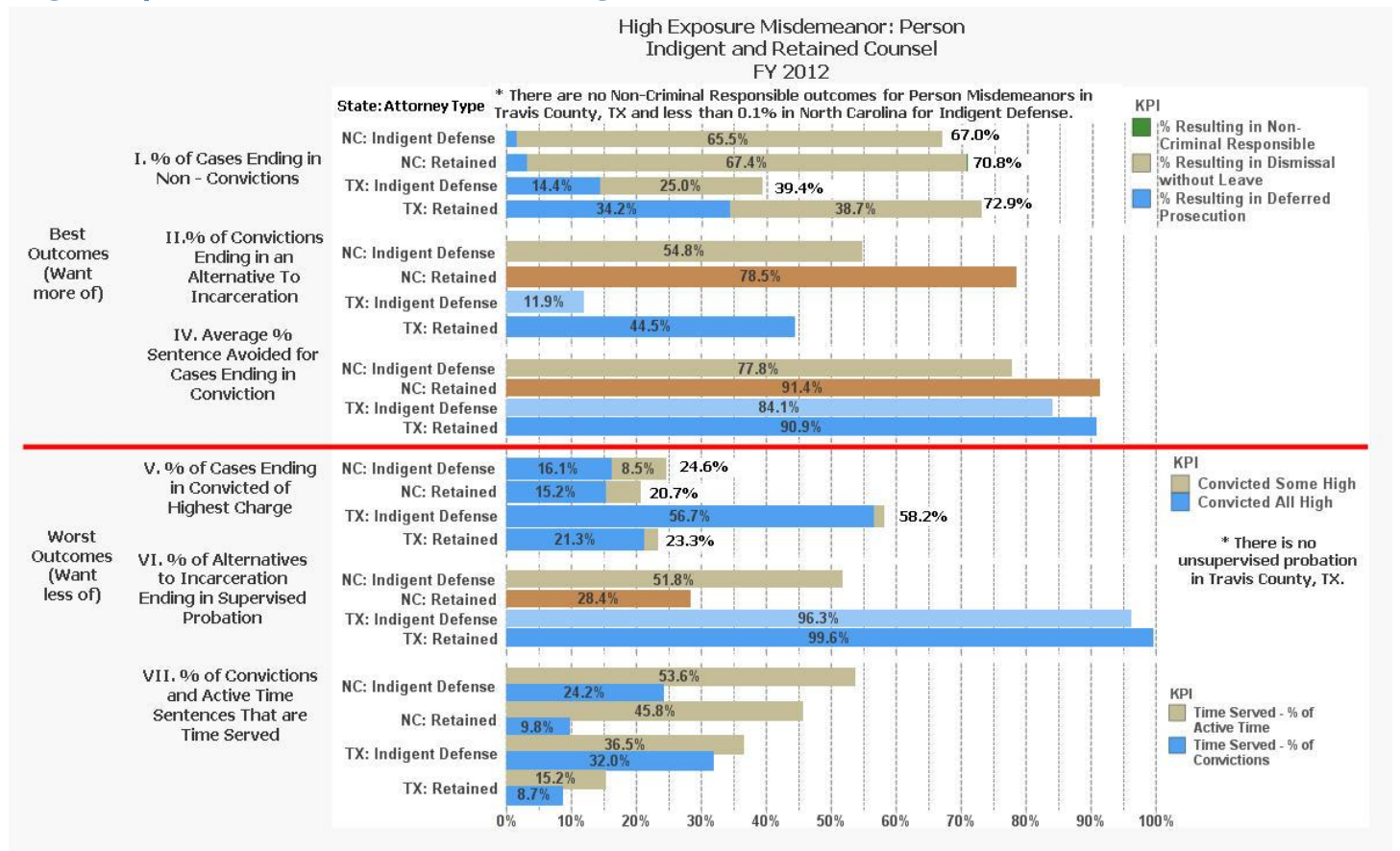
High Exposure Felony: Traffic  
Indigent and Retained Counsel  
FY 2012



High Exposure Felony: DWI & DWI Related  
Indigent and Retained Counsel  
FY 2012



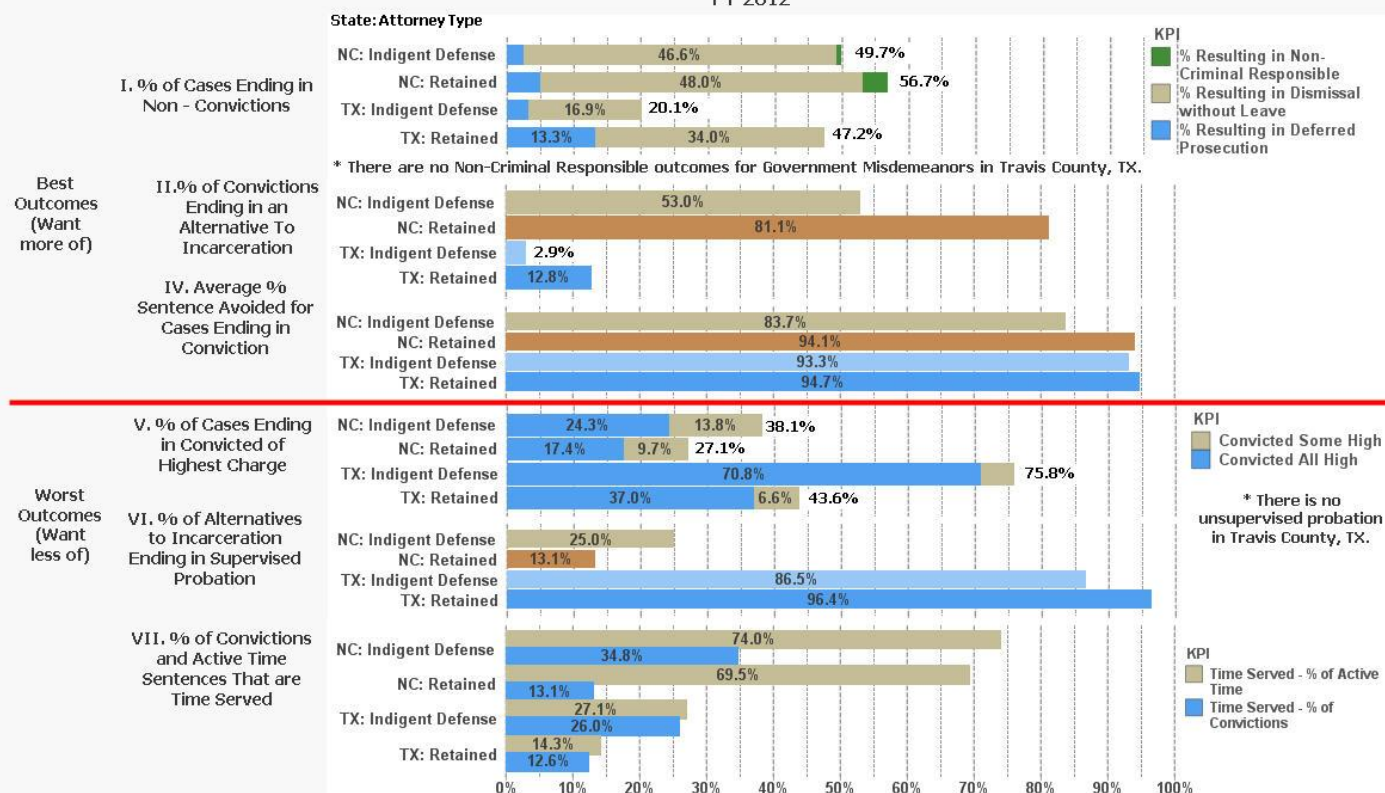
# NCSEP Case Outcomes Study: Travis County, TX High Exposure Misdemeanor: Indigent and Retained



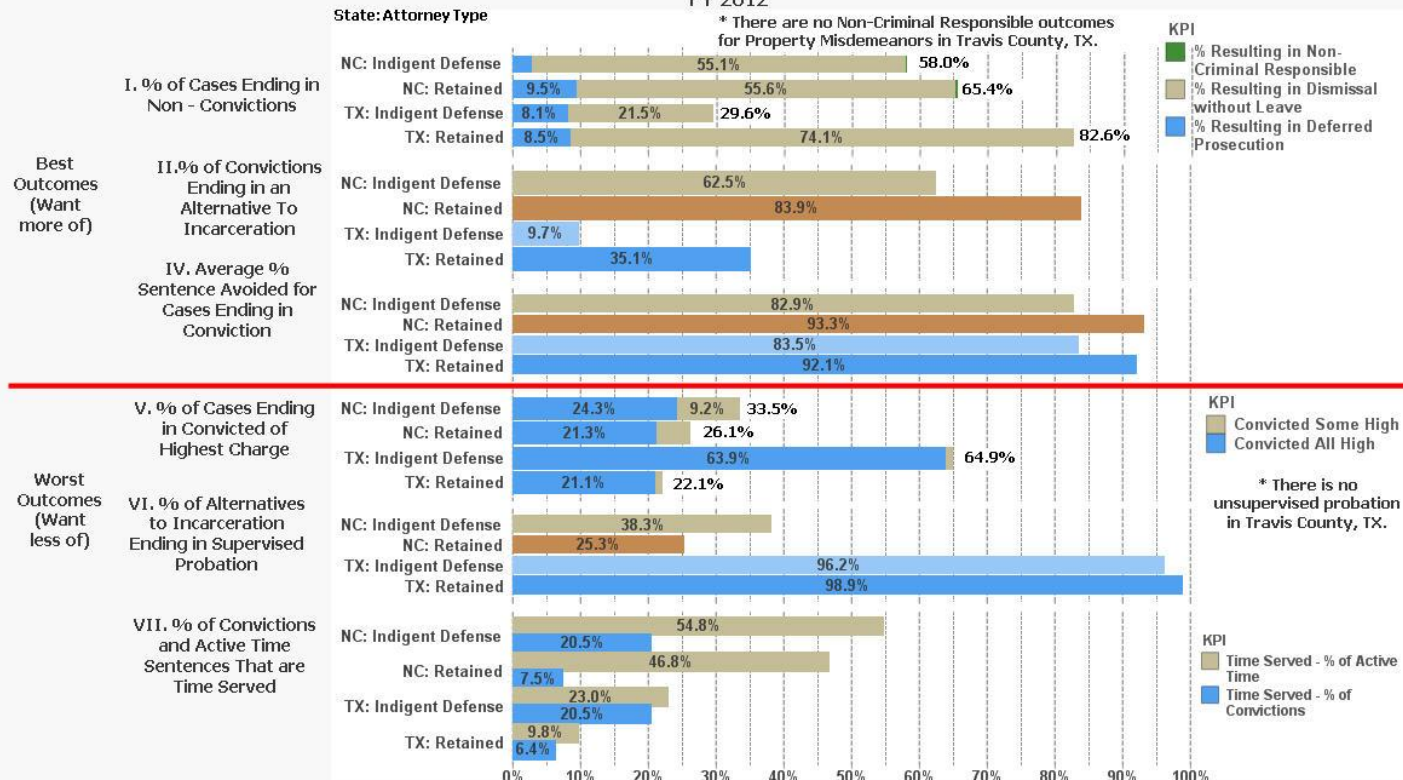


# NCSEP Case Outcomes Study: Travis County, TX

## High Exposure Misdemeanor: Government Indigent and Retained Counsel FY 2012

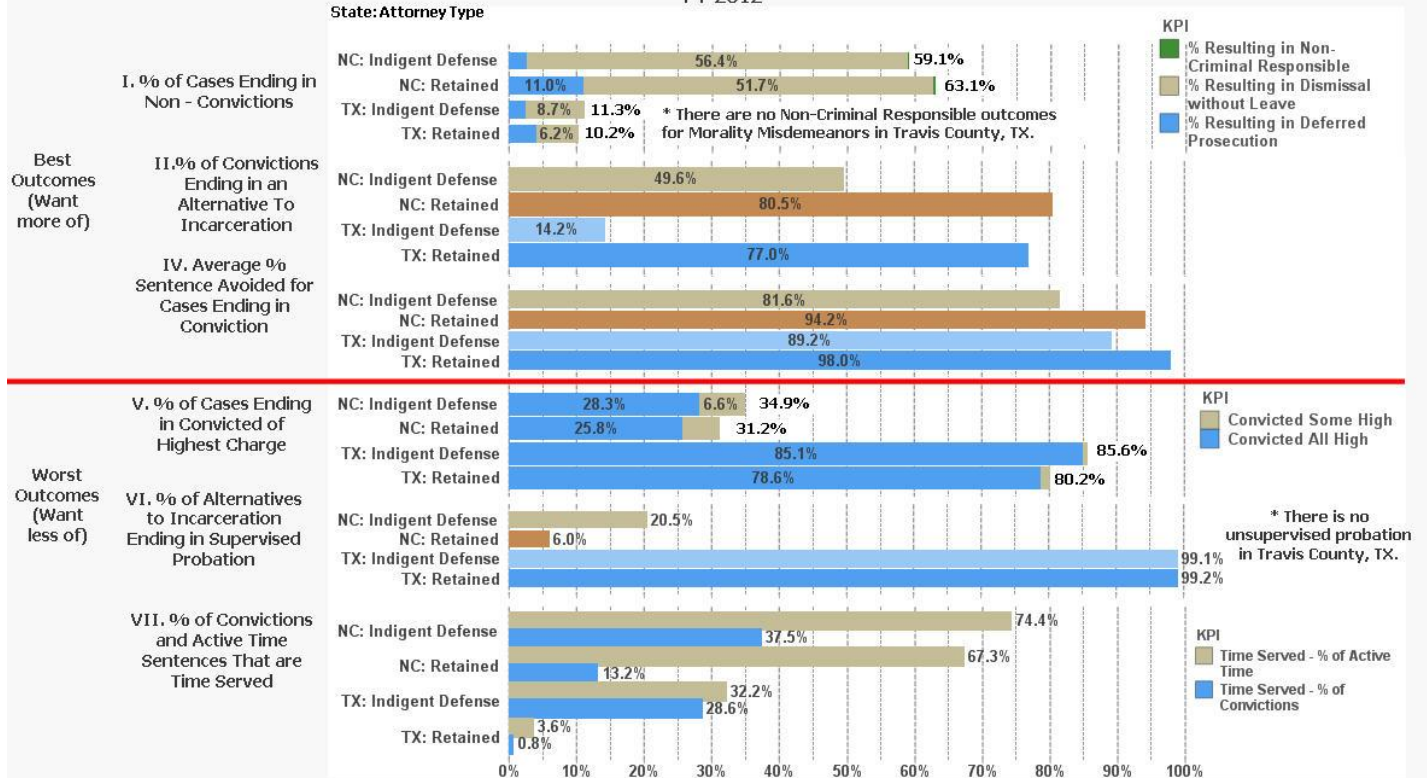


## High Exposure Misdemeanor: Property Indigent and Retained Counsel FY 2012



## NCSEP Case Outcomes Study: Travis County, TX

High Exposure Misdemeanor: Morality  
Indigent and Retained Counsel  
FY 2012





# NCSEP Case Outcomes Study: Travis County, TX

## High Exposure Misdemeanor: Drugs Indigent and Retained Counsel

FY 2012

State: Attorney Type

\* There are no Non-Criminal Responsible outcomes for Drug Misdemeanors in Travis County, TX.

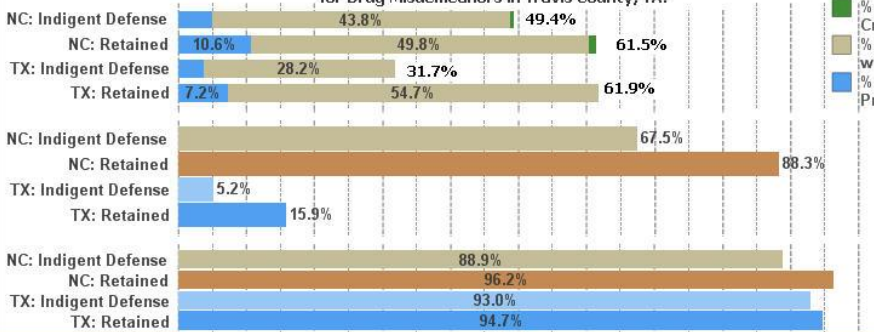
KPI  
 % Resulting in Non-Criminal Responsible  
 % Resulting in Dismissal without Leave  
 % Resulting in Deferred Prosecution

I. % of Cases Ending in Non - Convictions

II. % of Convictions Ending in an Alternative To Incarceration

IV. Average % Sentence Avoided for Cases Ending in Conviction

Best Outcomes (Want more of)

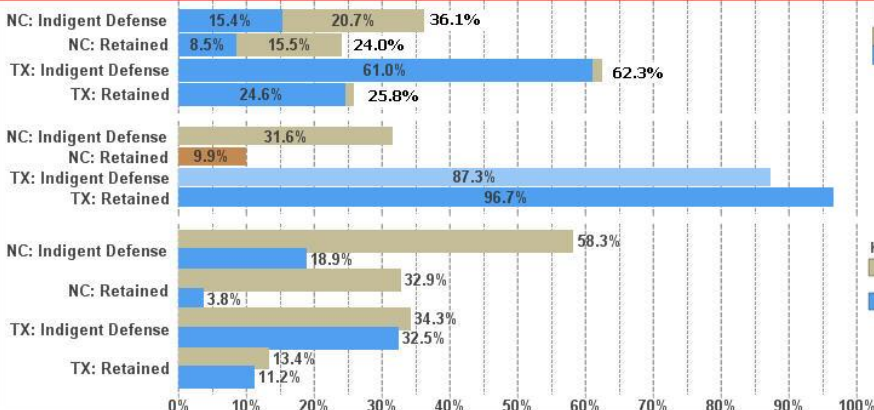


V. % of Cases Ending in Convicted of Highest Charge

VI. % of Alternatives to Incarceration Ending in Supervised Probation

VII. % of Convictions and Active Time Sentences That are Time Served

Worst Outcomes (Want less of)



KPI  
 Convicted Some High  
 Convicted All High

\* There is no unsupervised probation in Travis County, TX.

KPI  
 Time Served - % of Active Time  
 Time Served - % of Convictions

## High Exposure Misdemeanor: Traffic Indigent and Retained Counsel

FY 2012

State: Attorney Type

\* There are no Non-Criminal Responsible outcomes for Traffic Misdemeanors in Travis County, TX.

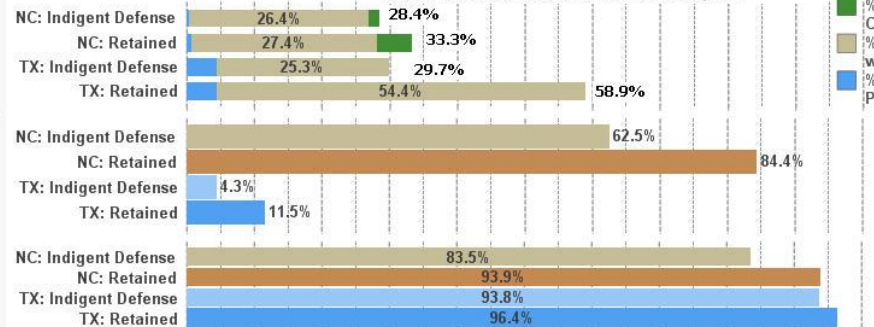
KPI  
 % Resulting in Non-Criminal Responsible  
 % Resulting in Dismissal without Leave  
 % Resulting in Deferred Prosecution

I. % of Cases Ending in Non - Convictions

II. % of Convictions Ending in an Alternative To Incarceration

IV. Average % Sentence Avoided for Cases Ending in Conviction

Best Outcomes (Want more of)



KPI  
 Convicted Some High  
 Convicted All High

\* There is no unsupervised probation in Travis County, TX.

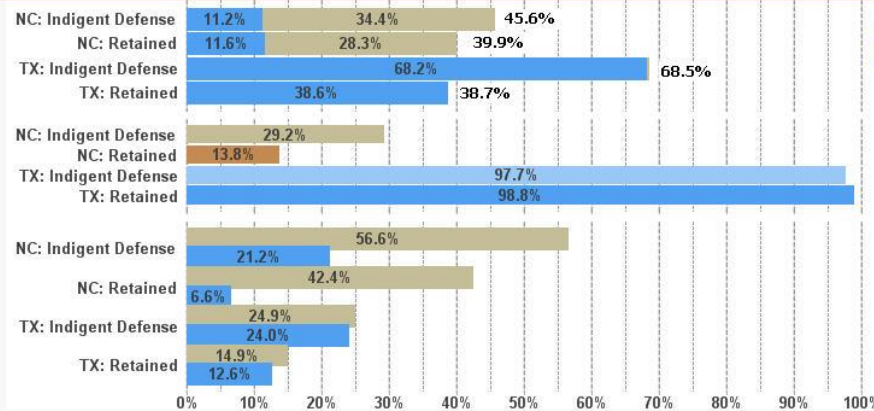
KPI  
 Time Served - % of Active Time  
 Time Served - % of Convictions

V. % of Cases Ending in Convicted of Highest Charge

VI. % of Alternatives to Incarceration Ending in Supervised Probation

VII. % of Convictions and Active Time Sentences That are Time Served

Worst Outcomes (Want less of)



KPI  
 Convicted Some High  
 Convicted All High

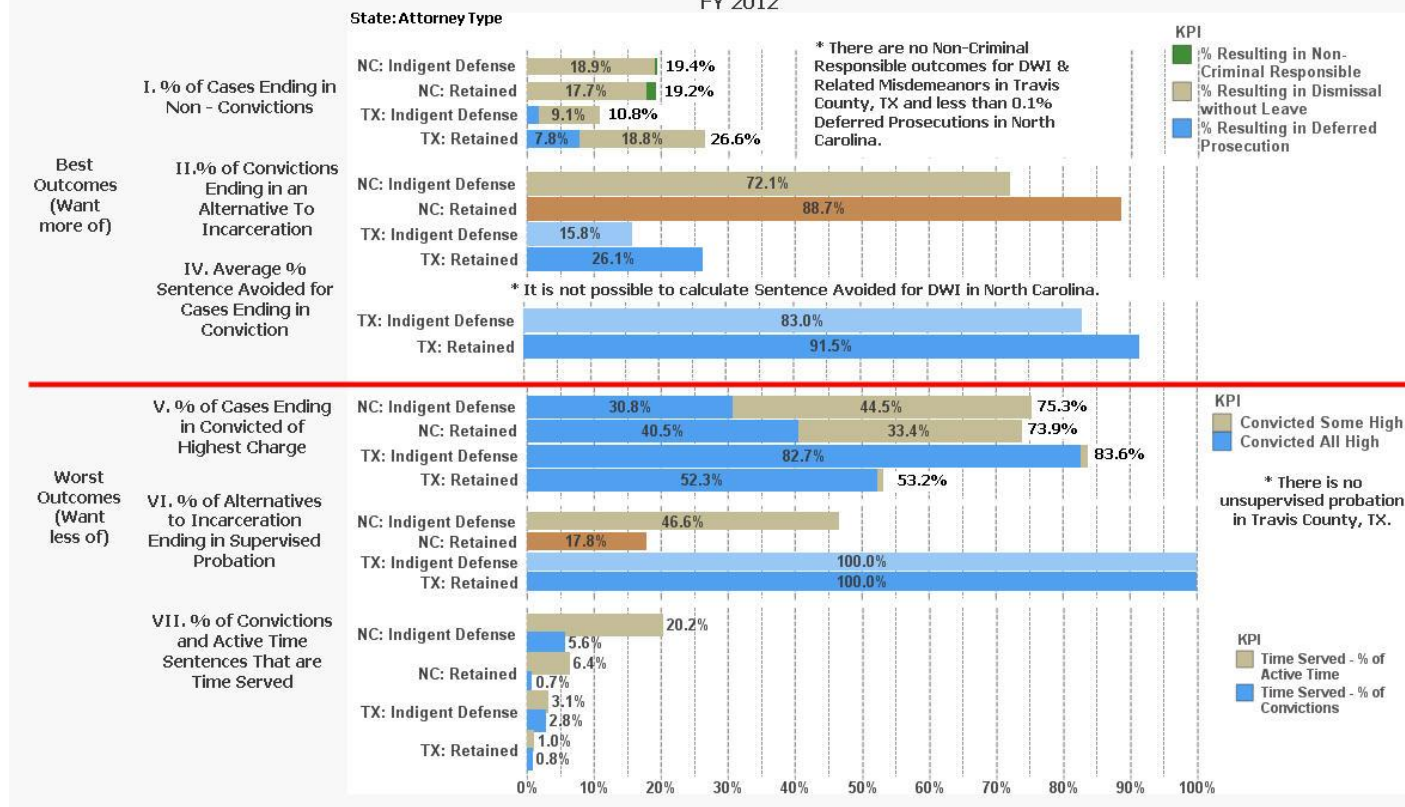
\* There is no unsupervised probation in Travis County, TX.

KPI  
 Time Served - % of Active Time  
 Time Served - % of Convictions



## NCSEP Case Outcomes Study: Travis County, TX

High Exposure Misdemeanor: DWI & DWI Related  
Indigent and Retained Counsel  
FY 2012



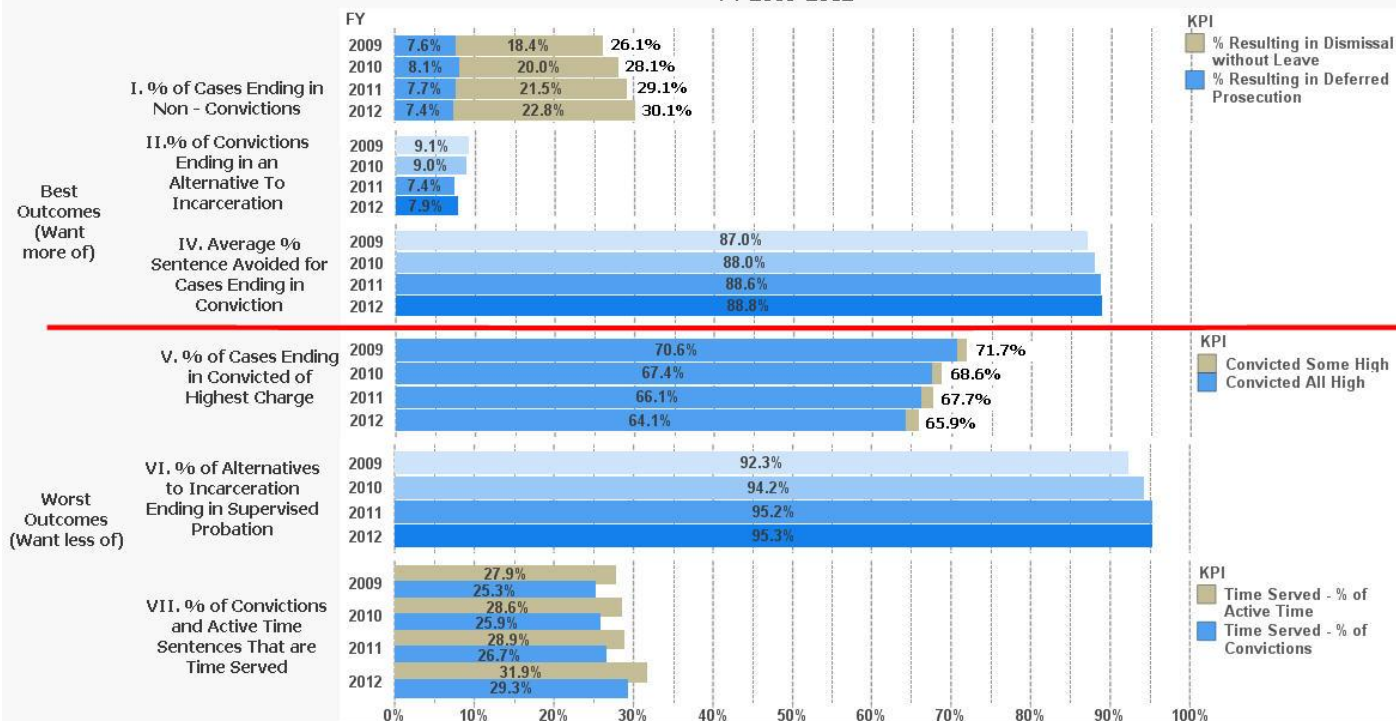
## Time Series Analysis

# NCSEP Case Outcomes Study: Travis County, TX

## High Exposure Misdemeanor: Travis County, TX

### Indigent Defense

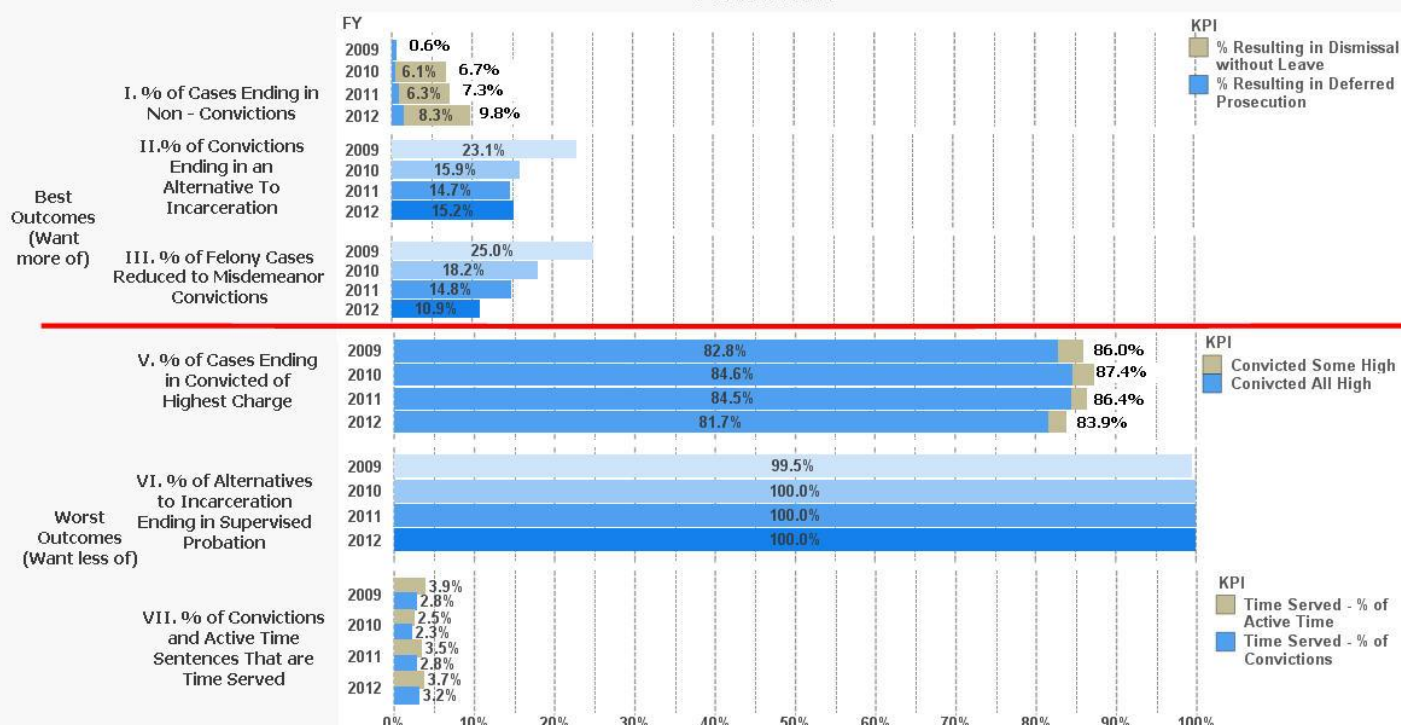
FY 2009-2012



## High Exposure DWI and DWI Related: Travis County, TX

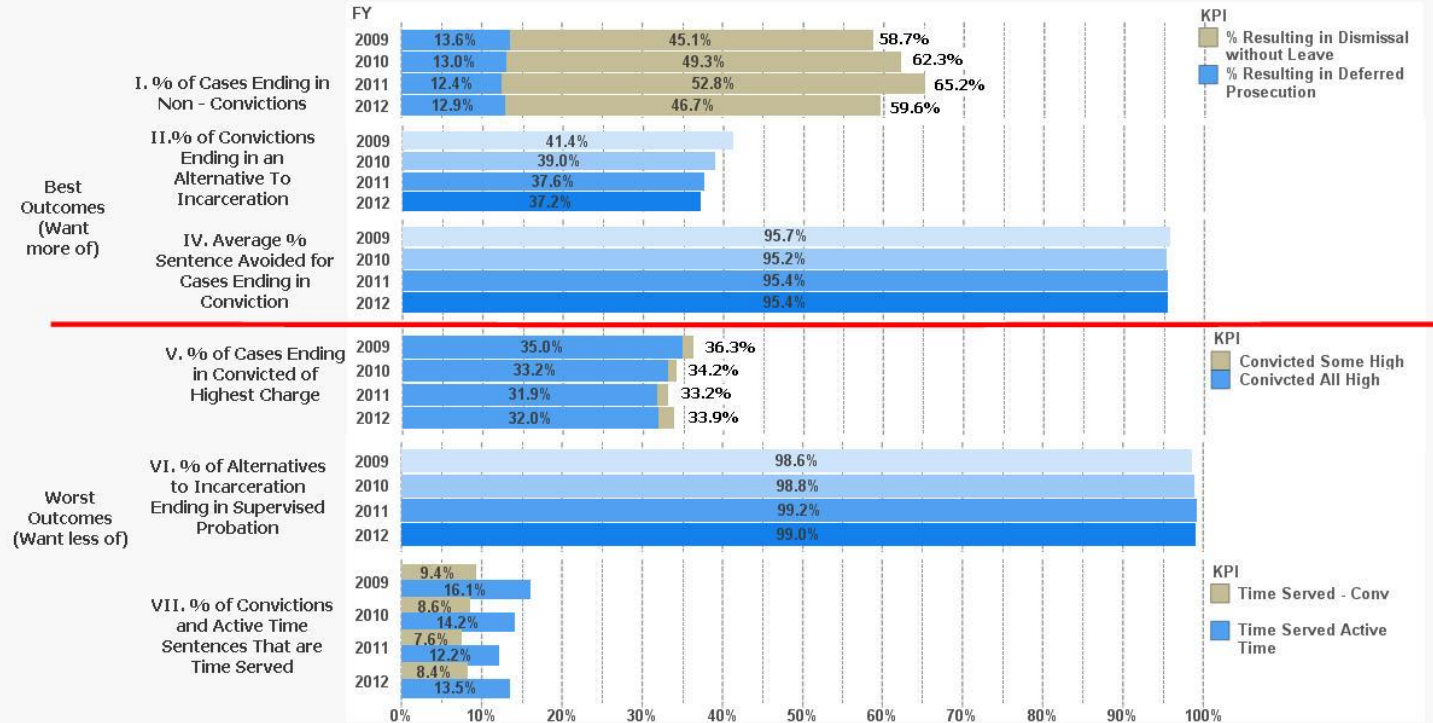
### Indigent Defense

FY 2009-2012

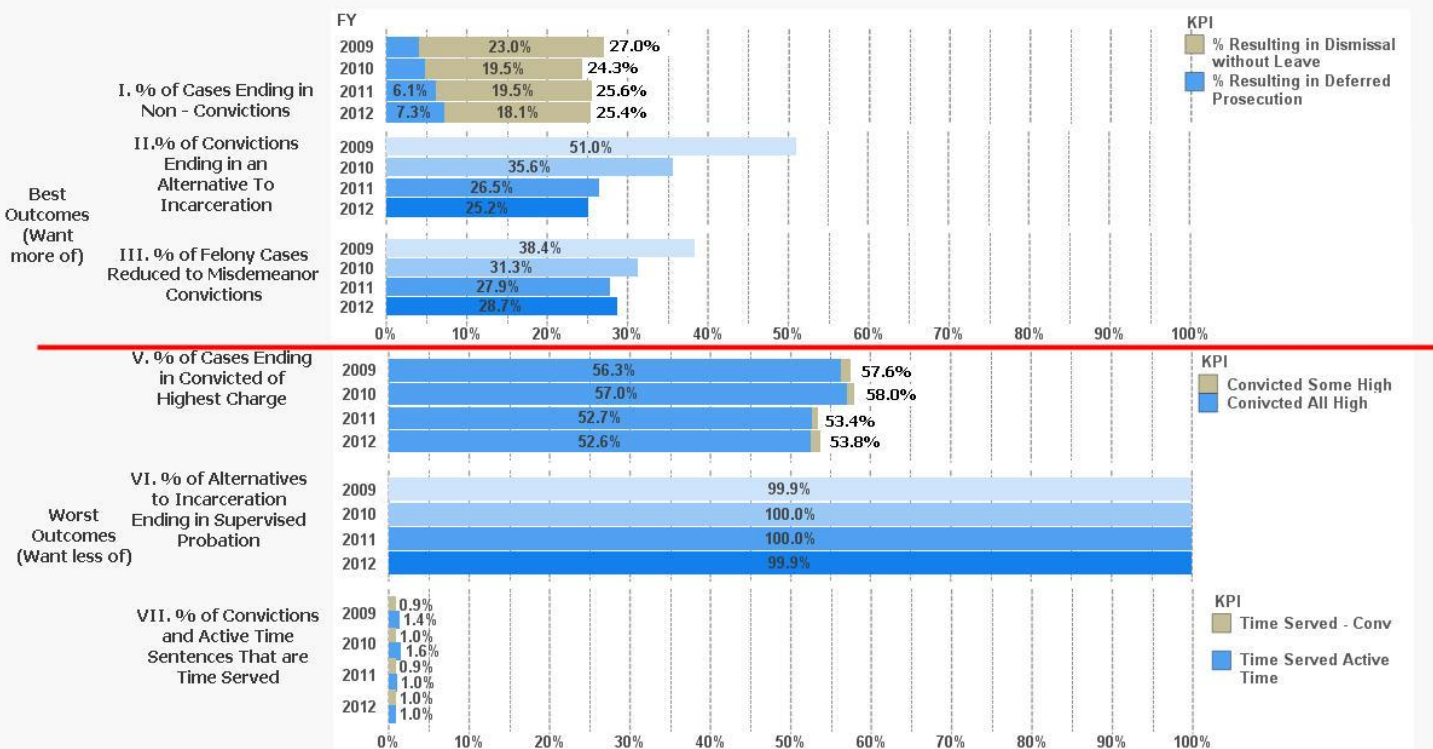


## NCSEP Case Outcomes Study: Travis County, TX

### High Exposure Misdemeanor: Travis County, TX Retained Attorneys FY 2009-2012



### High Exposure DWI and DWI Related: Travis County, TX Retained Attorneys FY 2009-2012

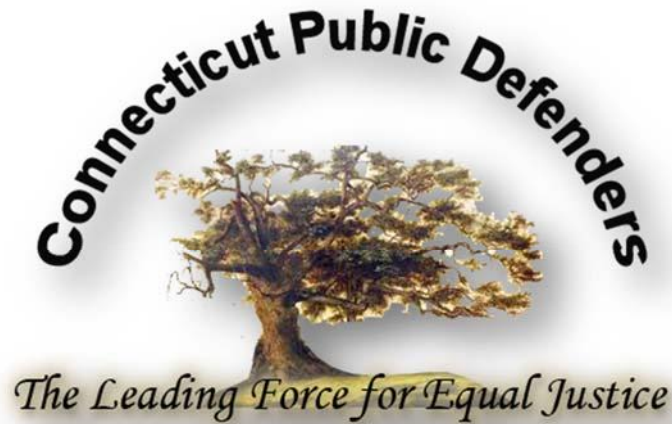


# Appendix G

## Connecticut Case Outcome Report



# NCSEP CASE OUTCOMES STUDY



8/1/2014

Connecticut Division of Public Defender Services Pilot Site Jennie  
Albert, Manager of Information Services and Research

***Introduction:*** The North Carolina Office of Indigent Defense Services' Systems Evaluation Project (NCSEP) and the National Legal Aid and Defender Association (NLADA) partnered, with the help of The Open Society, to develop an objective system outcome tool for indigent defense systems (IDS) to use throughout the country. NCSEP and NLADA chose three additional pilot sites (Connecticut; Knox County, TN and Travis County, TX) to assist them in developing the data elements, key indicators and methodologies that comprise the toolkit. This report represents the experiences of one site, Connecticut DPDS, during this initial process.

# NCSEP Case Outcomes Study

## CONNECTICUT DIVISION OF PUBLIC DEFENDER SERVICES PILOT SITE

### Project Overview- Justice Standards Evaluation and Research Initiative (JSERI)

NCSEP, beginning in 2005, recognized the need for IDS to collect meaningful data, have the capabilities to effectively analyze that data in an effort to evaluate system outcomes among other indicators. JSERI sought to build upon NCSEP's work and create a toolbox for the national indigent defense community:

- A lexicon of research terms and concepts
- A "how to" guide for systems on the nuts and bolts of research
- A guide for developing their own (or using the JSERI's) performance measures
- A guide to operationalizing performance indicators and conducting evidence-based evaluations of their indigent defense system.
- Shared coding for cleaning and analyzing large sets of data

IDS around the country should have the capability to empirically assess how well they are meeting the needs of clients, the criminal justice system and the community. To attend to the various IDS models during the toolkit development, NCSEP and NLADA included Connecticut, Knox County, TN and Travis County, TX as pilot sites. Sites had varying research capabilities, access to data and organizational structures. The heterogeneity of this project group led to rich discussions and decision-making activities that took a variety of factors into consideration. This process will benefit the applicability of the final product to a wide range of IDS.

*"JSERI was created to address a problem endemic to indigent defense communities nationwide: the inability to conduct effective, research-based evaluations that measure outcomes and assess system performance."*

*-www.defensenet.org*

### The Connecticut Division of Public Defender Services (CTDPDS)

The Division of Public Defender Services is a statewide indigent defense system as established by Chapter 887 of the Connecticut General Statutes and employs approximately 400 employees. The policy-making and appointing authority, a seven member Commission, is an autonomous body within the Judicial Department for fiscal and budgetary purposes only. As established by statute, the Division

is made up of three separate components: a Commission, which is responsible for policy-making, appointments of all personnel, and compensation matters; an Office of Chief Public Defender, charged with statewide administration of the public defender system and the provision of specialized legal representation; and, the individual public defender offices in the thirteen (13) Judicial Districts, the twenty (20) Geographical Areas and the thirteen (13) Juvenile venues of the Superior Court, providing legal services throughout the State to indigent persons accused of crimes as required by both the United States and Connecticut Constitutions. The Division also includes seven (7) specialized units including Legal Services (Appellate) Unit; the Psychiatric Defense Unit, located at Connecticut Valley Hospital in Middletown; the Capital Defense Unit and the Juvenile Post-Conviction and Reentry Unit, the Assigned Counsel (formerly Special Public Defenders) Unit, the Child Protection Unit and the newly combined Habeas Corpus and Innocence Project.

CT DPDS has collected case flow data on its indigent clients' cases through various iterations of a case tracking system since the 1980s. DPDS has diligently collected and reported these figures through quarterly and annual reports; however the agency recognized the need to improve the data collection and analyses in order to gain a better understanding of the various indicators that impact representation. In 2010, the agency expanded the role of the Information Services department (the data collection arm of the agency) to include a research component. CT DPDS had been following the efforts of the NCSEP in improving IDS research capacities for several years.

### **Connecticut's Judicial Information System (JIS) and CTDPS' Case Tracking System (CTS)**

In Connecticut, Judicial data is entered by the Judicial clerks into the Judicial Information System (JIS). Within the Connecticut Judicial Branch, the Chief Court Administrator oversees the Administrative Operations. Within Administrative Operations, the Information Technology Division is primarily responsible for handling the JIS system including applications development, support (network and systems as well as service and delivery), architecture and standards. It is through the IT Division that all requests for data extracts and feeds are processed with the assistance of Judicial legal counsel. The name of the database is the *Criminal Motor Vehicle System (CRMVS)*.

The CTDPS CTS had limited capabilities for the type of data collection and analysis needed for the pilot project. Although a new case management system for the agency was on the horizon, it would not



be available in time for the pilot project. While CTS could provide some information about our indigent clients' cases such as charges, case status, and disposition code, we did not have access to the case data of those defendants transferred out to Assigned Counsel (aka Special Public Defenders) in conflict cases, pro se defendants and defendants with private counsel. This eliminated the possibility of case comparisons and the detailed court data related to our own indigent clients' cases unless we were able to request data extracts from the JIS system.

### **The CTDPS and NCSEP**

When DPDS' research component was added at the end of 2010 and developing a research agenda, NCSEP's blueprint work was of particular interest. CTDPS had long collected and reported case flow figures and performed caseload goals analyses; particularly in the wake of the ACLU/Connecticut Civil Liberties Union class action lawsuit *Rivera v. Rowland*<sup>1</sup>. In Connecticut, the importance of collecting and responsibly reporting data in order to make evidence-based decisions was further highlighted by the Results Based Accountability (RBA)<sup>2</sup> requirements of the State Legislature for all state agencies. In this changing climate, CTDPS was eager to sign on to be one of the three pilot sites. The four incentives for CTDPS were:

- 1) Hands on consultation from NLADA/NCSEP in selecting indicators that reflect our goals and objectives to clients and community
- 2) Expand our research capacity as an agency
- 3) Relieve us from the burden of having to hire outside consultants to do a program evaluation of our system
- 4) Just as NCIDS created SEP in response to their legislature's call for evidence of cost-effectiveness and evidence-based results, this would provide strong RBA evidence and very convincing evidence of resource needs.

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<sup>1</sup> *Rivera v. Rowland* was filed, in part, against the CT Public Defender Services Commission in 1995 alleging high caseloads led to inadequate representation for indigent defendants. Resulting from the 1999 settlement, changes included: increased funding, computerized operations, increased attorney training, increased Special Public Defender rates, setting caseload goals, creating new practice standards, establishing a year-long training program for new attorneys and attorney evaluation.

<sup>2</sup> The appropriations committee of the CT General Assembly adopted Mark Friedman's model in order to guide the appropriations process using a straight-forward approach to measuring program success on individual, agency and community levels.

For our newly formed and lightly staffed (manager and secretary) research department, collaborating with strong research-oriented indigent defense entities NSEP and NLADA was significant. In addition, having the chance to work with other indigent defense systems around the country was appealing. A brief inventory of our agency's capabilities (infrastructure to support data collection and analysis: research department, analytical software, staff person with research knowledge; and the desire to develop a sustainable in-house evaluation of factors beyond caseload goals) led us to believe this was feasible.

### **The Study Methodology**

The upfront work for this type of research includes:

- identifying the questions your agency wants and/or needs to answer;
- operationally defining those concepts and identifying what variables/data components are necessary to answer those questions;
- determining how to collect/mine that data and validate its meaning and quality

Although the three performance indicators were already chosen for the study (Case Outcomes, Access to Attorney and Pretrial Release), each IDS should have a clear concept of what indicators and research questions are most salient to their research agenda. This is not a unilateral decision and, as in the case of North Carolina, should be a collaborative effort among management, front line staff, and other stakeholders when feasible.

Part of the process of the project included consensus building exercises. The sites were responsible for bringing relevant information, such as statute classifications and types of cases to the monthly WebEx meetings. During the meeting discussions ensued about topics such as:

- case definitions,
- operationalizing concepts such as "highest charge", "length of case"
- developing and standardizing exhaustive lists of case outcomes and determination of guilt

In Connecticut, the study participant is not an attorney. On many occasions questions arose about the above topics that required further research and discussion among other CTDPS staff. Social Workers, training Attorneys, trial attorneys, investigators and management were consulted as well as other

criminal justice IT and research colleagues, online reports<sup>3</sup> and databases. In addition to the work each site did to accomplish the above tasks for themselves, the goal was to put together guidelines that were generalizable to a variety of IDS across the country.

## **Technology**

*Software.* Connecticut DPDS had recently purchased *IBM Statistical Package for the Social Sciences (SPSS)*. This is a software package used for statistical analysis. SPSS in particular allows the user to pull data from the data source (in this case a SQL server) into the program. Users choose from pull down menus and/or writing syntax code. In SPSS the user can clean and manipulate the data as needed. Descriptive, bivariate and predictive statistical analyses are all possible within SPSS and chart builder within the program provides presentation capabilities.

*IT Support.* For Connecticut, IT support is necessary in two locations. The data is extracted from the JIS database within the Judicial Department, therefore it is important to have a copy of the codebook and/or manual that outlines every field, how it was collected, its attributes and its intended and de facto meanings. Having a contact person to answer questions is vital.

Having a good relationship with the in-house IT department is also vital. Not having any extensive technology background it was important for this researcher to have the expertise and knowledge of the IT department in order to facilitate the data transfer and other activities.

## **Obtaining Data**

Connecticut sought a data extract through the JIS. The CRMVS data, like any judicial data, is governed by a host of privacy and confidentiality concerns. It is important to identify early who will ultimately decide if and how you get a data extract and what legal documents and procedures are necessary. Having the support of your agency administrator may be helpful in requesting a meeting at a commissioner or Chief level between you and the agency that houses the data.

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<sup>3</sup> The Office of Legislative Research (OLR) is the non-partisan research arm of the Connecticut General Assembly and produces reports on legislation, agencies and other summaries that were very helpful. Additionally, the Statistical Analysis Center (CT-SAC) in Connecticut regularly publishes reports and studies on key criminal justice issues that were also helpful in this process.

As mentioned above, gathering training manuals and codebooks is important. At this stage, the books were helpful in Connecticut because they familiarized me with the field names and values so that I could craft a request letter identifying all of the information, the time frame and the format.

Involving in-house legal counsel to oversee the paperwork (MOU/MOA) and internal IT personnel to identify your system's capability for accepting a data extract and ensuring the security of the data while in your agency's possession should be done as early as possible. Our in-house IT person attended the meetings with me. Connecticut did provide an MOU from another state that outlined, among other concerns, the purpose of the data extract and the security plan.

Once the terms and conditions have been agreed upon, it may be a wait until your project is next in the queue. In Connecticut, the process is ongoing. The data has not been shared as of July 2014, but is still underway. A number of factors have impacted the extract timeline. Legal agreements can take a long time to wind through both agencies. Below is a breakdown of the factors that should be considered ahead of time to avoid the delays and pitfalls I have encountered along the way.

## **Lessons Learned**

Wanting to develop a data collection and analysis methodology for your own agency is the first step, however being ready to implement the Toolkit requires several interim steps. Feasibility involves assessing your agency's capabilities, resources and support before you begin and will help you avoid many pitfalls going forward.

1. **Timing:** What is the bigger picture in your department, agency and state? While there may not be a perfect time to begin implementing the Toolkit, there may be other projects brewing that will ultimately impact your available resources, funds, personnel and the general enthusiasm for this very worthwhile endeavor.

In addition to competing for resources, having knowledge about other projects may actually enhance your own plan to implement the Toolkit. Is your agency and/or state embarking on new technological advances or partnerships? If building your agency's research capabilities falls within the scope of the other projects or can contribute to or benefit from those projects you will benefit.

2. Capabilities: Assess “who knows what” by identifying those in your agency who have the desire and capability to work with you on this project and recognize that, without those who are willing to help, you will be on your own.
  - What are your research capabilities? Are you willing to learn?
  - Who has a research background and/or understands statistics? Is there staff willing to learn?
  - Can you see you/your team working on tasks such as: creating flow charts, securing data, coding, cleaning the data, conducting analyses and writing reports?
  
3. Assistance In-house: If you are able to identify staff willing and able to assist, are they available and how often? You should prepare all involved by outlining how often you need to meet, conference call, email or other forms of communication as well as the expectations of each person.
  - *Research Person:* This may be you or a combination of staff members who are versed in or willing to learn how to implement a research methodology.
  - *Attorney/Training Director:* It would be ideal to have an attorney who understands practice, procedures and outcomes for all levels of practice.
  - *Administrator:* Having an agency administrator on board to vet your plans and provide support and feedback would help avoid upcoming roadblocks.
  - *Front Line Staff:* This is a person or persons available for consultation on what really happens in a case. Constant feedback at this level will help you identify discrepancies in your methodology and your data and also will eventually assist you in making sense of and reporting your outcomes.
  - *Support Staff/Research Assistant:* Is there a support person who is willing and able to enter data when necessary, clean data and perform the functions of a research assistant?
  - *Court/Data Source Contact Person:* Although you will have or develop a data dictionary for the data extract you receive from the Court system, it is helpful to develop a relationship with someone from that system who can answer your questions about fields, attributes/values and other concerns.

Assistance outside the agency: If your agency does not have the resources to share staff with you, you may need to look outside for assistance. You may decide to incorporate interns from local universities and colleges for some of the research activities and administrative duties. If you decide to seek grant funding to hire individuals to assist your agency in implementing the toolkit, you will likely have to plan for sustaining your work after the grant period.

4. *Obtaining the Data Extract:* If you attend to the three issues above you will likely be well-prepared to begin developing your agency's research capabilities through the Toolkit, however there are other tips to consider that may further smooth your path when you secure the data extract.
- Identify early those in your court system who will ultimately decide if and how you get a data extract. Ask for your administrator's support and ask for a meeting.
  - Gather training manuals, codebooks, field names and any other information you can in order to familiarize yourself with the database from which you are seeking an extract.
  - Talk to your internal IT personnel about your system's capability for accepting a data extract and ensuring the security of the data while in your agency's possession. If possible, bring an IT person with you to the meeting.
  - Be prepared for the meeting by knowing exactly what information you need from the Court and, if possible, identify that information by the Court's field names.
  - Locate a Memorandum of Understanding (MOU) from another state or develop one within your agency that outlines, among other concerns, the purpose of the data extract and the security plan. Because Court systems often sell court data to companies, the Court agency may already have an MOU it prefers to use, but you will be prepared nonetheless.

# Appendix H

## Knox County, TN Case Outcome Report





## **NCSEP Case Outcomes Study**

Knox County, Tennessee Pilot Site

Knox County Public Defenders  
Community Law Office

Issac Merkle, IT Director

### **Project Overview**

The NCSEP Pilot Site Project is a multi-state collaboration to develop jurisdiction-agnostic criminal justice data classification and analysis metrics. By applying the methodology developed and utilized by this project, any organization with access to criminal justice data should be able to compare and contrast the workings of their local judicial system to others. Such analysis may expose previously-overlooked differences in practice and results between jurisdictions, and may suggest opportunities for improved efficiency or systems reform. Moreover, by comparing indicator snapshots from before and after a policy change, some empirical measure of the policy's effects may be gauged.

In addition to North Carolina Indigent Defense Services – organizer of this study – three additional sites were chosen to participate: Connecticut Division of Public Defender Services, the Knox County Public Defenders Community Law Office in Knoxville, TN, and Travis County, TX Court Administration. These pilot sites worked together to define and categorize the data elements needed to create comparable statistics; the result of the collaboration is, in part, a taxonomy of standardized case categories, outcome categories, and key outcome indicators.

### **The Knox County Public Defenders Community Law Office**

The Knox County Public Defenders Community Law Office (CLO) is one of the thirty-one district public defender offices that comprise Tennessee's Public Defender Conference. The CLO employs a holistic representation model, providing legal representation and, where appropriate and desired, social services to about seven thousand clients annually. These services are provided by twenty-six staff attorneys working in concert with five social workers.

The CLO is driven to provide quality criminal defense to Knox County's indigent community. In 2008, the volume of cases being assigned to the office so outstripped the office's resources that we found it necessary to file suit. We worked with The Spangenberg Group, a nationally recognized research and consulting firm specializing in improving justice programs, to analyze and characterize our workloads for the court. This process both educated us about legal data analysis and helped to identify areas in which our case management data could be improved. The experience inspired the CLO to increase and refine internal data collection, to use analytics to inform management decisions, and to more frequently reexamine and revise data collection practices.

A source of continual frustration is that while our data provides considerable opportunity for introspection, it is lacking a larger context. We can easily determine what percentage of our work is at a felony level, for example, but we can't tell what proportion of all felonies are appointed to our office. Analysis at the judicial system level requires data about cases our office had no involvement in, and are therefore entirely absent from our internal data. To obtain this data, we must turn to Knox County's Office of Information Technology.

## **The Justice Information Management System**

Among their many responsibilities, Knox County's Office of Information Technology (OIT) develops and maintains the Justice Information Management System (JIMS), a massive judicial data system collecting data from and providing information to the county's courts, detention facilities, prosecutors, and defense attorneys. Computer terminals in Knox County's court rooms, clerks' offices, and detention facilities enable realtime updates. Stakeholders throughout the judicial system are provided tailored access to JIMS; only data of interest, for which the logged-in user is authorized, is visible. OIT develops and maintains custom screens and reports for many agencies. JIMS is the data system of record in Knox County.

The CLO's access to JIMS is almost exclusively read-only. When we identify a clerical error, our staff cannot correct it themselves; they must instead contact the Clerk's Office and request that they make the correction. The only exception is with respect to the area in which JIMS records the defense attorney attached to a criminal case. There, the Clerk's Office will mark cases as assigned to our office generally; our clerical staff is permitted to amend that entry to reflect the specific Assistant Public Defender we've assigned the case to internally. Because of this established procedure, our office curates that single datum – the assigned defense attorney – on cases to which our office is assigned.

## **The CLO and NCSEP**

In the NCSEP project, we saw the opportunity to apply some of the same kinds of analysis we're accustomed to performing internally to the County's judicial system as a whole. As much as we hoped this would empirically demonstrate the high quality of our work, we also saw it as an opportunity to identify areas where our office can improve further. Additionally, we hoped that our internal efforts towards quantitative analysis would enable us to contribute to the methodology NCSEP sought to establish.

Initially, concerns were raised as to the CLO's ability to participate fully in the project. NCSEP researchers called for potential pilot sites to have both licensing for IBM's costly SPSS analytics software and staff familiar with its use. The CLO has neither. Further, it was hoped that each pilot site would be able to dedicate a full-time employee (or the equivalent) to working on the study, and the CLO had neither the resources to hire a researcher nor the manpower to spare. Both of these seemed to be substantial roadblocks.

Upon engaging in specific discussion as to how SPSS would be employed over the course of the study, however, we realized that there were viable technical alternatives with which we were already familiar. It was subsequently agreed that the SPSS software was not critical to the study *per se*.

The question of manpower was less easily dismissed. The CLO and the NCSEP researchers discussed how the study would proceed and the timetable it would adhere to. Ultimately, it was agreed that this researcher could manage the additional workload.

## **Operationalizing the Study Methodology**

NCSEP researchers originally called for pilot sites to leverage IBM's proprietary Statistical Package for the Social Sciences (SPSS) statistical analysis suite. This software incorporates data storage and management functions in addition to tools for analysis and documentation. SPSS also features a scripting engine that allows the user to automate repetitive tasks by writing "programs" in SPSS's proprietary 4GL "command syntax language."

The CLO operationalized the NCSEP study methodology differently than the lead researchers, however. In our approach, all data is stored in an industry-standard relational database management system (RDBMS), structured in a simple relational database. Both the logic and inherent metadata of the study methodology are embodied in a high-level scripting language. The application of the study methodology is broken down into stages, each of which can be applied to the working data or rolled back at any time. When the scripts are executed, status and debugging information is output to the command line. Early stages of script execution interpret the source data in terms of the study methodology, filling in the work tables as they

go. Later stages operate on the work tables exclusively, extending them on the fly to accommodate newly-derived data. The final stage analyzes each of the NCSEP Key Performance Indicators, which are summarized in nicely-formatted tables in an output document.

## Technology Stack

In order to implement this approach, the CLO leveraged five free, open source software projects:

- **Python**

<http://www.python.org>

A high-level, object-oriented programming language. It's very well documented and has a large, vibrant community providing ample support and learning materials. Python enforces clean formatting of code with syntactic whitespace and has a clear, readable syntax. It offers extensive standard libraries and a staggering array of third-party modules.

- **PostgreSQL**

<http://www.postgresql.org>

A powerful, object-relational database management system developed with an emphasis on reliability, data integrity, extensibility and standards compliance. PostgreSQL is exceptionally well-documented. In terms of features and capacities, PostgreSQL is similar to Oracle Database and Microsoft SQL Server.

- **pgAdmin3**

<http://www.pgadmin.org>

A feature rich, easy to use, graphical administration and development platform for PostgreSQL. Though PostgreSQL is distributed with command line tools that facilitate every necessary function, a graphical tool simplifies and expedites manual administration. In particular, this application enables hierarchical exploration and manipulation of all database resources and provides a SQL editor with syntax highlighting and an interactive query execution environment.

- **LibreOffice**

<http://www.libreoffice.org>

A powerful, cross-platform office suite and Microsoft Office workalike. This free and open software was forked from OpenOffice, which began its life as StarOffice. LibreOffice is reliable and flexible, interoperating with many standard and proprietary document formats. Through its Uno interface, we were able to automate document creation, population, and formatting.

- **Perl**

<http://www.perl.org>

A high-level, general purpose, dynamic, interpreted programming language. Perl is particularly suited to text parsing and manipulation.

While there are any number of alternatives to each of these software projects, each of the above was purposefully selected based on a number of factors:

### 1) Clarity

Locating the business logic in an external scripting layer – as the CLO's implementation does – isn't necessary and, in fact, is less performant. A project implemented in a high-

level scripting language is more easily extended, maintained, and understood by others, however. Since the CLO intends to continue to expand and refine the codebase developed for this research project, the tradeoff seemed acceptable.

## **2) Modularity**

Because the PostgreSQL project adheres strictly to the ANSI-SQL:2008 standard, DDL and SQL written for it should work with any other standards-compliant SQL server. If another organization wanted to duplicate this study using the CLO's approach, but wanted to use their existing proprietary database server, our code would need to be changed only insofar as the alternative target server's SQL dialect deviates from industry standards.

## **3) Scalability**

Analyzing an entire criminal justice system over the span of several years means dealing with lots of data. For Knox County, tens of thousands of cases meant hundreds of thousands of charges, each with many associated items of metadata. Larger sites could encounter datasets an order of magnitude larger than that. Small, light-duty databases (like SQLite or Microsoft's JET engine) wouldn't be up to this task. Our choice of PostgreSQL meant that the size of the database would never be cause for concern, however.

## **4) Freedom**

The CLO has for years made the use of free, open source software (FOSS) a high priority. FOSS is "free" in two distinct senses of the word, both of which are important to the CLO and to this project:

### **1. FOSS is free-as-in-beer**

There is no licensing or maintenance cost associated with FOSS, which is tremendously beneficial to underfunded agencies like public defender offices.

### **2. FOSS is free-as-in-speech**

FOSS software doesn't lock user data into proprietary file formats or restrictive license terms. This ensures that the future utility of work product is not contingent upon the fortunes and strategies of the software producer.

As a practical matter, open source software generally adheres to industry standards more closely and provides greater ease of interoperability with other tools, both open and proprietary.

## **5) Portability**

It was established in the early planning stages of this project that the researchers would meet on several occasions to work together. This made it desirable that the project implementation – both data storage and source code – be able to run in a standalone context on a laptop computer. (It would have been possible, of course, to connect a laptop in the field to a remote database server instance running in the CLO's physical facility. This arrangement would necessitate a reliable and ideally fast internet connection; a tractable problem, to be sure, but an avoidable dependency.)

## **6) Familiarity**

Though this researcher has worked with many databases and programming languages over the years, Python and PostgreSQL are currently the most familiar and trusted. There are other FOSS projects that could have been added to the technology stack to reduce and/or refine the source code to be written – for example, SQLAlchemy. Less-familiar tools can slow or constrain the development process unacceptably, however, and this researcher ultimately decided that rapid development trumped those potential benefits.

## Obtaining Data

The CLO relied upon Knox County OIT to provide the data analyzed in this study. A member of the JIMS team was assigned to the project and worked with us on an ongoing basis. Due to the complexity of the JIMS internals and the extent to which access to that data is guarded, it was not feasible for us to simply request all of the data fields available; instead, we were required to specify each datum we wanted to be included. We agreed upon comma-separated values (CSV) format for the data extract.

As the project proceeded, the methodology evolved and additional data fields were incorporated. Each time this occurred, it was necessary for the CLO to expand the data extract specification and request that our JIMS contact modify the data export accordingly. The data would then be re-exported and supplied to the CLO. Execution of this export routine took approximately twelve hours and put substantial load on JIMS servers.

Due both to other demands placed on the JIMS team and to the necessity of running the export routine during “off-peak” hours, the delay stemming from each expansion of the study data requirements set the CLO's efforts back considerably.

## Data Extract Preprocessing

Working with the data extract was less straightforward than expected. JIMS incorporates many text fields which often contain non-alphanumeric characters (eg, punctuation marks and carriage returns). The tool used to export the data did not handle those characters properly, creating data files that didn't quite adhere to the CSV standard and rendering the data effectively unusable.

To bring the data extract into conformance with the CSV standard, it was therefore necessary to write a preprocessor script. The script simply identified broken non-alphanumeric characters and fixed them. This trivial tool was written in the Perl scripting language to take advantage of its superior text parsing capabilities.

## Importing the JIMS Data

Once the JIMS data extract was in proper CSV format, it was opened with the LibreOffice Calc spreadsheet software. Preliminary examination of the supplied data revealed three types of inherent inconsistency:

1. Inconsistency in treatment of absent data

Some text fields contained a null value when left empty, while others store an empty string. From the standpoint of the end users, there is no meaningful distinction between the two; to a computer, those two values are completely distinct, however.

2. Inconsistency of data input format

For example, consider a field intended to represent the dollar amount of a fine assessed. Such fields were modeled as text strings, accepting user-supplied values ranging from “50” and “fifty” to “none.” While these values are all clear and unambiguous to a human reading values displayed in a software interface, they are not meaningful to a software process.

3. Inconsistency between fields

For example, two columns present in the data extract are “HAS\_FINE” and “FINE\_AMOUNT.” These columns can easily contain contradictory values, leaving their meaning ambiguous. Consider these values:

ID	HAS_FINE	FINE_AMOUNT
1	FALSE	50
2	TRUE	

These inconsistencies posed challenges both to importing the data extract into a database and to the subsequent interpretation of the data. It was therefore necessary to devise and implement a set of rules to normalize the data before writing it to the database.

Additionally, the data from lower courts was supplied in a separate file from the data from the higher courts. These files not only contained differing sets of data columns, but the sequence of the columns varied between runs of the export process. As a result, each time we iterated the data export specification to correct a problem or add additional data, the requirements for import changed also.

The data normalization rules, along with the code to read the incoming text file and write to the database, were implemented as a pair of Python scripts; one for each of the two input files.

*(This is an area where the CLO code should be refined. The two import scripts should be generalized and combined, separating site-specific configuration from utility code.)*

## **Case Grouping**

Once the pilot sites had agreed upon a standardized case definition, it was incumbent on each site to group their data accordingly. For the CLO implementation, we created database tables representing “NCSEP case” and “NCSEP charge” objects. These tables store derived data, standardized data, and metadata about the raw imported data.

Our implementation supports arbitrarily many modular case definitions, automatically creating sets of database tables to contain them separately and simultaneously. This enabled the CLO to use the codebase under development for this study to produce “NCSEP-style” statistics in terms of the Tennessee statutory case definition, as well.

## **Data Standardization**

As this study by design spans several disparate jurisdictions, it is necessary to establish a kind of *lingua franca* into which each pilot site can translate their data. To make these translations quickly, the CLO implementation creates in-memory data structures to act as translation tables.

These data structures were originally “hard-coded” (eg, part of the Python script files themselves), but as the code was refined, that data was moved into external delimited text files that are read into memory when the scripts initialize. This segregation of logic and data is considered good practice and will eventually make our codebase easier for other organizations to leverage.

*(At the time of this writing, several of the lookup tables have been refined in this way, but several still remain hard-coded. This is another area for refinement in the CLO code.)*

## **Data Derivation**

Many datums need to be derived from the normalized, standardized data – both as interim steps and as end results. As the study progressed, it has become necessary to revise the code that generates the various datums on many occasions. In some situations, this has been because a defect in the code has been identified; in others, because the NCSEP group has decided to revise the categorization in some way. Because some datums are dependent upon other datums, these revisions sometimes require cascading recalculations of multiple, related datums.

The simplest way to address this – from an implementation standpoint – is simply to wipe the database clean and rebuild everything from scratch. Because all of the actual work is automated, this requires only a couple of commands.

Reprocessing the entire dataset takes roughly two hours, however, and while this is in many situations acceptable, in others it squanders too much valuable development time. As a result of many such frustrating delays, the CLO codebase was ultimately refactored into various

interdependent stages that can be applied to or rolled back from the work tables at any time. This permits unaffected work to be preserved while automatically regenerating all datums that have been rendered invalid.

### **Generating Key Performance Indicator Analyses**

Ultimately, the group identified nine Key Performance Indicators (KPIs) to be analyzed by each of the pilot sites. The intention is that each of these indicators serve as a canary in a coal mine; that when a jurisdiction finds that a particular indicator looks different in their locality than in others, it may warn of a problem. (It may also simply highlight a difference in local criminal justice practices, of course.) Of arguably more utility, a comparison of KPIs from before and after a policy change would provide some empirical measure of how case outcomes are impacted.

To produce these analyses, the CLO codebase was extended to incorporate an in-memory data structure describing the KPIs and the desired analyses. General purpose query and reporting code was added, allowing the code to automatically fetch data from the research database, extract statistics for each indicator, and – using the LibreOffice/Python UNO bridge – generate attractive tables of data.

### **Data Quality Concerns**

Quite far into this research project, an unrelated but critical issue surfaced at the CLO. In an attempt to address concerns raised by a legislator, it became desirable to produce a set of statistics encompassing both the CLO's cases and cases handled by other attorneys in our jurisdiction. The dataset being developed for the NCSEP project contained all of the requisite information, but charges were grouped in terms of the NCSEP case definition rather than Tennessee's statutory case definition.

At this point, the development code was refactored to make the case definition modular, enabling the dataset to serve this collateral purpose, as well. The NCSEP methodology was then applied to the dataset, with cases grouped according to Tennessee statutory definition. Some of the statistics generated were so far away from our expectations that we feared the JIMS data we were working with was, in some significant way, flawed.

In an effort to validate the results, case counts by representation type were generated and cross referenced with case counts from the CLO's internal case management system. The generated figures matched to within a few percentage points. Next, case counts for appointed private counsel were cross referenced with fee claim statistics published by the Tennessee Administrative Office of the Courts (AOC). These figures were strikingly dissimilar, with the AOC's data showing roughly seven times as many private appointed cases than were evident in the JIMS data<sup>\*</sup>. Our concerns regarding our data extract's validity intensified.

We relayed our concern to our JIMS contact. At this point, we suspected both that the representation type was being reported inaccurately for non-CLO cases and that some substantial group of cases weren't being included in the dataset at all. We asked that they review the data export routines created for this project.

We also reached out to the AOC. Initially, discussion focused on validating our interpretation of their published statistics. Once it seemed clear that that matter wasn't one of simple misunderstanding, we began an effort to obtain an extract of the AOC's fee claim database to enable detailed comparison and validation. Though the AOC expressed interest in providing assistance, they informed us that it would take several months, at minimum, before they might be able to dedicate any substantial time to our project.

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*\*Our theory is that because CLO clerical staff has been permitted to maintain information regarding the CLO's connection to cases and to the specific attorneys assigned within JIMS, that this datum is more reliable with respect to CLO cases than to other cases. Thus, the initial match between our internal case management system's case counts and those derived from the JIMS data extract.*



## Lessons Learned

- An organization with direct access to the requisite data will have a substantially easier time completing a study of this type than will an organization reliant upon outside agencies to provide that data.
- Every database designer models objects and processes differently, which can make it challenging to successfully negotiate a data extract. In the legal field, there are many frequently-used terms of art that have subtle shades of meaning or even entirely different definitions, depending upon one's perspective. The only way to address the problem is to make data requests agonizingly specific and to use the plainest language possible.
- Every time data is extracted, there is an opportunity for a mistake in the export process to corrupt previously-validated aspects of the data export. Validation of the dataset should be automated and performed as a matter of course with each new import. This realization came too late in the process to be of help to the CLO, but we hope to integrate such a testing framework into our codebase.
- Procedural code is quick and easy to write, but quickly becomes unwieldy. Repetition is difficult to avoid, and maintenance becomes increasingly onerous. It's worth it to employ object-oriented coding practices from the very beginning, even though they may seem at first to add unnecessary formalism and complexity.

## Where This Leaves Us

Until and unless we are able to obtain a data extract from the AOC, we have no alternative source of data to check our JIMS data extract against. As of now, we are too uncertain about the validity of our data to feel comfortable publishing our Key Performance Indicators. With so little equivalent data available – only the North Carolina and Texas pilot sites will be publishing KPIs in the near term – there is too much potential for us to muddy the water.

## The Way Forward

It is our hope that in the coming months, the AOC will be able to provide us with a data extract we can use to verify – and, as necessary, improve – our data extract. At that point, we'll be able to generate countywide statistics with greater confidence.

This process has lead us to identify a few key areas where data collection within JIMS is currently spotty. Improving reliability in those areas would considerably increase the utility of the data. We hope we can encourage the Clerk's Office to track that information more reliably in the future.

We also intend to continue to extend and refine the code we've written for this project, making it easier to adapt to other jurisdictions and purposes.

# Appendix I

## *Building Research Capacity Toolkit*

# Toolkit

## Building In-House Research Capacity

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National Legal Aid & Defender Association (NLADA)  
North Carolina Office of Indigent Defense Services (NCIDS)



**NLADA**

National Legal Aid &  
Defender Association

National Legal Aid and Defender Association

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# Toolkit Components

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# About Justice Standards, Evaluation and Research Initiative (JSERI)

The National Legal Aid & Defender Association (NLADA) and the North Carolina Office of Indigent Defense Services (NCIDS) are partnering in a new project to help expand the research capacity of the public defense community. The project is part of NLADA's Justice Standards, Evaluation and Research Initiative (JSERI).

The National Legal Aid & Defender Association (NLADA), founded in 1911, is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. For 100 years, NLADA has pioneered access to justice, groundbreaking legislation, and the creation of critical institutions from the Sentencing Project to the Legal Services Corporation. In partnership with the U.S. Department of Justice and the Ford Foundation, NLADA played a leadership role in expanding the nation's public defense system in the wake of the landmark *Gideon vs. Wainwright* Supreme Court case. A leader in the development of national standards for the delivery of public defense services and performance guidelines for defense attorneys, NLADA provides advocacy, training and technical assistance to indigent defense programs across the country.

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

Together, NLADA and NCIDS have re-focused JSERI to address a problem endemic to public defense communities and the people they serve nationwide: the inability to conduct effective research-based evaluations that measure outcomes, assess system performance, and inform practice. With limited resources, public defense providers are committed to providing zealous and high-quality representation,

and their leaders advocate for criminal justice systems that are fair and equitable. Experientially, attorneys, social workers, investigators, and other staff know the difference they make on the lives of people and communities. However, it is difficult to effectively advocate in the budgetary and policy arenas when there is little or no data about our systems or their impact on important outcomes. Our inability to measure client outcomes and assess system performance makes it difficult, if not impossible, for the defense community to quantify the social and economic benefits of a high-quality, well-resourced public defense system.

This year marked the 50th anniversary of the U.S. Supreme Court decision in *Gideon v. Wainwright*, constitutionally guaranteeing the right to counsel as a fundamental and essential component of a fair criminal justice system. Yet, the right to counsel in the United States is in a perpetual state of crisis. It is time for our community to embrace and utilize data and research to fuel our efforts to advocate for adequate resources, system improvements, and for criminal justice policies that are rational, just, and do not create rippling individual and social harm. Without accurate, verifiable, objective data, decision-makers and the public are left to continue to form attitudes and policy based solely on narratives driven by fear and inertia.

JSERI is dedicated to changing this landscape. Through the development of tools, resources, training, shared technology, and assisting in research projects in a small number of pilot sites, JSERI will work to build the capacity of public defense agencies across the country to conduct research and data analysis in-house.

As part of JSERI, the NLADA has established the national Research & Data Analysis Advisory Committee (RDA) to facilitate and inform the work of this initiative. The RDA consists of defenders, researchers, policy experts and others who support the creation of a strong foundation for indigent defense research.<sup>1</sup>

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<sup>1</sup> See Appendix B for a list of RDA members

# Introduction

Defender leaders need empirical data for planning, managing, and advocating effectively for indigent defense funding and for criminal justice system policies that make sense. Defender practitioners need to know how empirical data strengthens their advocacy for individual clients.

Evidence-based criminal justice reform has taken hold at the local and national level and public defense practitioners need to embrace this practice in order to more effectively advocate for their clients. The goal the Justice Standards, Evaluation and Research Initiative is to: 1) expand the will and capacity of the indigent defense community to embrace and utilize data, research and analysis, 2) fuel evidence-based and research-driven approaches, 3) increase resources for public defense nationally, and 4) promote sound criminal justice and public defense policies.

This is the first in a series of Toolkits to be developed by JSERI for defender organizations. Each JSERI Toolkit will contain the information and tools needed to help defender organizations replicate a research project or initiative successfully implemented elsewhere in the nation. Toolkits will contain such items as:

- Background information
- Budgets
- Work Plans
- Simple “How-To” instructions written for non-researchers
- Templates
- Example products
- Access to download technology products, such as import utilities, software, or smart-device applications
- Examples of success stories
- Advocacy tools

“Access to data and to professionals who are skilled at understanding and analyzing that data, are essential components of administering a successful indigent defense system.”  
-Danielle M. Carman, Office of Indigent Defense Services, Assistant Director/General Counsel, North Carolina

## Building In-House Research Capacity

This JSERI Toolkit provides defenders with the tools to advocate for and to set up in-house research positions. One of the main obstacles to having a research function within indigent defense agencies is the lack of trained research personnel on staff to set up data-collection infrastructures and implement data driven reform and policy analysis. This Toolkit contains information to help defender leaders move forward with creating a research function within their office.

This toolkit will not address what it means to conduct research, how to collect mineable data or how to analyze the data you collect. **The Research Capacity toolkit provides defender leaders with an outline of the information and tools needed to advocate for and set up in-house research positions at public defense agencies/programs.** The research capacity toolkit helps defender leaders develop a framework to hire an in-house researcher and provides offices with the information they need to either hire a researcher or to advocate for funds needed to hire a researcher and/or equipment needed to conduct research. While in-house research capacity is ideal, we recognize that not all offices may be able to develop such capacity due to size, funding or limitations or other constraints. Accordingly, the toolkit also contains a section that gives guidance on developing research capacity through collaboration with external partnerships.



## What Can a Researcher Do for Me?

A researcher can provide a defender office with data and analysis that will allow defender leaders to more effectively evaluate the efficiency and quality of their services, advocate for appropriate funding, and make data driven policy decisions.<sup>2</sup> The data collected and analyzed by the researcher can:

- Provide data and information on indigent defense services costs, caseloads, workloads, and operations.
- Provide data and information to assist in policy and budget decisions.
- Provide information to advocate for adequate funding and criminal justice reform.
- Perform program evaluation and cost-benefit analyses.
- Provide information and data to improve performance of staff members towards stated objectives.
- Respond to legislative requests for information and analyses.
- Respond to information requests from other court system actors and the public.
- Conduct analysis of court operations affecting clients, to better understand trends and identify office-wide or systemic issues.
- Respond to reported inaccuracies and misperceptions within the court system and/or the media.
- Identify the data needed to meet organizational goals and responsibilities.

“Researchers are an essential component of the defense team...which has the goal of ensuring that the State of New York does not fail to honor the simple and non-negotiable goal of providing an effective and uniform quality of representation to all persons, anywhere in the state, who have the legal right to an attorney yet cannot afford to hire one.”  
-William J. Leahy, Director, Office of Indigent Legal Services.  
New York

## Collaborations with External Researchers

Defender offices that do not have the resources to hire an in-house researcher may still achieve the same objectives by collaborating with external researchers. Collaboration with universities and/or external researchers can provide you with low cost research from experts who have access to many of the research tools that are necessary to evaluate your program and develop reports that fit your needs.

A survey conducted in 2010 revealed that a third of the police departments in the United States had engaged in a partnership with an external researcher within the prior five years.<sup>3</sup> No comparison data exist for defenders, though such partnerships are rare in public defense. This is regrettable, since researcher-practitioner partnerships can bring benefits to both parties, and are especially advantageous for providers without the resources to conduct research in-house. The good news is that the information contained in this toolkit – along with the other work of JSERI – can help expand these partnerships.

### The Basics of Forming a Researcher – Defender Partnership

Being aware of certain common pitfalls might help prevent you from embarking on a project flawed by miscommunications, divergent expectations, or disagreement over how the findings should be interpreted. Initially, you will want to consider what it is you want to know – the effectiveness of a new program? The impact of defenders on pre-trial release rates? Cost-savings resulting from post-sentencing advocacy? These questions may seem simple, but they are often overlooked for analysis because they are accepted as something defenders “already know.” However, to translate what we intuitively believe into something tangible to relate to other stakeholders, these questions can be turned into research questions that test our assumptions and beliefs.

<sup>2</sup> See Appendix A (success stories) for examples of what a researcher can do to assist in evaluation and advocacy.

<sup>3</sup> Rojek, Smith & Alpert (2012), ‘The Prevalence and Characteristics of Police Practitioner-Researcher Partnerships,’ *Police Quarterly*, 15(3), pp.241-261.

Research partnerships are founded upon trust and shared understandings, and, at the very least, you may wish to consider the following five tips for successful partnerships.

**1** ***Is the research going to be funded?*** Some researchers will expect to be paid directly and you will need to think about how they are going to be reimbursed for their time, expertise and expenses. A lack of funding need not prevent a successful partnership. Researcher-practitioner partnerships can be a mutually beneficial exchange where you gain expertise and the researcher gains access to data. For researchers with a personal or professional interest in examining defender data it may be that you can get certain work done free or inexpensively in exchange for access, an understanding they can publish their findings, or the promise of future collaborations. Some may also be willing to devote personnel (in the form of student research assistants) to the project. You should be aware, however, that such arrangements may affect your ability to define the parameters of their project and the dissemination of the findings – about which more is said below.

*“We enlisted NACDL and NLADA assistance to litigate the caseload issue, and because of the depth of our caseload data we were able to succeed in obtaining significantly more funding for the system.”*  
*-Dana P. Hlavac, JD CPM, Former Deputy Mohave County Manger, Arizona*

**2** ***What are the questions you are addressing?*** You need to talk to any prospective research partner about exactly what question it is that you’re trying to answer, because this will define all the work they do. This can be quite a productive process: you may realize the researcher has thought about your issue in ways that haven’t occurred to you, or that their interests are different from and incompatible with yours, in which case you can end the relationship. More practically, the question you settle on will define implicitly the kinds of data and analysis that are needed to provide the answer, and therefore whether and in what form the research is feasible. Above all, make sure your research is indeed focused around a specific, empirical question such as ‘Is this program working to reduce incarceration?’ or ‘When are our clients happiest with the service we provide?’ Simply saying you are ‘researching defender quality’ or ‘researching case outcomes’ isn’t specific enough to assure that you are focused on the same objectives.

**3** ***How will the researchers access data?*** Getting data into a usable form can be very complex; however until you have done so, no analysis can take place, and no questions can be answered. If you are obtaining data from other sources – perhaps courts or jails – be aware that getting outside data and linking it to whatever you have in-house (probably a case management system) will take much more time than you expect. You may need to follow a bureaucratic process to get it, and once obtained you may also find that almost all databases have errors and they have to be cleaned extensively. Your researcher will need to do a lot of work on a case-by-case basis (much as you did when you were defending your clients) to get the data in order. To the extent, you are able to provide them with data already ‘canned’ – that is, a dataset that is already in existence which they can simply analyze – you can save a lot of time.

**4** ***How will client confidentiality be assured?*** This is critical because researchers are likely to have access to client records with information that might compromise your clients, either in their cases or in some other way. Thankfully there are many ways to assure this – the principal of which is to delete any information from the dataset that could be used to identify individual clients. It is very rare indeed that researchers actually need to know your client’s name or social security number in order to undertake their analyses. They may need this information in the course of building a dataset – for example, if they need to look up every client’s criminal record, they will likely need identifying information about them. But once the data are ready for analysis it is extremely rare that client identities are needed, and it is an established point of best practice to delete any identifying information leaving only the “de-identified” data in the possession of the researchers. Most academic researchers will be required to

do this anyway by the 'Institutional Review Board' of their institution – the body charged with upholding research ethics. If for some sound, analytically relevant reason you cannot delete this information from the dataset, you should consider what protections you have should the data be subpoenaed directly from the researchers. (Sometimes, data need not be handed over even in these situations.)

**5** **What is the final work product?** You will likely be interested in a written report from your research partner that digests the findings of the analysis and offers guidance on actions you could take. But bear in mind that academics often want to publish their findings in law journals or peer-reviewed scientific journals. At its best, publication serves to disseminate the lessons from your experience more widely, and can help establish the academic credentials of the analysis. At the point of publication, however, you are unlikely to have significant editorial control over the content of any writing. Therefore, to the extent the findings of the project are in any way sensitive, you may find yourself unable to control either their wider distribution or the manner of their presentation. Even before data collection has begun, it is important to discuss what venues for publications might be sought, what issues the findings are expected to address, and the kinds of implications that are expected to be drawn and to have a mutually agreed upon resolution of any such issues.

## Funding Your Researcher

“I must confess that I was skeptical about the necessity of spending our precious resources on a full time researcher for our very modest-sized staff. I actually had never had access to true data to back up requests for funding, as I had always used primarily anecdotal information. However, after serving ten years on the Commission, I can truly say that the money spent on a trained researcher is probably the best money ever expended.” -*The Honorable Mary Ann Tally, NC Resident Superior Court Judge, 12th Judicial District, North Carolina*

If your organization does not have the funds to hire a researcher, there are a variety of ways that you can garner funds to do so. You may use this toolkit to solicit funds from either your county or state governments. There are federal grants, such as the “Byrne-JAG” administered by the U.S. Department of Justice’s Bureau of Justice Assistance, that allow for funds to be used for research. There are also private philanthropic foundations that are interested in increasing the use of evidence-based practices in public defense.

At the onset, a researcher may seem like a luxury that diverts resources from other programmatic efforts and direct services. The success stories<sup>4</sup> found in this toolkit demonstrate that the improved efficiency and additional funding that research and program evaluation supports can quickly offset the upfront cost for a researcher.

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4 See Appendix A for Success Stories.

# Research Department Planning Guide

For many indigent defense leaders, hiring research staff is outside their experience and they may not know what research skills and experience to look for. The following information provides a few hiring tips to help you with the hiring process as well as a list of the skills and abilities to look for when hiring research staff.

## Tips for the Hiring Process

If you have access to a college or university with a Masters in Public Administration or other social science advanced degree program, reach out to one or more of the professors in these programs and ask if they would be willing to help screen resumes and/or interview potential candidates. As an alternative, identify and reach out to a government agency that performs a similar research function to assist you.

One of the keys to expanding your organization's research capacity over time will be the research department's ability to automate research functions by developing programs, data queries, and templates to perform standard analyses or studies on a repeat basis for a fraction of the labor.

- Ask potential candidates for examples of how they were able to automate research tasks in their prior jobs.
- Ask to see examples of syntaxes, program routines, or templates they have created for past research projects.
- Ask potential candidates about the size of the data sets they have worked with in the past. The ideal candidate will have worked with data sets at least as large as the number of cases your office handles per year. For example, if a defender system handles 300,000 cases per year, this research department will handle files containing millions of records. Dealing with extremely large data sets requires the ability to automate research functions by developing syntaxes or programs to perform research tasks. A robust case management system will help facilitate the research process but a skilled researcher will know how to automate the millions of records that are routinely handled in a defender office. If your candidate has never dealt with data sets in the tens of thousands, it is likely they have never learned to write programs to perform large-scale research tasks.

When you have identified your final candidates, provide them with a real-world research example to help you get a sense of their analytical skills.

## Skills and Abilities

### ***Research Director***

Directs and oversees institutional research for an indigent defense agency or organization. The director is responsible for developing research policies, objectives, and initiatives. A research director designs and leads institutional research studies evaluating the effectiveness of the organization's programs and policies. The director will manage data collection and analysis and oversee the formulation of research reports. The Research Director position requires an advanced degree and at least 7 years of related experience. The candidate should be familiar with a variety of the field's concepts, practices, and procedures. A good research director candidate will rely on experience and judgment to plan and accomplish goals and will lead and direct the work of others. The Director of Research typically reports to a top management official.

### ***Research Associate***

The Research Associate position carries out research/development activities. The research associate makes detailed observations, analyzes data, and interprets results. The research associate compiles results and prepares technical reports and documentation of outcomes. This position typically requires a master's degree and 3-5 years of experience in the field or in a related area. The research associate must be familiar with standard concepts, practices, and procedures within a particular field of research. This position relies on



limited experience and judgment to plan and accomplish goals. The research associate works under general supervision; typically reports to a supervisor or manager. A certain degree of creativity and latitude is required.

The following table provides a list of specific job duties, skills, and abilities to look for when hiring research personnel.

Responsibilities or Tasks	Skills
<ul style="list-style-type: none"> <li>• Prepare and manage large, complex, multi-million-record data sets for data mining and analysis, including integrating, cleaning, coding, and verifying accuracy of data.</li> <li>• Develop syntaxes or programs within statistical software to analyze data and automate research functions.</li> <li>• Analyze and interpret data utilizing a variety of research methodologies, including regression analysis.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience doing program evaluation and cost-benefit studies. Ask for samples of studies they have done.</li> <li>• Experience doing program evaluations, especially if they have experience identifying and developing performance indicators.</li> <li>• Experience analyzing raw data to inform policy (which is different from policy analysis where they are reviewing issue briefs and not working with raw data)</li> <li>• Expertise in a statistical program like SPSS or SAS, including:               <ul style="list-style-type: none"> <li>◦ Experience dealing with large data sets having tens of thousands of records (this is KEY, if they have never dealt with large data sets, they won't have the know-how you need)</li> <li>◦ Advanced programming skills; ask them to describe examples of programs they have written in SPSS or SAS or equivalent statistical package.</li> </ul> </li> </ul>
Objectives or Tasks	Skills
<ul style="list-style-type: none"> <li>• Prepare summaries and reports on research findings, including study reports, briefs, presentations, fact sheets, tables, graphs, charts, and other research products as needed.</li> <li>• Communicate effectively with non-research staff.</li> <li>• Identify core research questions and appropriate methodological approaches to research questions.</li> <li>• Maintain and expand data-collection infrastructures to support organizational goals.</li> </ul>	<ul style="list-style-type: none"> <li>• Past work experience includes building databases in Access or other database program or work with an IT consultant or staff to build a database. Ask to see what they built.</li> <li>• Experience in having to work with other outside agencies to obtain data and integrate data into a current data infrastructure. Look for someone who has experience with working with multiple data sources—not someone who has only worked with a provided data set, e.g., downloaded a federal data set off the web, etc.</li> <li>• Past experience doing research for a startup organization, department, or project. They did not inherit a research infrastructure but had to create one to meet their organization's needs.</li> </ul> <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> <li>• Someone who has significantly expanded the research capacity of an organization.</li> <li>• Demonstrated ability to complete research tasks on a timely basis</li> <li>• Experience working with commissions, boards, partnering organizations, and the public.</li> <li>• Strong writing skills.</li> <li>• Strong project management and multi-tasking skills.</li> <li>• Strong research, conceptual, and analytical skills.</li> </ul>

## Budget and Personnel Costs

The personnel cost for an in-house research department will vary across the country. We've provided a range for a Research Director position and a Research Associate position.

### **Research Director**

Directs and oversees institutional research for an indigent defense agency or organization. Responsible for developing research policies, objectives, and initiatives. Designs and leads institutional research studies evaluating the effectiveness of the organization's programs and policies. Manages data collection and analysis and oversees the formulation of research reports. Requires an advanced degree and at least 7 years of related experience. Familiar with a variety of the field's concepts, practices, and procedures. Relies on experience and judgment to plan and accomplish goals. Performs a variety of tasks. Leads and directs the work of others. A wide degree of creativity and latitude is expected. Typically reports to a top management.

\$55,000 to \$120,000

### **Research Associate**

Carries out research/development activities. Makes detailed observations, analyzes data, and interprets results. Compiles results and prepares technical reports and documentation of outcomes. Requires a master's degree and 3-5 years of experience in the field or in a related area. Familiar with standard concepts, practices, and procedures within a particular field. Relies on limited experience and judgment to plan and accomplish goals. Performs a variety of tasks. Works under general supervision; typically reports to a supervisor or manager. A certain degree of creativity and latitude is required.

\$35,000 to \$90,000

## Equipment Costs

There are several equipment costs associated with the research department function. The following are some of the most common costs that a well-resourced research department can expect to have.

### **SPSS, SAS, or Other Statistical Program**

A single license of SPSS Base plus SPSS Custom Tables was around \$3,000 per license for government agencies

\$3,000 per license

### **Computer**

Computer with both speed and power. Processing speed of at least 3.0 GHz with dual or quad processors, at least 4 GB SDRAM and preferably 16 GB, SATA drive preferred. Example Dell T3500 Work Station.

\$2,500

### **Monitor**

Computer monitor needs to be 24 inches at a minimum and larger if possible. A large monitor is essential when working with columns of data and large spreadsheets and will speed up production and accuracy significantly. Note: you can often find better pricing on 24" to 32" LCD TVs that also serve as monitors. They make great monitors, but they must be 1080p, 720p is not sharp enough.

\$250

### **Standard Software**

Computer should be equipped with Microsoft Office 2007 at a minimum. Microsoft Office releases after 2003 contain pivot table tools that are faster and more versatile and which are essential to data analysis. Note: be sure to install all components or features, such as the data analysis pack. Highly recommend that you purchase Pro version of Microsoft Office, which includes Access, which is a database program that will prove extremely useful.

\$200 single license  
\$280 for 2 licenses  
\$500 Pro version license

**Research Website (Optional)**

Post research studies, presentations, projects on agency website to easily disseminate information to stakeholders, other court system actors, policy makers, and the public about important indigent defense issues and policy decisions. You will need a software program, such as Adobe Dreamweaver, to help you create web pages in html. In North Carolina, NCIDS's office manager manages the office's website. She taught herself how to use Dreamweaver.

\$399 per license

**Long-Term Equipment and Program Needs**

As the research function in your office grows and you expand your data collection, both in-house and by integrating data from outside resources, you will need the ability to store and access large datasets, which involves developing technology infrastructures, such as servers equipped with software such as Microsoft SQL Server. You will need assistance from an Information Technology specialist, who will be able to help you decide the most effective way to achieve your technology needs.

**Access to IT Functions**

IT personnel experienced in database design and web application development will become a necessity as you grow. During their startup years, North Carolina contracted with an IT programmer on an hourly basis to serve this function. To date, NCIDS's IT needs have grown to the point where it became necessary to hire a full-time IT Director.

\$80 to \$150

Contractor Rate

IT Director

\$70,000 to \$125,000

**Data Server**

Computer hardware that houses data.

\$3,000 to \$10,000

**SQL Server Software**

Software that executes automated database tasks and processes.

\$5,282 per license



# Sample Job Posting 1

**Agency:** New York Office of Indigent Legal Services

**Title:** Director of Criminal Justice Research

**Salary Range:** \$70000 to \$80000 Annually

**Employment Type:** Full-Time

**Appointment Type:** Permanent

**Travel Percentage:** 20%

**Workweek:** Mon-Fri

**Hours Per Week:** 37.5

**Minimum Qualifications:** Masters Degree or higher in Criminal Justice or related field. Five years experience in criminal justice research. Published research in public defense is preferred.

**Duties Description:** Special Assistant manages the activities of the Office of Indigent Legal Services (ILS) related to the collection of data on public defense policies and services across the state. The incumbent of this position will serve as the Director of Criminal Justice Research.

Regularly collect, manage, interpret and report data on the provision of public defense services

- Collect data on all areas of public defense services in New York counties as required by Article 30 of the Executive Law, including but not limited to: types and combinations of public defense service delivery systems; salaries paid to attorneys and other employees; caseloads; case dispositions; resources expended, including monetary expenditures, in-kind contributions and the use of ancillary services; comparison data for prosecution services where relevant; criteria determining service eligibility for clients; and criteria for the qualification of attorneys.
- Monitor the prompt submission of data by service providers to the office.
- Establish data storage protocols that protect the integrity, and, where applicable, confidentiality of data.
- Establish procedures for the regular and consistent reporting of statistics illustrating the state of public defense across the state.
- Contribute as appropriate to the Office's regular published report on the state of public defense in New York.

Evaluate, maintain and improve the quality of data collected from service providers

- Monitor the ways in which service providers collect data and any changes in these methods.
- Create and sustain positive relationships with the individuals within service provider organizations directly responsible for data collection.
- Establish 'model' data collection strategies and disseminate information regarding these strategies to service providers.
- Where possible, encourage and assist service providers to improve their data collection strategies to mirror 'model' strategies.
- Where service providers do not conform to model data collection strategies, ensure that the strategies employed are understood well enough to permit the Director to place those data in their appropriate context, ensuring their correct interpretation.

Improve the relevance of data collected

- Carry out ongoing, in-depth research into the meaning and measurement of 'quality' public defense, as well as other concerns centrally relevant to the provision of cost-effective services that meet standards promulgated by the office.
- Where research suggests new types of data are required to evaluate quality more effectively, develop and implement data collection strategies that ensure that systematic, efficient and reliable collection of such data.
- Remain familiar with public defense research conducted by academics, research groups, service providers themselves and others.
- Seek to learn from examples elsewhere of public defense programming, policies, research and measurement practices, or other relevant innovations that improve public defense, and consider their usefulness in New York.

# Sample Job Posting 2

## STATE OF NORTH CAROLINA JUDICIAL BRANCH OF GOVERNMENT EMPLOYMENT OPPORTUNITY BULLETIN

**TITLE:** Research Associate

**POSITION NUMBER:** 65006018

**SALARY RANGE:** \$32,000 to \$50,000 plus state benefits

**LOCATION:** Durham, North Carolina

**AGENCY:** North Carolina Office of Indigent Defense Services (IDS) IDS is the North Carolina state agency that oversees the provision of legal representation to citizens accused of a crime who cannot afford counsel on their own. Having access to legal representation is a constitutional right and is the hallmark of free societies. IDS is at the forefront of indigent defense research and is doing cutting-edge work in our field. We are looking for experienced researchers to work on a nationally recognized innovative project to evaluate indigent defense system performance. The Systems Evaluation Project (SEP) has developed a set of metrics or indicators for measuring indigent defense performance. The project is the first of its kind and will improve our understanding of how the court system operates and its impact on clients and the community.

**DESCRIPTION OF WORK:** The person in this position will work under the direction of the Research Director. The position will assist with designing and implementing a variety of research projects for the Office of Indigent Defense Services to measure the quality, cost-effectiveness, and fiscal impact of indigent defense services across the state. This position will manage and analyze large data sets; assist with or conduct qualitative and quantitative data analysis using a wide variety of research methodologies and techniques; prepare research summaries, reports, briefs, fiscal notes, and presentation and training materials; and perform other research duties as necessary.

**KNOWLEDGE, SKILLS, AND ABILITIES:** The IDS Office is a small and fast-paced office environment. The person in this position must have strong conceptual, analytical and organizational skills and work productively under time pressure to meet project deadlines. It is essential for the person in this position to have the capacity to work independently, exercise sound judgment, and be attentive to detail. In addition, the person in this position must be able to work collaboratively and effectively with a small research team, as well as a wide range of office management and staff from various disciplines.

**BASIC QUALIFICATION REQUIREMENTS:** Masters degree in Public Administration or social science degree and two years of relevant experience in governmental or applied social science research. Applicants should have strong quantitative abilities and know SPSS or SAS programming language, as well as have experience in managing large data sets, including developing programs to clean, code, and integrate data from multiple sources and develop complex programs to perform research routines and procedures. Knowledge of database software, such as Access, and relational database design is preferred. Knowledge of GIS software is a plus.

**HOW TO APPLY:** Submit: 1) Application Form 2) cover letter, 3) resume, 4) research writing sample, and 5) contact information for at least two references. Please note that applicants who do not submit all of the above items will not be considered.

# Sample Research Products:

Sample Cost-Benefit Analysis (Public Defender and Private Appointed Counsel Cost-Benefit Analysis):  
[http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY10PublicDefender\\_PAC\\_CostAnalysis.pdf](http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY10PublicDefender_PAC_CostAnalysis.pdf)

Sample Program Evaluation Study and Case Outcome Study from Wichita County, Texas, Report:  
<http://ppri.tamu.edu/files/WichitaPDOStudy.pdf>


Response to Dissemination of Misconceptions and Inaccuracies (Time to Complete Cases + Average Cost Capital Case):  
<http://www.ncids.org/Reports%20&%20Data/Latest%20Releases/FY07CapitalStudyFinal.pdf>

Sample Data to Inform Policy Decisions (Estimated Cost and Potential Cost-Savings of Establishing a Public Defender Office):  
[http://www.courts.state.tx.us/tidc/pdf/PD%20Feasibility\\_Final.pdf](http://www.courts.state.tx.us/tidc/pdf/PD%20Feasibility_Final.pdf)

Sample Descriptive Statistics Success story from Connecticut:  
[http://www.ct.gov/ocpd/lib/ocpd/publications/dpds\\_domestic\\_violence\\_social\\_work\\_pilot\\_sites\\_preliminary\\_report\\_february\\_2013.pdf](http://www.ct.gov/ocpd/lib/ocpd/publications/dpds_domestic_violence_social_work_pilot_sites_preliminary_report_february_2013.pdf)

Sample Evaluation of Country Public Defense office Harris County, Texas, Data Report:  
<http://harriscountypublicdefender.org/wp-content/uploads/2013/10/JCHCPDFinalReport.pdf>

# Sample Research Website



The North Carolina Court System  
**Office of Indigent Defense Services**  
123 W Main Street, Suite 400, Durham, NC 27701  
Telephone: (919) 354-7200, Fax: (919) 354-7201

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[Related Links & Agencies](#)

Research and Reports → Reports And Data

**Reports & Data** (Note: These files may take several minutes to download.)  
**Latest Releases**

- ❖ [IDS Report to the General Assembly -- March 2012](#) **New**
- ❖ [North Carolina's Criminal Justice System: A Comparison of Prosecution and Indigent Defense Resources](#) -- April 2011
- ❖ [Time Needed to Resolve Criminal Cases: A Comparison of Attorney Types](#) -- March 2011
- ❖ [FY11 Reclassification Impact Study](#) -- March 2011  
(Please note pages 7 and 11 need to be printed on legal size paper.)
- ❖ [FY10 Public Defender and Private Assigned Counsel Cost Analysis](#) -- February 2011  
(Please note pages 14-19 need to be printed on legal size paper.)
- ❖ [Sentencing Services Continuation Review Report to the General Assembly](#) -- March 1, 2010
- ❖ [District Court Scheduling Survey Report](#) -- October 2009
- ❖ [FY07 Capital Trial Case Study: PAC and Expert Spending in Potentially Capital Cases at the Trial Level](#) -- December 2008
- ❖ [Report on the Evaluation of North Carolina Prisoner Legal Services](#) -- May 2007  
(Prepared by the School of Government)

**Prior Reports to the General Assembly**

- ❖ [IDS Report to the General Assembly](#) -- March 2011
- ❖ [IDS Report to the General Assembly](#) -- March 2010
- ❖ [IDS Report to the General Assembly](#) -- March 2009
- ❖ [IDS Report to the General Assembly](#) -- March 2008
- ❖ [IDS Report to the General Assembly](#) -- March 2007
- ❖ [IDS Report to the General Assembly](#) -- March 2006
- ❖ [IDS Report to the General Assembly](#) -- March 2005
- ❖ [IDS Report to the General Assembly](#) -- March 2004
- ❖ [IDS Report to the General Assembly](#) -- March 2003

**Prior Publications**

- ❖ [FY07 Public Defender and Private Assigned Counsel Cost Analysis](#) -- May 2008
- ❖ [FY06 Public Defender and Private Assigned Counsel Cost Analysis](#) -- March 2007
- ❖ [FY05 Public Defender and Private Assigned Counsel Cost Analysis](#) -- January 2006
- ❖ [Superior Court FY05 Study: Statewide Private Attorney Fee Application Average Hours and Frequency Distributions per Case by Charge Type](#) -- November 2005
- ❖ [FY05 Private Assigned Counsel Waiting-In-Court Study](#) -- August 2005
- ❖ [District Court FY05 Study: Statewide Private Attorney Fee Application Average Hours and Frequency Distributions per Case by Charge Type](#) -- August 2005
- ❖ [FY04 Public Defender and Private Assigned Counsel Cost Analysis](#) -- January 2005



## Appendix A: Personal Narratives & Research Success Stories

### ARIZONA

In 2001, we began to revamp our data collection and analysis process. Mohave County is the origin of the Joe U. Smith case and as such caseload limits are always at the forefront. However, in 2001 when I became the PD, the office was down to only two remaining lawyers who each had upwards of 700 open and active felonies! We immediately began to hire and reduce caseloads, but could see the writing on the wall that this would be an issue again in the future. From that point forward, every year we would present caseload/workload data during our budgets and every year we met with the same results - insufficient budget to meet caseload needs. We were lucky enough to also be in control of the sending out of cases on contract whenever we felt it was appropriate and as such limited our caseloads to ethical workload standards. However, we continued to maintain and refine our data until the issue arose in 2007 when no contract funding was provided and the office moved to withdraw on dozens of cases simultaneously citing workload, caseload issues. We enlisted NACDL and NLADA assistance to litigate the caseload issue, and because of the depth of our caseload data we were able to succeed in obtaining significantly more funding for the system. To this day, there is an absolute understanding that the last place that budget cuts can be made is within indigent defense because of this issue.

We have also been able to utilize the case data to better analyze and allocate resources, which led to the development of a separate appellate office and a separate office of juvenile representation. We have continued to improve our process with a result of increased service and decreased costs (overall 13.5% reduction in costs in last three years with an improvement in service delivery!).

Dana P. Hlavac, JD CPM  
Former Deputy Mohave County Manager  
Criminal Justice Services  
Kingman, Arizona

### NEW YORK

The Legal Aid Society (“LAS”), the nation’s largest and oldest provider of legal services to the indigent, and the primary public defender in New York City, recently developed a specialized pilot project that focuses on its representation of those individuals charged with prostitution offenses. The Trafficking Victims Legal Defense and Advocacy Project (“TVLDAP”) began in March 2011 and represents the first effort by a public defender office to address the problem of systemic criminalization of victims of trafficking and exploitation.

The use of data was critical to TVLDAP getting off the ground, and also has been incredibly useful as TVLDAP continues its efforts to shape a better criminal justice response to the issue of trafficking.

In order to develop funding for the specialized project, LAS had to look critically at its historic representation on this subset of cases. The project handles cases involving two charged offenses. It was important to identify the overall number of cases handled, and critical to examine the speed with which these cases were traditionally resolved. We suspected that the fact that this high volume of cases met resolution so quickly was contributing to the failure of the criminal justice system to identify victims of trafficking and exploitation.

Once the project began, we started tracking these cases in greater detail and made the continued compilation of data a major goal of the project. We looked at certain characteristics of this client group that made them more vulnerable to exploitation (age, education, prior court involvement, immigration status, language capacity, abuse & trauma histories, poverty). To the extent that each factor could be quantified, we sought to do so and to slow down the criminal court process to allow time to collect information and assess each client's unique circumstances. Central to this data collection was the assessment/identification of clients as trafficking victims. This was critical because there is much debate over the true number of people affected by sex trafficking, and a dearth of actual research in the area. Many numbers are frequently cited, but not particularly substantiated. LAS saw TVLDAP and its work, particularly in the large number of clients it was reaching, as a way to bridge this gap.

In its first year of work, the project has used the data it has compiled about this client group to shape media coverage of the issue of trafficking facilitate changes in the way the Manhattan DA's office handles prosecution of the two charges (a change more favorable to those accused), and to continue to raise awareness about the scope of the problem of sex trafficking and how it affects those facing criminal charges in New York City. For example, TVLDAP cited its data when it testified in front of the New York City Council, and was able to use the data to controvert an assertion made at the same hearing by representatives of the New York Police Department, prompting the council members presiding over the hearing to engage in further investigation as to NYPD's claim that it was conducting a debriefing, to screen for potential trafficking, of every person arrested for prostitution in New York City.

Justine Luongo  
New York Legal Aid Society  
New York, New York

I would love to claim farsightedness, creativity or brilliance for the decision to bring Andrew Davies on board as Director of Research at ILS; but the truth is that our 2010 enabling legislation not only identifies but fairly screams out the imperative of collecting and analyzing data with which to inform our decisions as to distributions of state funding to New York's county-based defender and assigned counsel delivery systems, and our recommendations as to statewide standards of various kinds.

The very first of our responsibilities, set forth in article 30, section 832 (d) (3) (a) of Executive Law, calls upon the nascent office "to examine, evaluate and monitor services provided in each county...", and the next, in subsection (b), requires ILS "to collect information and data regarding the provision of services...including, but not limited to [just about everything under the sun]". If that were not sufficiently explicit, subsection (c) mandates that we "analyze and evaluate the collected data, and undertake any necessary research and studies, in order to consider and recommend measures to enhance the provision of indigent legal services...."

On top of these explicit requirements, it was plain almost from the day we began operations as a one-employee office in February, 2011, that our staffing levels would be extremely modest: there would be no teams of attorneys canvassing the state's urban and rural courts, making extensive observations and undertaking time-consuming interviews with participants in the criminal and family court justice systems that we are charged with improving. No, we would be, in total, a staff of ten; and given this circumscribed reality, the decision to engage the services of the best justice researcher we could find was an easy if not inevitable one to make.

I suppose it could be said that the person power shortage cuts the other way: that a researcher is a luxury that an undersized office must do without; that additional attorneys are more essential, and can mince the data as best they can. But in Andy Davies, our researcher, and Peter Avery, our Manager of Information Systems, we have a very dynamic and accomplished duo of a high quality researcher who thinks like a lawyer, and a high quality computer guru who is a lawyer of long standing. Andy and Peter are essential components of the lean, multi-

talented and efficient team we are assembling, which has the goal of ensuring that the State of New York does not fail to honor the simple and non-negotiable goal of providing an effective and uniform quality of representation to all persons, anywhere in the state, who have the legal right to an attorney yet cannot afford to hire one.

William J. Leahy  
Director, Office of Indigent Legal Services  
Albany, New York

## NORTH CAROLINA

Access to data and to professionals who are skilled at understanding and analyzing that data, are essential components of administering a successful indigent defense system. The North Carolina Office of Indigent Defense Services' ("IDS") staff has included a Research Director since the office was created in 2001. Having access to that skill set has made it possible for the Commission and staff to understand the average costs of cases by case type, as well as the variation in costs by case type, and to make informed decisions about resource allocation. It has also enabled the office to advocate for adequate funding based on facts, rather than anecdotes, and to combat rumors and inaccuracies.

Recently, the North Carolina General Assembly directed IDS to generate savings by shifting away from a system of paying private appointed counsel for individual cases based on the amount of time approved by a judge and toward a contract system. Pursuant to the contract system that IDS has designed, contractors will be paid a set monthly amount for handling a group of cases that, on average, will represent approximately 20% of an attorney's annual billable time (or 360 hours). IDS chose to pay a set fee for a group of cases, rather than a set fee per case, because of concerns that set fees per case could create disincentives to do the work required by a more difficult case. The hope is that spreading the fee across a group of cases will enable attorneys to do the work required by cases that are more difficult because they are offset by easy cases in the same group and because the attorneys will be guaranteed a certain volume of cases. Without access to our historical case and cost data or to professionals who know how to analyze that data, IDS would not have been able to figure out how many cases of each case type should be included in each group to reach the average of 360 hours, or how much to pay for each group of cases.

Danielle M. Carman  
NC Office of Indigent Defense Services  
Assistant Director/General Counsel  
Durham, North Carolina

As an initial member of the IDS Commission, I must confess that I was skeptical about the necessity of spending our precious resources on a full time researcher for our very modest –sized staff. I actually had never had access to true data to back up requests for funding, as I had always used primarily anecdotal information. However, after serving ten years on the Commission, I can truly say that the money spent on a trained researcher is probably the best money ever expended.

In so many ways, the work directed by our researcher, has had a positive impact. The numerous and well-researched reports generated for the Commission are posted on the IDS website. The studies cover a wide range of important issues, from a "wait time" study for lawyers in court to the average fees paid to lawyers for each category of felony cases. I also am convinced that the research has significantly improved the standing of IDS with our funders in the Legislature, as we have hard data to answer their sometimes-hard questions.



I would definitely urge the indigent defense community to make more and better use of high quality research by trained professionals to improve the quality and quantity of services to our constituents.

The Honorable Mary Ann Tally  
NC Resident Superior Court Judge, 12th Judicial District  
Former North Carolina IDS Commissioner  
Former Board Member, Legal Aid of North Carolina  
Fayetteville, North Carolina

**A**s an attorney concerned about and involved in indigent defense for thirty five years, I have been disappointed in the lack of research concerning best practices in indigent criminal defense. While “evidence based” practice has significantly improved medical care policy over the last twenty years, there has been little or no serious study of the best ways to deliver indigent legal services. There is no consensus on what factors should be measured to determine best practices and no consensus on how to measure them once they are identified. The result is a hodge podge of different delivery systems from state to state and even community to community, based, not on analysis showing what delivers the highest quality services at the best price, but on local custom, more often than not based on the interests of the decision makers, rather than the recipients of the service or the community at large. In my opinion, we have a crisis in the delivery of indigent legal services. The development of reliable and credible tools to evaluate delivery systems based on facts would be an extremely important step forward.

Malcom (“Tye”) R. Hunter  
Former Director, NC Office of Indigent Defense Services  
Director, Center for Death Penalty Litigation  
Durham, North Carolina

**I** have practiced law as a criminal defense attorney in the relatively small city of Asheville in Western North Carolina for nearly 30 years. Over those three decades, I have spent considerable time at crime scenes and in jails and courtrooms. Many of my clients were indigent and I was paid by the State to represent them. I thought that I knew a thing or two about the provision of legal services to “poor people”.

In 2004, I was appointed to the North Carolina Commission on Indigent Defense Services. The commission oversees the provision of legal services to indigent citizens over the 100 counties in the 10th most populous state in the country. The IDS annual budget is now approximately \$128 million. At each of its quarterly meetings – and at numerous committee meetings throughout the year – Commission members are called upon to make fundamental decisions about the most appropriate methods of delivering legal services; about training, evaluating and supporting the legal professionals who provide those services; and about providing those services in the most cost-effective manner.

There is simply no comparison between the quality of legal services provided indigent defendants in North Carolina in 2012 and the legal services that attorneys were providing in the late seventies and early eighties when I first volunteered for “the court appointed list”. For the past eight years, I have had the privilege of observing first hand why the quality of representation has improved so dramatically. I have been fortunate to observe these changes not just from the bottom up – in my own practice – but also from the top down – as an IDS Commissioner.

These changes would not have been possible without the in-house research capacity of IDS. Over and over again, our decisions have been informed by the data presented to us by Margaret Gressens, the IDS Research Director, and her staff. The Commission is very frequently navigating through turbulent political waters.

Commission members have been soundly criticized – even vilified on occasions – by our own lawyers, both private practitioners who accept appointments and public defenders. Commission decisions receive immediate and constant scrutiny from the North Carolina General Assembly and groups that do not generally wish us well – for example, the North Carolina Conference of District Attorneys. More often than not, we are able to stay our course – while other state government agencies lose their way (and their funding) – because of the certitude of the data underlying our decisions.

Two examples come to mind. Nearly all questions regarding the administration of the death penalty in North Carolina are emotionally and politically charged. For about 15 years, I regularly accepted appointment in capital cases. Those cases invariably achieve at least local notoriety with the result that the lawyers associated with them are drawn into public debate well beyond the courtroom. District Attorneys are elected in North Carolina. Death penalty litigation provides a great deal of media exposure. For as long as I can remember, debate about the death penalty has been largely anecdotal. Myths and inaccuracies flourished because they were unassailable. IDS was established in 2000. Between 1993 and 2001, North Carolina juries returned 199 death sentences. Fourteen of those sentences were imposed in 2001 alone. From 2001 to 2009, only 47 death sentences were returned, a 75% reduction. In the three years between 2007 and 2009, only five defendants received the death penalty. In the wake of these fairly extraordinary results, there developed the widely held political view that paying private counsel and appointed experts in capital cases was driving litigation costs to an unacceptable level and resulting in some “unfairness” to state prosecutors. Numbers developed by Ms. Gressens told a very different story. The high cost of the death penalty to North Carolina taxpayers had little to do with matters within the control of defense counsel or IDS itself. Almost all of the interested parties – the General Assembly, prosecutors, judges and defense counsel – now accept the reality that a significant reduction in the cost death penalty litigation will require generalized reform of the criminal justice system.

Since the 2010 election, the North Carolina General Assembly has become decidedly more fiscally conservative. As one cost-cutting measure, the General Assembly required that IDS replace the hourly rate compensation system – under which private attorneys have been paid for as long as I have practice law – with contract and flat fee system. Again, much hand wringing and rhetoric ensued – this time, from the other end of the political spectrum. The IDS staff began their task as they characteristically begin – by gathering and examining the data. As a result, IDS has progressed a long way toward complying with the legislative mandate without, at the same time, compromising the quality of indigent representation.

These are just two examples of the value of the IDS in-house research capability. More routine, but no less valuable, are periodic and year-end budget reports; various studies on the ways in which costs differ in different kinds of cases from violent felonies and serious drug crimes down to traffic violations; a pilot program to determine how much state money is wasted by inefficient calendaring systems which require appointed counsel to sit idly in courtrooms; and periodic studies which have enabled IDS to maintain an efficient balance statewide between public defender and private assigned counsel representation.

Trial lawyers are storytellers. I am as fond as anyone of the resonant anecdote and the folklore of criminal defense practice. On my bookshelf beside *Trial Lawyer's Art*,<sup>5</sup> however, is a bound volume of IDS reports. When I debate our local District Attorney on the subject of the death penalty, I match him story for story, but before we appeared at Mars Hill College together last year for a debate, I called Ms. Gressens for data on the racial makeup of North Carolina's death row since the Civil War.

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5 Sam Schrager. Temple University Press, 1999.

The IDS Commission has not had to navigate blindly. Because of the hard facts, which our Research Director makes available to us, we are able to respond calmly and rationally to political clamor from all directions. The result has been sound and durable policy for the people of North Carolina.

Sean Devereux  
North Carolina IDS Commissioner  
Devereux & Banzhoff, PLLC  
Asheville, North Carolina

## OHIO

First, the background: Ohio is a state that is heavily dominated by local government. This is true of much of our justice system. There are very few consolidated data sets. The courts all use independent case management systems. Each of the prosecutor offices does the same, and that is even true of public defense. Despite this, the Center for State Governments came to Ohio as part of its Justice Reinvestment project. The main goal was to reduce the incarcerated population without increasing recidivism. A year of work went into data collection and policy meetings. The findings are startling: Ohio incarcerates over 10,000 offenders who can be classified as both low-level offenders and low risk for recidivism. Incarcerating these individuals increases the likelihood of recidivism. The result was a piece of legislation (HB 86) that has gone into effect. It takes numerous approaches to diverting low risk, low level offenders into community treatment centers, it uses a risk assessment system to actively seek early release for qualifying inmates, it expands the eligibility for intervention in lieu of conviction, and it reclassifies a number of offenses, and doubles the value threshold for all theft related offenses to redirect large numbers of theft cases back to municipal courts and local community programming. While it was not sweeping enough (not nearly enough of the 10,000 are being diverted) it is a tremendous first step.

The second success story is about collateral consequences. With the leadership of the Ohio Justice and Policy Center, OPD was able to program and house the CIVICC (Civil Impacts of Criminal Convictions) <http://opd.ohio.gov/civicc/> This is an interactive searchable database collecting every collateral consequence in Ohio Code or Administrative Rule for adult level offenses. It returns a list of collateral consequences applicable to each offense or term that was searched. This database has brought significant attention to the over inclusiveness of dozens of consequences for the simplest offenses. The Ohio Supreme Court commented during an oral argument on being shocked when it saw the list of collateral sanctions for one offense. At the same time CIVICC was coming online, the Ohio Department of Rehabilitation and Correction was trying to build re-entry skills for inmates. It found the barriers to employment almost impossible to overcome because of collateral consequences. As a result of this newfound focus on collateral consequences, Ohio passed its first collateral consequences legislation that repeals rather than expands the scope. The goal is to try and repeal all of the low hanging fruit – the 17 ways to lose your license that have nothing to do with driving, removing administrative rules for obtaining employment, and providing training and certificates of employability to inmates and limited immunity to employers. Again, while not comprehensive enough, it is a good first step.

Tim Young  
Ohio State Public Defender  
Columbus, Ohio

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- Phone Number - 803-212-6810
- Email - [HCommLegOv@schouse.gov](mailto:HCommLegOv@schouse.gov)
- Location - Blatt Building, Room 228

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<sup>1</sup> Visual Summary Figure 1 is compiled from information in the Commission on Indigent Defense study materials available online under "Citizens' Interest," under "House Legislative Oversight Committee Postings and Reports," and then under "Indigent Defense, Commission on"

<http://www.scstatehouse.gov/CommitteeInfo/HouseLegislativeOversightCommittee/AgencyPHPFiles/IndigentDefense.php> (accessed April 17, 2018).

<sup>2</sup> Greenville Online, <https://www.greenvilleonline.com/story/news/crime/2015/03/09/citizens-group-court-backlog-making-streets-unsafe/24524199/> (Accessed April 19, 2018); August 9, 2018 email from Rodney Grizzle, SCCID to Charles Appleby, staff for House Legislative Oversight Committee.

<sup>3</sup> S.C. Code Ann. 17-3-310. Commission created; appointment of members; terms; powers and duties.

(A) There is created the Commission on Indigent Defense consisting of thirteen members.

(B) Nine members shall be appointed by the Governor as follows: (1) One member from each of the four judicial regions of the State appointed upon recommendation of the South Carolina Public Defender Association. Members shall serve for terms of four years and until their successors are appointed and qualify. Vacancies must be filled in the manner of original appointment for the unexpired portion of the term. A person may not be appointed to the commission pursuant to the provisions of this item or, once appointed pursuant to the provisions of this item, may not continue to serve on the commission unless the person is a public defender. (2) A member of the South Carolina Bar whose practice is principally in family law, appointed upon recommendation by the South Carolina Bar membership for a term of two years and who may be reappointed. (3) Two members of the South Carolina Bar whose practice is principally in criminal defense law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for a term of two years and may be reappointed. (4) Two members of the South Carolina Bar whose practice is principally neither criminal defense nor family law, appointed upon recommendation of the South Carolina Bar membership, who shall serve for two-year terms and who may be reappointed.

(C) The remaining four members must be appointed as follows: (1) two members appointed by the Chief Justice of the South Carolina Supreme Court, one of whom must be a retired circuit court judge and one of whom must be either a retired family court judge or a retired appellate court judge, each of whom shall serve for a term of four years and until a successor is appointed and qualifies; and (2) the Chairmen of the Senate and House Judiciary Committees, or their legislative designees, for the terms for which they are elected.

(D) The chairman must be elected by the commission from its membership and shall serve for a term of two years. A chairman may be re-elected.

(E) Members currently serving as of July 1, 2005, shall continue to serve until the expiration of their term and may be reappointed as provided in subsection (B)(1).

(F) The commission may adopt an appropriate seal and promulgate regulations consistent with the provisions of this article to govern its operations and procedures and shall supervise the operations of the Office of Indigent Defense including all the divisions of the office.

(G) The commission: (1) may establish divisions within the office to administer the services and programs as it considers necessary to fulfill the purposes of this article; (2) shall develop rules, policies, procedures, regulations, and standards as it considers necessary to carry out the provisions of the article and comply with state law or regulations and the rules of the Supreme Court, including the nature and scope of services to be provided, the clientele to be served, and the establishment of criteria to be used in the determination of indigency and qualifications for services for indigent legal representation; (3) shall cooperate and consult with state agencies, professional associations, and other groups concerning the causes of criminal conduct, the rehabilitation and correction of persons charged with and convicted of crimes, the administration of criminal justice, and the improvement and expansion of defender services; (4) shall assist the public defenders throughout the State in their efforts to provide adequate legal defense to the indigent. This assistance includes, but is not limited to: (a) the preparation and distribution of a basic defense manual and other educational materials; (b) the preparation and distribution of model forms and documents employed in indigent defense; (c) the promotion of and assistance in the training of indigent defense attorneys; (d) the provision of legal research assistance to public defenders; and (e) the provision of other assistance to public defenders as may be authorized by law; (5) shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in the State; and (6) shall have the authority to negotiate and enter into contracts, as appropriate, with independent counsel for the provision of indigent defense services in cases in which a conflict of interest exists in a public defender office and in other cases in which indigent representation by independent counsel is necessary or advisable.

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This authority may be delegated by the commission to a circuit public defender, but is at all times subject to standards established by the commission. (7) The commission shall establish and administer the rules and procedures for selection of members to serve on the Circuit Public Defender Selection Panels, and shall establish the rules and procedures under which the selection panels shall operate.

<sup>4</sup> S.C. Code Ann. 17-3-340. Duties of commission.

(A) All members of the commission shall at all times act in the best interest of indigent defendants who are receiving legal representation pursuant to the provisions of this chapter.

(B) All members of the commission are entitled to vote on all matters before the commission unless otherwise provided by law or by rules adopted by the commission concerning conflicts of interest.

(C) Each member of the commission shall serve until a successor has been appointed. Removal of commission members is for cause and must be in accordance with policies and procedures adopted by the commission.

(D) Unless otherwise provided in this article, a quorum is a majority of the members of the commission who are currently serving in office, and decisions of the commission are determined by majority vote of the members present, except that a majority of the entire commission must approve the appointment or removal of a circuit public defender or the executive director for cause.

(E) The commission shall meet at least quarterly and at other times and places as it deems necessary or convenient for the performance of its duties and shall keep and maintain minutes of all commission meetings.

(F) The commission shall elect such officers, other than the chairperson, from the members of the commission as it deems necessary and shall adopt rules for the transaction of its business as it desires. Elected officers shall serve for a term of one year and may be removed without cause by a vote of two-thirds of the members of the entire commission and for cause by a majority vote of the entire commission. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest.

(G) The members of the commission shall receive no compensation for their services but will be reimbursed for their actual expenses incurred in the performance of their duties as members of the commission. Expenses incurred by the commission must be paid from the general operating budget of the commission.

(H) The commission shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles accused of violations of criminal law.

(I) The commission shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary or advisable to fulfill the purposes and provisions of this article in the delivery of indigent services. This includes, but is not limited to, standards for: (1) maintaining and operating circuit public defender offices, including requirements regarding qualifications, training, and size of the legal and support staff of the offices and access to data and records, including business records, in each circuit public defender office; (2) prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person; (3) public defender and appointed counsel caseloads; (4) the qualifications, employment, and compensation of public defenders and other circuit public defender office personnel, based on job description, education, training, and experience; (5) the performance of public defenders and appointed counsel representing indigent persons; (6) procedures for prescribing qualifications and performance of independent counsel representing indigent persons in both trial and appellate courts, whether by contract or court appointment; (7) providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons; (8) determining indigence and for assessing and collecting the costs of legal representation and related services; (9) compensation of attorneys appointed to represent indigent persons pursuant to this chapter; (10) removing a circuit public defender for cause; (11) a uniform definition of a "case" for purposes of determining caseload statistics; and (12) accepting contractual indigent defense representation.

<sup>5</sup> S.C. Code Ann. 17-3-330. Duties of Office of Indigent Defense.

(A) The Office of Indigent Defense shall: (1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes; (2) perform those functions provided pursuant to Section 17-3-360; (3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State; (4) implement other duties the commission may direct; and (5) report annually to the General Assembly on the indigent defense system.

(B) On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all

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outstanding obligations against the fund for payment of attorney fees and expenses in non-capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.

(C) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.

<sup>6</sup> S.C. Code Ann. 17-3-360. Division of Appellate Defense created; administration and staffing; duties and responsibilities.

(A) There is created within the Office of Indigent Defense, the Division of Appellate Defense. All of the allied, advisory, affiliated, or related entities as well as the employees, funds, property, and all contractual rights and obligations associated with the commission and Office of Appellate Defense formerly provided in Chapter 4, Title 17 are transferred to and incorporated in and must be administered as part of the Office of Indigent Defense.

(B) The division must be administered by a chief attorney. The staff of the division shall consist of additional attorneys and administrative, investigative, secretarial, and clerical employees necessary to discharge the duties of the division. No person may be hired to serve as an attorney who is not licensed to practice law in this State. Attorneys employed by the division shall devote full time to their duties and may not engage in the private practice of law.

(C) The division shall carry out the following duties and responsibilities: (1) It shall represent a person who the office determines, subject to court review, falls within the guidelines promulgated pursuant to Section 17-3-310(G)(2) who files Notice of Intention to Appeal or desires to appeal a conviction in a trial court, or decision of a proceeding in civil commitment or other voluntary placement in a state, county, or municipal facility. A person desiring representation by the division shall request a determination of his indigency status in writing from the Supreme Court, the court of appeals, the circuit or family court, or the division. A court receiving a request for indigent appellate representation shall forward the request to the office who, within ten days of the receipt of the request for representation, shall notify the person requesting representation and the court in which the appeal will be effected of its decision. (2) Upon a finding that a person requesting representation qualifies as an indigent and after being appointed as counsel for this person by the court in which the appeal will be effected, the division shall represent this person in his appeal of a conviction in a trial court, or decision of a proceeding in civil commitment or other involuntary placement in a state, county, or municipal facility, provided nothing in this article requires the division to pursue an appeal unless the chief attorney of the division is first satisfied that there is arguable merit to the appeal. (3) It shall represent indigents, other than at trial or commitment proceedings when appointed by the court. (4) It shall represent indigents in appeals of convictions in trial courts of this State, or decisions of civil commitment proceedings or other involuntary placement only in courts of this State.

<sup>7</sup> S.C. Code Ann. 17-3-310.

<sup>8</sup> S.C. Code Ann. 17-3-340.

<sup>9</sup> S.C. Code Ann. 17-3-340.

<sup>10</sup> S.C. Code Ann. 17-3-340.

<sup>11</sup> S.C. Code Ann. 17-3-340.

<sup>12</sup> S.C. Code Ann. 17-3-310.

<sup>13</sup> S.C. Code Ann. 17-3-340.

<sup>14</sup> S.C. Code Ann. 17-3-320.

<sup>15</sup> S.C. Code Ann. 17-3-320.

<sup>16</sup> S.C. Code Ann. 17-3-320.

<sup>17</sup> S.C. Code Ann. 17-3-320. Office of Indigent Defense; executive director; appointment; duties.

(A) There is created the Office of Indigent Defense under the jurisdiction of the commission. The office must be administered by an executive director appointed by the commission. The executive director may hire other administrative, clerical, and legal staff and is authorized to contract with outside consultants on behalf of the office as he considers necessary to provide the services as required pursuant to the provisions of this article.

(B) The executive director shall: (1) administer and coordinate the operations of the office and all divisions within the office and supervise compliance among the circuit defender offices with rules, procedures, regulations, and standards adopted by the commission; (2) maintain proper records of all financial transactions related to the operation of the office; (3) coordinate the services of the office with any federal, county, private, or other programs established to provide assistance to indigent persons entitled to representation pursuant to the provisions of this chapter and consult with professional organizations concerning the implementation and improvement of programs for providing indigent services; (4) prepare and submit annually to the commission a proposed budget for the provision of statewide indigent defense services; and prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the state's indigent defense system and other information as the commission may require; (5) coordinate in the development and implementation of rules, policies,

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procedures, regulations, and standards adopted by the commission to carry out the provisions of this chapter and comply with all applicable laws and standards; (6) maintain proper records of all financial transactions related to the operation of the commission; (7) apply for and accept on behalf of the commission funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests; (8) provide for the training of attorneys and other staff involved in the legal representation of persons subject to the provisions of this chapter; (9) attend all commission meetings, except those meetings or portions of the meetings that address the question of appointment or removal of the director; (10) ensure that the expenditures of the commission are not greater than the amounts budgeted or available from other revenue sources; and (11) perform other duties as the commission assigns.

<sup>18</sup> S.C. Code Ann. 17-3-320.

<sup>19</sup> S.C. Code Ann. 17-3-320.

<sup>20</sup> S.C. Code Ann. 17-3-320.

<sup>21</sup> S.C. Code Ann. 17-3-330. including funds allocated to public defender offices pursuant to the formula, funds for the defense of capital cases, funds for attorney's fees and expenses in non-capital cases, and other funds appropriated for these purposes

<sup>22</sup> S.C. Code Ann. 17-3-320.

<sup>23</sup> S.C. Code Ann. 17-3-330.

<sup>24</sup> S.C. Code Ann. 17-3-340.

<sup>25</sup> S.C. Code Ann. 17-3-310.

<sup>26</sup> S.C. Code Ann. 17-3-310.

<sup>27</sup> S.C. Code Ann. 17-3-340.

<sup>28</sup> S.C. Code Ann. 17-3-310.

<sup>29</sup> S.C. Code Ann. 17-3-310.

<sup>30</sup> S.C. Code Ann. 17-3-320.

<sup>31</sup> S.C. Code Ann. 17-3-320.

<sup>32</sup> S.C. Code Ann. 17-3-340.

<sup>33</sup> S.C. Code Ann. 17-3-340.

<sup>34</sup> S.C. Code Ann. 17-3-340.

<sup>35</sup> S.C. Code Ann. 17-3-320.

<sup>36</sup> S.C. Code Ann. 17-3-340.

<sup>37</sup> S.C. Code Ann. 17-3-340.

<sup>38</sup> S.C. Code Ann. 17-3-330. See also, S.C. Code Ann. 17-3-360.

<sup>39</sup> S.C. Code Ann. 17-3-330(B)-(C)

<sup>40</sup> S.C. Code Ann. 17-3-310.

<sup>41</sup> S.C. Code Ann. 17-3-310.

<sup>42</sup> S.C. Code Ann. 17-3-340.

<sup>43</sup> S.C. Code Ann. 17-3-320.

<sup>44</sup> S.C. Code Ann. 17-3-330.

<sup>45</sup> Phone conversation between Mr. Hugh Ryan, SCCID, Mr. Rodney Grizzle, SCCID, and Mr. Charles Appleby, House Legislative Oversight Committee staff, on April 20, 2018.

<sup>46</sup> Phone conversation between Mr. Hugh Ryan, SCCID, Mr. Rodney Grizzle, SCCID, and Mr. Charles Appleby, House Legislative Oversight Committee staff, on April 20, 2018. See also, Proviso 117.110, General Appropriations Bill for Fiscal Year 2016-17 and Proviso 117.109, General Appropriations Bill for Fiscal Year 2017-18 (The Prosecution Coordination Commission and the Commission on Indigent Defense shall provide detailed expenditure reports and associated revenue streams for each individual circuit, revenue streams shall include, but not be limited to, state funds, local funds, Federal funds, and also nongovernmental sources of funds, by no later than September first, on the prior fiscal year, to the appropriate commission. The commissions shall than provide the Chairman of the House Ways and Means Committee and Chairman of the Senate Finance Committee with a combined report by September fifteenth of the current fiscal year.)

<sup>47</sup> S.C. Code Ann. 17-3-330.

<sup>48</sup> S.C. Code Ann. Section 17-3-310(G)(7).

<sup>49</sup> S.C. Code Ann. Section 17-3-310(G)(7).

<sup>50</sup> S.C. Code Ann. Section 17-3-510(A).

<sup>51</sup> S.C. Code Ann. Section 17-3-510(A) and (B).

<sup>52</sup> Uniform Guidelines for the Selection of Circuit Public Defender Selection Panels, adopted by the Commission on Indigent Defense, revised and republished April 25, 2018, available at [www.sccid.sc.gov](http://www.sccid.sc.gov).

<sup>53</sup> S.C. Code Ann. Section 17-3-510(B) and Uniform Guidelines for the Selection of Circuit Public Defender Selection Panels, adopted by the Commission on Indigent Defense, revised and republished April 25, 2018, available at [www.sccid.sc.gov](http://www.sccid.sc.gov).

<sup>54</sup> S.C. Code Ann. Section 17-3-510(B)



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<sup>55</sup> S.C. Code Ann. Section 17-3-510(C)  
<sup>56</sup> S.C. Code Ann. Section 17-3-510(E)  
<sup>57</sup> S.C. Code Ann. Section 17-3-510(A).  
<sup>58</sup> S.C. Code Ann. Section 17-3-510(A).  
<sup>59</sup> S.C. Code Ann. Section 17-3-510(A).  
<sup>60</sup> S.C. Code Ann. Section 17-3-510(A).  
<sup>61</sup> S.C. Code Ann. Section 17-3-510(A).  
<sup>62</sup> S.C. Code Ann. Section 17-3-510(C) and -520(A).  
<sup>63</sup> S.C. Code Ann. Section 17-3-510(C).  
<sup>64</sup> S.C. Code Ann. Section 17-3-510(C).  
<sup>65</sup> S.C. Code Ann. Section 17-3-510(D).  
<sup>66</sup> S.C. Code Ann. Section 17-3-520(B).  
<sup>67</sup> S.C. Code Ann. Section 17-3-520(B)(1)  
<sup>68</sup> S.C. Code Ann. Section 17-3-520(B)(10)  
<sup>69</sup> S.C. Code Ann. Section 17-3-520(B)(13)  
<sup>70</sup> S.C. Code Ann. Section 17-3-520(B)(14)  
<sup>71</sup> S.C. Code Ann. Section 17-3-520(B)(2)  
<sup>72</sup> S.C. Code Ann. Section 17-3-520(B)(4)  
<sup>73</sup> S.C. Code Ann. Section 17-3-520(B)(4)  
<sup>74</sup> S.C. Code Ann. Section 17-3-520(B)(6)  
<sup>75</sup> S.C. Code Ann. Section 17-3-520(B)(4)  
<sup>76</sup> S.C. Code Ann. Section 17-3-520(B)(7)-(9)  
<sup>77</sup> S.C. Code Ann. Section 17-3-520(B)(11)  
<sup>78</sup> S.C. Code Ann. Section 17-3-520(B)(12)  
<sup>79</sup> S.C. Code Ann. Section 17-3-520(B)(14)  
<sup>80</sup> S.C. Code Ann. Section 17-3-520(B)(3)  
<sup>81</sup> S.C. Code Ann. Section 17-3-520(B)(1)  
<sup>82</sup> S.C. Code Ann. Section 17-3-520(B)(5)  
<sup>83</sup> S.C. Code Ann. Section 17-3-530(A)  
<sup>84</sup> S.C. Code Ann. Section 17-3-530(B)

<sup>85</sup> Agency PER.

<sup>86</sup> Item numbers are the ones utilized in agency's program evaluation report.

<sup>87</sup> Item numbers are the ones utilized in agency's program evaluation report.

<sup>88</sup> Item numbers are the ones utilized in agency's program evaluation report.

<sup>89</sup> Item numbers are the ones utilized in agency's program evaluation report.

<sup>90</sup> Mr. Rodney Grizzle, SCCID email to Mr. Charles Appleby, House Legislative Oversight Committee, in April 2018.

<sup>91</sup> Agency PER, Organizational Chart as of July 1, 2017.

<sup>92</sup> Mr. Rodney Grizzle, SCCID email to Mr. Charles Appleby, House Legislative Oversight Committee, in April 2018.

<sup>93</sup> Agency's PER, Comprehensive Strategic Finances Chart

<sup>94</sup> Agency's PER, Comprehensive Strategic Finances Chart

<sup>95</sup> Agency's PER, Comprehensive Strategic Finances Chart

<sup>96</sup> Agency's PER, Comprehensive Strategic Plan Chart and Strategic Plan Summary Chart.

<sup>97</sup> Department of Administration, Executive Budget Office, "2016-17 Accountability Report Technical Assistance Guide," under Agency Accountability Reports <http://www.admin.sc.gov/files/FY%202016-17%20Accountability%20Report%20Technical%20Assistance.pdf> (accessed July 21, 2017). See also, Agency PER.

<sup>98</sup> Agency's PER, Comprehensive Strategic Finances Chart.

<sup>99</sup> See S.C. Legal Services website, History, <https://sclegal.org/history/> (Accessed April 19, 2018). (Congress passed the Legal Services Corporation Act in 1974. For the first time, there was a federal statute setting forth terms and conditions, with authority to make grants, for provision of civil legal services, including formulas based on population and access. The Legal Services Corporation was inaugurated as the primary funding source for legal aid providers. Congress in successive years allowed for funding to expand the existing network of legal services programs to rural and suburban areas of the United States that had never been included as a target population for free civil legal services. The funding injected new vitality into the existing legal aid network—allowing for critical expansion into rural counties so that all forty-six counties in South Carolina were eligible for assistance. The regional approach from the 1970s continued, however, with several legal aid programs all coexisting with their separate boards and staffs. In the late 1990s, the Legal Services Corporation promoted mergers of regional programs with the

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aim of consolidation and streamlining of resources. Thus, in 2002, through seasons of change, South Carolina Legal Services was born.)

<sup>100</sup> Agency's PER.

<sup>101</sup> The North Carolina Systems Evaluation Project (NCSEP), available at <http://www.ncids.org/Systems%20Evaluation%20Project/SEP%20HomePage.html?c=Research%20%20and%20%20Reports,%20Systems%20Evaluation%20Project> (accessed August 16, 2018).