Chapter 5
Experts and Other Assistance

5.1 Right to Expert **5-2**
- A. Basis of Right
- B. Breadth of Right
- C. Right to Own Expert

5.2 Required Showing for Expert **5-4**
- A. Indigency
- B. Preliminary but Particularized Showing of Need

5.3 Applying for Funding **5-6**
- A. Noncapital Cases
- B. Capital Cases
- C. Inmate Cases

5.4 Components of Request for Funding **5-7**
- A. Generally
- B. Area of Expertise
- C. Name of Expert
- D. Amount of Funds
- E. What Expert Will Do
- F. Why Expert's Work is Necessary
- G. Documentation

5.5 Obtaining an Expert Ex Parte in Noncapital Cases **5-10**
- A. Importance of Ex Parte Hearing
- B. Who Hears the Motion
- C. Filing, Hearing, and Disposition of Motion
- D. Other Procedural Issues

5.6 Specific Types of Experts **5-13**
- A. Mental Health Experts
- B. Experts on Physical Evidence
- C. Investigators
- D. Other Experts

5.7 Confidentiality of Expert's Work **5-18**

5.8 Right to Other Assistance **5-19**
- A. Interpreters

B. Transcripts
C. Other Expenses

This chapter focuses on motions for funds for the assistance of an expert (including the assistance of an investigator). Such motions are most appropriate in felony cases but should be considered in any case where expert assistance is necessary for an effective defense. Other forms of state-funded assistance (such as interpreters) are discussed briefly at the end of this chapter. Information for professionals working as expert witnesses in indigent criminal defense cases, as well as a guide to best practices for defense attorneys on how to work with expert witnesses authored by IDS's forensic resource counsel, Sarah Olson, is available at the IDS website.

Experts can assist the defense in various ways, including among other things:

- reviewing the discovery relevant to their expertise, including any materials prepared by the State's experts,
- identifying gaps in the discovery that has been produced and additional discovery that should be requested,
- evaluating the client's mental state for purposes of suppression motions, trial defenses, and sentencing,
- preparing for any hearing to exclude or limit testimony by the State's expert witnesses,
- helping defense counsel prepare for cross-examination of the State's experts, and
- testifying before the jury.