

VIRGINIA'S PUBLIC DEFENDER SYSTEM
REPORT OF THE
VIRGINIA PUBLIC DEFENDER COMMISSION
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA
SEPTEMBER, 1979



House Document No. 2

COMMONWEALTH OF VIRGINIA
Richmond
1980

VIRGINIA PUBLIC DEFENDER COMMISSION

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William E. Bobbitt, Jr., Staunton

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David D. Walker, Roanoke

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FOURTH REPORT OF THE
VIRGINIA PUBLIC DEFENDER COMMISSION TO
THE GOVERNOR AND THE GENERAL ASSEMBLY OF VIRGINIA
SEPTEMBER, 1979

INTRODUCTION

The Virginia Public Defender Commission, pursuant to Chapter 698 of the Acts of Assembly, 1978 (carried by reference as § 19.2-163.1 through §19.2-163.6 of the Code of Virginia) takes pleasure in submitting its fourth report on the establishment, operation, experience and evaluation of public defender offices in the Commonwealth. Previous reports were submitted in November, 1974; June, 1976; and January, 1978. This is the first report since amendment of enabling legislation in 1978 increased to five the number of public defender offices to be established¹ and the size of the Commission to nine members.

Two of the Commission members, Honorable Henry D. Garnett, Judge, Seventh Judicial Circuit, and Honorable William W. Sweeney, Judge, Twenty-Fourth Judicial Circuit, have served since the creation of the Commission pursuant to Chapter 2.1, 1972 Acts of Assembly. Both judges have previously served as Chairman, and Judge Sweeney currently serves as Vice Chairman.

Establishment and analysis of defender offices as alternatives to the assigned counsel systems' method of providing defense services was, and continues to be, the purpose of the enabling legislation.

¹The fourth office was opened in the City of Petersburg on July 1, 1979 with funding provided pursuant to LEAA Grant Number 79-A4848 approved by the Council on Criminal Justice and administered by the Division of Justice and Crime Prevention.

In this regard, the Commission continues to be pleased with the high quality of defense services afforded by the Public Defenders and their staffs and has determined that the offices are providing satisfactory alternatives to the assigned counsel systems.² It is equally gratifying that the General Assembly has responded favorably to recommended amendments to the initial enabling legislation since 1972.³ Suggestions relative to establishment of the fifth office are now being considered and evaluated by the Commission.⁴ It is hoped that this office can be operational by July 1, 1980.

In order to provide adequate planning, budgeting, and selection of office locations, there is necessarily some time lag. The problem is manifest mostly in the funding area. Funding for the Petersburg office was not available until July 1, 1979, with funding for the fifth office projected for July 1, 1980.

Problems of inflation continue to strain projected budgets, and the cost of administering the program has increased

²As stated in previous reports, there seems to be no statewide assigned counsel system. Some jurisdictions select panel attorneys who have "duty days" on a rotating basis. In others, appointments are made on an ad hoc basis. There are probably many variations within these "systems".

³Because of various amendments since 1972 and the difficulty in locating the complete text as currently in force, §§19.2-163.1 through 19.2-163.6 are set forth in the Appendix, pages 11 and 12.

⁴Eligible counties and cities are listed in the Appendix, page 13.

considerably.⁵ Nevertheless, the overall efficiency of providing defense services through public defender offices continues to compare favorably to the assigned counsel systems.

FINDINGS AND RECOMMENDATIONS

During fiscal year 1978-79, the defender offices in Roanoke, Staunton and Virginia Beach represented 3,400 indigent clients (2,359 adults and 1,729 juveniles) charged with a total of 6,150 felony and misdemeanor counts.⁶

Average costs per count over a three-year period (July 1, 1976 - June 30, 1979) range from \$55.00 in Virginia Beach to \$64.00 in Roanoke to \$72.00 in Staunton. Both Roanoke and Staunton had average costs of \$120.00 per defendant with the average for Virginia Beach being \$108.00.⁷ In order to make cost comparisons

⁵The additional reporting and record keeping requirements of grant administration, program budgeting and the new Commonwealth Accounting and Reporting System have increased administrative costs (because of the need to hire an additional employee), but the effect has not been entirely adverse. These same requirements have led to a greater awareness of spending patterns and have simplified relating specific objectives to their cost. More financial information is available and thus budgetary control is easier.

⁶Statistical listings of types of counts, etc. for all public defender offices appear in the Appendix, page 14, and individual office statistics on types of crimes appear in the Appendix, pages 15, 16 and 17.

⁷These figures include indirect costs of administration and Commission expenses. For complete costs per count and per defendant, see the Appendix, pages 18 and 19.

between the use of public defenders and private attorneys on a court-appointed basis, average fees for types of counts (misdemeanor or felony) were used. Estimated savings to the Commonwealth for fiscal year 1977-78 were \$86,300.00 and for fiscal year 1978-79 were \$149,390.00.⁸ The savings become more significant when the total cost of court-appointed attorneys is considered.⁹ There should not be undue emphasis on costs and savings, however, with consistent quality defense services being the primary objective.

Findings of the Commission relative to the operation of the public defender offices are virtually unchanged since the 1978 report. Members of the judiciary, Commonwealth's Attorneys, court administrative staffs and others continue to praise the quality of defense services and the efficiency provided by the defender offices.¹⁰

⁸Cost comparisons for the total defender program appear in the Appendix, pages 20 and 21. The individual office cost comparisons statistics are in the Appendix, pages 22 through 27.

⁹The statewide cost for court-appointed attorneys in fiscal year 1977-78 was almost 5 million dollars and in fiscal year 1978-79, the cost was approximately 4.25 million dollars. Complete cost figures appear in the Appendix, page 28. Costs for selected areas appear in the Appendix, pages 29 and 30.

¹⁰One of the views voiced by opponents of defender systems was that the quality of defense services rendered by the private bar would be lowered since young lawyers would miss the training provided by court-appointed cases. It does not appear, however, that the public defender offices have affected the private bar in this regard. Indeed the training provided in the defender offices may well improve the quality of private criminal practice, since former defenders and assistants often enter private practice, much like those who perform prosecutorial functions.

The Petersburg office has been operating with a full staff for approximately two months, which is insufficient time for evaluation. Based on past experience, however, it is anticipated that the Petersburg office will be well received, will likely assist in alleviating court congestion, and will be cost efficient.

Fulltime personnel are employed in the City of Roanoke, and this results in a more costly operation than the use of part-time assistants who use their own offices and secretarial help. It should be noted, however, that the cost of court administration may be lowered considerably by the use of fulltime defender personnel.

Personnel turnover has been somewhat of a problem for the fulltime office (Roanoke), but there is the advantage of fulltime lawyers practicing only criminal law and thus having no other fields of law competing for their time.

An advantage expressed by the offices employing part-time assistants (Staunton and Virginia Beach) has been the ability to attract more experienced assistants.¹¹

The Commission, from its inception, has attempted to provide objective evaluation, avoiding the role of advocate, either for or against, a statewide public defender system, although it is hoped that states which have instituted statewide systems may

¹¹The Petersburg office also has part-time assistants, but no opinion on the desirability of same is expressed because of the short time the office has been operating.

provide some insight into this possibility.¹² Establishment of the fifth office in a metropolitan area, and observation of its acceptance and effectiveness, as well as evaluation of the Petersburg office, will be the primary goals of the Commission in 1980.

COMMISSION ACTIVITIES

The final meeting of the five-member commission was held on June 23, 1978 at Virginia Beach (in conjunction with the meeting of the Virginia State Bar), at which time the amendments to the enabling legislation were reviewed, with particular emphasis on the expansion of the Commission to nine members and the selection of a new (fourth) office. The Commission, as is customary during the June meeting, established the salaries for the Public Defenders and the Commission staff for the 1978-79 fiscal year and approved the salaries of the defenders' staffs.

The 1978 fall meeting was held at the Virginia State Bar office in Richmond on October 18, 1978, this being the first meeting of the nine-member Commission. D. Nelson Sutton, Jr. was elected Chairman at that time (Mr. Sutton having also been elected by the five-member Commission). The main items on the agenda included budgetary matters, orientation of the new Commission members, reports of the Public Defenders on their

¹²For information purposes, the Model State Defender Act, prepared by the National Study Commission on Defense Services appears in the Appendix, pages 31 through 39.

respective offices, and the selection process for the fourth defender office.

The winter meeting of the Commission was held on January 13, 1979 in Williamsburg. At this meeting, the City of Petersburg was selected as the site for a defender office, and plans were made for presentation of this matter to the Petersburg Bar, the judiciary, and court administrative personnel as well as a selection procedure for a public defender.

In an effort to familiarize the Commission members with the individual public defender offices, a special meeting was held in Roanoke on February 21, 1979 at which time members of the Roanoke judiciary were invited to attend and comment on the operation of the Roanoke office. The response was overwhelmingly favorable as it has been in Virginia Beach and the Staunton-Waynesboro-Augusta County area.

The final Commission meeting during fiscal year 1978-79 was held in Virginia Beach on June 23, 1979. The agenda included a report on the planned opening of the Petersburg office (on July 1, 1979), establishment of salaries for the Public Defenders (and members of the Commission staff) for the 1979-80 fiscal year, and plans for preparation of the September, 1979 report to the Genral Assembly.

Generally, the Commission attempts to have four meetings during the year (and sometimes special meetings), with the Bar functions and defender office locations given preference, except for the fall meeting which normally is held in Richmond.

Administrative matters continue to be supervised by Overton P. Pollard as Executive Director (employed on a part-time basis) and Bonnie R. Farrish as Fiscal Director, 305 Mutual Building, Richmond, Virginia.

THE PETERSBURG OFFICE

G. Richard Beck serves as Public Defender for the City of Petersburg, and he is assisted by Donald Matthys as a fulltime investigator. The assistant public defenders (part-time) are Frank B. McCann and Kenneth E. Nickels. Janice Bookout is secretary for the office. The office is located at 29 South Jefferson Street, an easy walk to the court buildings. The case load will be monitored closely to determine if Mr. Beck's staff is adequate.

THE ROANOKE OFFICE

David D. Walker continues as Public Defender for the City of Roanoke, a position he has occupied since March 1, 1976. Douglas G. Maynard serves as investigator. All personnel in the Roanoke office are fulltime (as a policy matter) with the assistants being David J. Damico, John Gregory, Jr., Francis W. Burkart and Raymond F. Leven. Mr. Walker also employs two secretaries, Mollie C. Talbott and Sherry J. Powers. The office is physically located in the Southwest Virginia Bank Building, Campbell and Second Streets, Roanoke, Virginia. This location is within easy walking distance of the City courts, a factor expressed by many members of the judiciary and their administrative staffs as being especially advantageous because

of the easy and ready availability to the courts. It is anticipated that the Roanoke staff will add one assistant public defender on or before July 1, 1980.

THE STAUNTON OFFICE

William E. Bobbitt, Jr., Public Defender, recently moved his office to the Law Building in Staunton, which is also easily within walking distance of the Augusta County and Staunton courts. Thomas S. Ashby serves as investigator and Mrs. Doris S. Whitesell as secretary. R. Toms Dalton, Jr. and Victor M. Santos are the part-time assistant public defenders. Mr. Dalton resides in Waynesboro and, as a general rule, represents eligible indigent clients in the Waynesboro courts.

The Staunton office has the lowest volume of cases but serves three jurisdictions (and thus three sets of courts) and has a large area to cover. It appears that the staff is adequate to cover the courts at this time, although some consideration is being given to increasing the number of assistants simply because of the various courts and jurisdictions in which they are needed and schedule conflicts which sometimes arise.

THE VIRGINIA BEACH OFFICE

Peter T. Legler continues as Public Defender for this office, a position he has held since its inception in 1972. Mr. Legler's office is physically located directly across Princess Anne Road

from the courthouse complex, although the office has been moved a short distance since the 1978 report. William M. Campbell has served as investigator since 1972, and Mrs. Irene P. Evans, secretary, completes the fulltime staff. Mr. Legler's part-time assistants are Frederick B. Lowe, Virginia Cochran Miller and Margaret M. Lawlor.

Because of increasing caseloads, it is anticipated that an additional assistant public defender will be needed on or about July 1, 1980.

§ 19.2-163.1. Public Defender Commission to be appointed; membership; expenses; report to General Assembly.--There is hereby created a Public Defender Commission, which shall be composed of nine citizens and residents of this Commonwealth. Members of the Commission shall be appointed by the Speaker of the House of Delegates in consultation with the chairmen of the Courts of Justice Committees of the House of Delegates and the Senate. Members shall be appointed for staggered terms of three years, with the term of one judicial appointment, one lawyer appointment, and one public appointment expiring each year, except that the terms of the nine members initially appointed shall be in equal numbers of one-year, two-year, and three-year terms. The Commission shall annually elect one of its members chairman. The Commission shall consist of two members who are active judges of courts of record, one member who is an active general district court judge, three members who are active members of the Virginia State Bar and have practiced law in the Commonwealth for ten or more years immediately preceding their appointment and three public members who shall not be active or retired judges and shall never have been licensed lawyers. Members of this Commission shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. The Commission shall report its actions to the General Assembly no later than November fifteenth, nineteen hundred seventy-four, and shall file additional reports no later than June thirtieth, nineteen hundred seventy-six, and September thirtieth, nineteen hundred seventy-nine.

§ 19.2-163.2. Commission to appoint public defenders in selected areas; compensation, assistants, offices, etc., of public defenders.--The duties of the Public Defender Commission hereinafter referred to as "the Commission" are:

(a) To select five areas wherein public defender offices are to be established, two of which are to be established subsequent to January one, nineteen hundred seventy-eight, one to be located in a county or city with a population in excess of one hundred thousand and one in a county or city with a population of less than one hundred thousand.

(b) Appoint a public defender for each of the above areas to serve at the pleasure of the Commission, who shall devote his full time to his duties and not engage in the private practice of law. The Commission shall fix his compensation.

(c) To authorize the public defender to employ such assistants as authorized by the Commission. Such assistants shall devote such time to the performance of their duties as may be required by the public defender or the Commission and may engage in the private practice of law. The Commission shall approve the salaries to be paid said assistants.

(d) To authorize the public defender to employ the necessary staff, including secretarial and investigative personnel and such other personnel as may be necessary to carry out the duties imposed upon him.

(e) To authorize the public defender to secure such office space as needed and to purchase or rent such office equipment and purchase supplies and to incur such expenses as are necessary to carry out the duties imposed upon him.

(f) To receive and expend moneys appropriated by the General Assembly of Virginia and to receive other moneys as they be available to it and to expend the same in order to carry out the duties imposed upon it.

(g) In any case in which a public defender or his assistant represents an indigent person charged with an offense and such person is convicted, such sum as would have been allowed a court-appointed attorney as compensation and as reasonable expenses shall be taxed against the person defended as a part of the costs of the prosecution, and, if collected, shall be paid to the Commonwealth. An abstract of such costs shall be docketed in the judgment docket and execution lien book of the court.

§ 19.2-163.3. Duties of public defenders and assistants.--Public defenders and their assistants shall carry out the following duties:

(a) To secure office space, to employ a staff, to fix salaries and to do such other things necessary to carry out the duties imposed upon him with the approval of the Commission.

(b) To represent indigent persons charged with a crime or offense when such persons are entitled to be represented by law by court-appointed counsel in a court of record or a court not of record, and to assist the courts in verifying the indigent status of such persons.

(c) To represent indigent persons who are entitled to be represented by court-appointed counsel in an appeal of their conviction to the Supreme Court of Virginia.

(d) To represent indigent prisoners when a habeas corpus proceeding is brought by such prisoners.

(e) To submit such reports as required by the Commission.

§ 19.2-163.4. In counties and cities in which public defenders are appointed, the provisions of §§ 14.1-183 and 19.2-163 of the Code of Virginia shall not apply unless the public defender is unable to represent the defendant or petitioner by reason of conflict of interest or otherwise, in which case the provisions of §§ 14.1-183 and 19.2-163 shall be in full force and effect.

§ 19.2-163.5. Legal services to public defenders, and/or assistant public defenders.--At the request of a public defender, the Attorney General shall provide legal services to such attorney, his assistants, or members of his staff in any proceeding brought against him, his assistants, or staff for money damages, when the cause of action allegedly arises out of the duties of his office.

Any costs chargeable against the defendant or defendants in any such case shall be paid by the Commonwealth from the appropriation for the payment of criminal charges.

§ 19.2-163.6. Executive Director, consultants and other personnel.--The Commission shall be authorized to appoint and employ and, at pleasure, remove, an executive director, counsel, and such other persons as it may deem necessary and to determine their duties and fix their salaries or compensation within the amounts appropriated therefor.

APPENDIX

COUNTIES AND CITIES ELIGIBLE FOR THE FIFTH PUBLIC DEFENDER
OFFICE - 1970 POPULATION DATE (EXCEPT FOR THOSE MARKED WITH
AN "*") OBTAINED FROM REPORT OF THE SECRETARY OF THE COMMONWEALTH

<u>COUNTIES</u>	<u>1970</u>	<u>1974</u>	<u>1980 PROJECTION</u>
Arlington	174,284	154,300	132,900
Chesterfield	76,855	95,900	125,700
Fairfax	454,275 (455,032) *	505,500	569,100
Henrico	154,364	166,800	188,500
Prince William	111,102 (93,240) *	120,700	152,400
<u>CITIES</u>			
Alexandria	110,938 (110,927) *	107,300	104,200
Chesapeake	89,580	101,700	117,500
Hampton	120,779	128,200	137,700
Newport News	138,177	138,000	138,100
Norfolk	307,951	289,000	270,300
Portsmouth	110,963	109,400	105,500
Richmond	249,621 (249,431) *	232,800	203,400

*Population figures reported by Economic Research Section of
Department of Planning and Budget

PUBLIC DEFENDER OFFICES
ALL LOCATIONS
July 1, 1978-June 30, 1979

Miscellaneous information:
 Clients accepted 3,400
 Misdemeanor appeals 251
 Supreme Court appeals (1 granted) 20
 Preliminary hearings 1,217
 Certified to circuit court 796
 Indictments w/o preliminary
 hearings 213

SUMMARY OF COUNTS

	<u>TOTAL</u>	<u>ADULT</u>	<u>JUVENILE</u>
Felony counts	2,718	2,002	716
Misdemeanor counts	3,432	2,419	1,013
TOTALS	6,150	4,421	1,729
Number of defendants	3,400	2,359	1,041

FELONY COUNTS

Arson, Statutory Burning	20	12
Attempted Murder, Burglary, Rape, Robbery	34	21
Other Attempts	19	4
Burglary/Breaking & Entering	333	250
Controlled Substance, Possession	29	2
Possession W/Intent To Distribute	33	10
Distribution of Controlled Substance	50	16
Felonious Use of Firearm	29	2
Foregry/Uttering	303	25
Grand Larceny/Embezzlement	427	230
Malicious/Unlawful Wounding	75	29
Murder (Capital)	1	--
Murder	6	1
Rape/Sodomy	44	4
Robbery	54	12
Revocation of Probation/Fugitive	110	7
Miscellaneous Felonies	435	91
TOTALS	2,002	716

MISDEMEANOR COUNTS

Assault	237	149
Contempt of Court	144	23
Disorderly Conduct/Resisting Arrest	140	72
Petty Larceny/Shoplifting/Concealment of Merchandise/Bad Checks	659	178
Miscellaneous Misdemeanors	706	388
DWI/Driving on Revoked OL/Hit and Run	236	10
Other Traffic Offenses	297	53
Status Offenses, Guardian ad Litem*	xx	140
TOTALS	2,419	1,013

*Guardian ad Litem appointments prior to
March 8, 1979, when enabling legislation
was changed to eliminate them.

PUBLIC DEFENDER OFFICE
 ROANOKE, VIRGINIA
July 1, 1978-June 30, 1979.

Miscellaneous Information:
 Clients accepted 1,519
 Misdemeanor appeals 163
 Supreme Court appeals 6
 Preliminary hearings 639
 Certified to circuit court 393
 Indictments w/o preliminary
 hearings 24

SUMMARY OF COUNTS

	<u>TOTAL</u>	<u>ADULT</u>	<u>JUVENILE</u>
Felony Counts	1,023	690	333
Misdemeanor counts	<u>1,552</u>	<u>1,029</u>	<u>523</u>
TOTALS	2,575	1,719	856
Number of defendants	1,519	1,058	461

FELONY COUNTS

Arson, Statutory Burning	11	8
Attempted Murder, Burglary, Rape, Robbery	17	14
Other Attempts	--	--
Burglary/Breaking & Entering	131	107
Controlled Substance, Possession	9	--
Possession W/Intent to Distribute	13	1
Distribution of Controlled Substance	12	9
Felonious Use of Firearm	9	2
Forgery/Uttering	61	10
Grand Larceny/Embezzlement	156	99
Malicious/Unlawful Wounding	45	21
Murder (capital)	--	--
Murder	3	--
Rape/Sodomy	19	2
Robbery	22	9
Revocation of Probation/Fugitive	28	--
Miscellaneous Felonies	<u>154</u>	<u>51</u>
TOTALS	690	333

MISDEMEANOR COUNTS

Assault	144	112
Contempt of Court	79	19
Disorderly Conduct/Resisting Arrest	65	47
Petty Larceny/Shoplifting/Concealment of Merchandise/Bad Checks	178	101
Miscellaneous Misdemeanors	231	144
DWI/Driving on Revoked OL/Hit and Run	140	8
Other Traffic Offenses	192	41
Status Offenses, Guardian ad Litem*	<u>xx</u>	<u>51</u>
TOTALS	1,029	523

*Guardian ad Litem appointments prior to March 8, 1979, when enabling legislation was changed to eliminate them.

PUBLIC DEFENDER OFFICE
 STAUNTON, VIRGINIA
July 1, 1978-June 30, 1979

Miscellaneous information:
 Clients accepted 808
 Misdemeanor appeals 27
 Supreme Court appeals (1 granted) 12
 Preliminary hearings 188
 Certified to circuit court 174
 Indictments w/o preliminary
 hearings 22

	<u>SUMMARY OF COUNTS</u>		
	<u>TOTAL</u>	<u>ADULT</u>	<u>JUVENILE</u>
Felony counts	609	451	158
Misdemeanor counts	800	563	237
TOTALS	1,409	1,014	395
Number of defendants	808	510	298

FELONY COUNTS

Arson, Statutory Burning	2	3
Attempted Murder, Burglary, Rape, Robbery	5	--
Other Attempts	2	2
Burglary/Breaking & Entering	84	64
Possession W/Intent to Distribute	1	1
Distribution of Controlled Substance	25	6
Felonious Use of Firearm	4	--
Forgery/Uttering	63	3
Grand Larceny/Embezzlement	114	50
Malicious/Unlawful Wounding	8	3
Murder (Capital)	1	--
Murder	1	1
Rape/Sodomy	13	--
Robbery	9	--
Revocation of Probation/Fugitive	8	6
Miscellaneous Felonies	111	19
TOTALS	451	158

MISDEMEANOR COUNTS

Assault	41	19
Contempt of Court	11	3
Disorderly Conduct/Resisting Arrest	8	5
Petty Larceny/Shoplifting/Concealment or Merchandise/Bad Checks	217	52
Miscellaneous Misdemeanors	165	127
DWI/Driving on Revoked OL/Hit and Run	67	2
Other Traffic Offenses	54	3
Status Offenses, Guardian ad Litem *	xx	26
TOTALS	563	237

*Guardian ad Litem appointments prior to
 March 8, 1979, when enabling legislation
 was changed to eliminate them.

PUBLIC DEFENDER OFFICE
 VIRGINIA BEACH, VIRGINIA
July 1, 1978-June 30, 1979

Miscellaneous Information:

Clients accepted	1,073
Misdemeanor appeals	61
Supreme Court appeals	2
Preliminary hearings	390
Certified to circuit court	229
Indictments w/o preliminary hearings	167

SUMMARY OF COUNTS

	<u>TOTAL</u>	<u>ADULT</u>	<u>JUVENILE</u>
Felony Counts	1,086	861	225
Misdemeanor counts	<u>1,080</u>	<u>827</u>	<u>253</u>
TOTALS	2,166	1,688	478
Number of defendants	1,073	791	282

FELONY COUNTS

Arson, Statutory Burning	7	1
Attempted Murder, Burglary, Rape, Robbery	12	7
Other Attempts	17	2
Burglary/Breaking & Entering	118	79
Controlled Substance, Possession	20	2
Possession W/Intent To Distribute	19	8
Distribution of Controlled Substance	13	1
Felonious Use of Firearm	16	--
Forgery/Uttering	179	12
Grand Larceny/Embezzlement	157	81
Malicious/Unlawful Wounding	22	5
Murder (Capital)	--	--
Murder	2	--
Rape/Sodomy	12	2
Robbery	23	3
Revocation of Probation/Fugitive	74	1
Miscellaneous Felonies	<u>170</u>	<u>21</u>
TOTALS	861	225

MISDEMEANOR COUNTS

Assault	52	18
Contempt of Court	54	1
Disorderly Conduct/Resisting Arrest	67	20
Petty Larceny/Shoplifting of Merchandise/ Bad Checks	264	25
Miscellaneous Misdemeanors	310	117
DWI/Driving on Revoked OL/Hit and Run	29	--
Other Traffic Offenses	51	9
Status Offenses, Guardian ad Litem*	<u>xx</u>	<u>63</u>
TOTALS	827	253

*Guardian ad Litem appointments prior to March 8, 1979, when enabling legislation was changed to eliminate them.

COST PER COUNT¹

	<u>July 1, 1976 - June 30, 1977</u>		<u>July 1, 1977 - June 30, 1978</u>		<u>July 1, 1978 - June 30, 1979</u>		<u>July 1, 1976 - June 30, 1979</u>	
	<u>DIRECT</u>	<u>TOTAL</u>	<u>DIRECT</u>	<u>TOTAL</u>	<u>DIRECT</u>	<u>TOTAL</u>	<u>DIRECT</u>	<u>TOTAL</u>
	<u>COST³</u>	<u>COST³</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>
<u>Staunton Office:</u>								
Cost	72,667	80,356	73,110	79,995	86,675	101,905	232,452	262,256
Counts	1,073	1,073	1,161	1,161	1,409	1,409	3,643	3,643
Cost/count	68	75	63	69	62	72	64	72
<u>VA Beach Office:</u>								
Cost	88,367	96,056	91,970	98,855	108,425	123,655	288,762	318,566
Counts	1,775	1,775	1,903	1,903	2,166	2,166	5,844	5,844
Cost/count	50	54	48	52	50	57	49	55
<u>Petersburg Office:</u> ²								
Cost	--	--	--	--	685	685	685	685
<u>Offices with Part-time Ass'ts.</u>								
Cost	161,034	176,412	165,080	178,850	195,785	226,245	521,899	581,507
Counts	2,848	2,848	3,064	3,064	3,575	3,575	9,487	9,487
Cost/count	57	62	54	58	55	63	55	61
<u>Roanoke Office:</u>								
Cost	140,764	149,632	151,935	162,855	162,060	177,290	454,759	489,777
Counts	2,835	2,835	2,278	2,278	2,575	2,575	7,688	7,688
Cost/count	50	53	67	71	63	69	59	64
<u>All Offices:</u>								
Cost	301,798	326,044	317,015	341,705	357,845	403,535	976,658	1,071,284
Counts	5,683	5,683	5,342	5,342	6,150	6,150	17,175	17,175
Cost/count	53	57	59	64	58	66	57	62

¹For the purposes of this table, all charges (certified felonies, indictments without preliminary hearings, noncertified felonies, misdemeanors) and appeals (Supreme Court, misdemeanor) are given equal weight.

²The Petersburg office began operation July 1, 1979.

³Direct cost is the actual cost of office operation; total cost includes a share of the cost of Administration and expenses of Commission Members.

COST PER DEFENDANT

	<u>July 1, 1976 - June 30, 1977</u>		<u>July 1, 1977 - June 30, 1978</u>		<u>July 1, 1978 - June 30, 1979</u>		<u>July 1, 1976 - June 30, 1979</u>	
	<u>DIRECT</u>	<u>TOTAL</u>	<u>DIRECT</u>	<u>TOTAL</u>	<u>DIRECT</u>	<u>TOTAL</u>	<u>DIRECT</u>	<u>TOTAL</u>
	<u>COST¹</u>	<u>COST¹</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>	<u>COST</u>
<u>Staunton Office:</u>								
Cost	72,667	80,356	73,110	79,995	86,675	101,905	232,452	262,256
Defendants	694	694	680	680	808	808	2,182	2,182
Cost/defendant	105	116	108	118	107	126	107	120
<u>VA Beach Office:</u>								
Cost	88,367	96,056	91,970	98,855	108,425	123,655	288,762	318,566
Defendants	945	945	941	941	1,073	1,073	2,959	2,959
Cost/defendant	94	102	98	105	101	115	98	108
<u>Petersburg Office:²</u>								
Cost	--	--	--	--	685	685	685	685
<u>Offices with Part-time Ass'ts.:</u>								
Cost	161,034	176,412	165,080	178,850	195,785	226,245	521,899	581,507
Defendants	1,639	1,639	1,621	1,621	1,881	1,881	5,141	5,141
Cost/defendant	98	108	102	110	104	120	102	113
<u>Roanoke Office:</u>								
Cost	140,764	149,632	151,935	162,855	162,060	177,290	454,759	489,777
Defendants	1,374	1,374	1,190	1,190	1,519	1,519	4,083	4,083
Cost/defendant	102	109	128	137	107	117	111	120
<u>All Offices:</u>								
Cost	301,798	326,044	317,015	341,705	357,845	403,535	976,658	1,071,284
Defendants	3,013	3,013	2,811	2,811	3,400	3,400	9,224	9,224
Cost/defendant	100	108	113	122	105	119	106	116

¹Direct cost is the actual cost of office operation; total cost includes a share of the cost of Administration and expenses of Commission Members.

²The Petersburg office began operation July 1, 1979.

COST AND CASELOAD INFORMATION
PUBLIC DEFENDER OFFICES
1977-78

	<u>Staunton</u>	<u>VA Beach</u>	<u>Roanoke</u>	<u>Total</u>
Caseload information:				
Interviews	686	1,232	1,214	3,132
Ineligible	<u>- 6</u>	<u>-291</u>	<u>- 24</u>	<u>- 321</u>
Clients accepted	680	941	1,190	2,811
Defendants:				
Adult	426	717	798	1,941
Certified Juvenile	<u>254</u>	<u>224</u>	<u>392</u>	<u>870</u>
Total	680	941	1,190	2,811
Counts:				
Certified felonies	150	210	274	634
Noncertified felonies	<u>233</u>	<u>774</u>	<u>583</u>	<u>1,590</u>
Total felonies	383	984	857	2,224
Misdemeanors	<u>744</u>	<u>837</u>	<u>1,171</u>	<u>2,752</u>
Total counts	1,127	1,821	2,028	4,976
Appeals:				
Supreme Court	14	4	5	23
Misdemeanor	<u>20</u>	<u>78</u>	<u>245</u>	<u>343</u>
Total appeals	34	82	250	366
Cost information:				
Estimated cost of court- appointed attorneys ¹	97,105	169,275	161,625	428,005
Cost of operation of defender office	<u>73,110</u>	<u>91,970</u>	<u>151,935</u>	<u>317,015</u>
Estimated savings of public defender office ²	23,995	77,305	9,690	110,990
Less: share of expenses of Executive Director and Commission members	<u>-6,885</u>	<u>-6,885</u>	<u>-10,920</u>	<u>-24,690</u>
Net savings ²	17,110	70,420	(1,230)	86,300
% savings before adjustment	24.7%	45.7%	6.0%	25.9%
% savings after adjustment	17.6%	41.6%	(0.8%)	20.1%

¹Based on actual caseload of each public defender office.

²Savings of unknown magnitude result from decreased paperwork in Clerk's offices (because of reduced number of form 4's) and from increased efficiency of court system in terms of scheduling, etc.

COST AND CASELOAD INFORMATION
PUBLIC DEFENDER OFFICES
1978-79

	<u>Staunton</u>	Virginia <u>Beach</u>	<u>Roanoke</u>	<u>Petersburg</u> ³	<u>Total</u>
Caseload information:					
Interviews	811	1,359			
Ineligible	<u>- 3</u>	<u>- 286</u>			
Clients accepted	808	1,073	1,519		3,400
Defendants:					
Adult	510	791	1,058		2,359
Juvenile	<u>298</u>	<u>282</u>	<u>461</u>		<u>1,041</u>
Total	808	1,073	1,519		3,400
Counts:					
Certified felonies	174	229	393		796
Noncertified felonies	<u>435</u>	<u>857</u>	<u>630</u>		<u>1,922</u>
Total felonies	609	1,086	1,023		2,718
Misdemeanors	<u>800</u>	<u>1,080</u>	<u>1,552</u>		<u>3,432</u>
Total counts	1,409	2,166	2,575		6,150
Appeals:					
Supreme Court	12	2	6		20
Misdemeanor	<u>27</u>	<u>61</u>	<u>163</u>		<u>251</u>
Total appeals	39	63	169		271
Cost information:					
Estimated cost of court-					
appointed attorneys ¹	\$133,225	\$208,475	\$211,225	\$-0-	\$552,925
Cost of operation of					
defender office	<u>86,675</u>	<u>108,425</u>	<u>162,060</u>	<u>685</u>	<u>357,845</u>
Estimated savings of					
public defender					
office ²	\$ 46,550	\$100,050	\$ 49,165	(\$685)	\$195,080
Less: share of expenses					
of Executive Director					
and Commission members	<u>-15,230</u>	<u>-15,230</u>	<u>-15,230</u>	<u>--</u>	<u>-45,690</u>
Net savings ²	\$31,320	\$84,820	\$33,935	(\$685)	\$149,390
% savings before adjustment	34.9%	48.0%	23.3%	--	35.3%
% savings after adjustment	23.5%	40.7%	16.1%	--	27.0%

¹Based on actual caseload of each public defender office

²Savings of unknown magnitude result from decreased paperwork in Clerk's offices (because of reduced number of form 4's) and from increased efficiency of court system in terms of scheduling, etc.

³The Petersburg office did not open until July 1, 1979

PUBLIC DEFENDER OFFICE
ROANOKE, VIRGINIA
July 1, 1977 - June 30, 1978

Expenditures of the Public Defender Office:	
Personnel	\$ 134,720
Travel	1,705
Equipment	890
Other Supplies and Operating Expenses	14,620
Cost of office operation	<u>\$ 151,935</u>
Estimated cost of Court-Appointed Counsel (based on actual office caseload):	
274 certified felonies @ \$200	\$ 54,800
583 noncertified felonies @ \$50	29,150
1171 misdemeanors @ \$50	58,550
245 misdemeanor appeals @ \$75	18,375
5 Supreme Court appeals @ \$150	750
Estimated cost of court-appointed counsel	<u>\$ 161,625</u>
Estimated savings of Public Defender Office	\$ 9,690 = 6.0%
Less: Share of expenses of Administration and Public Defender Commission	<u>10,920</u>
Net loss of Public Defender Office	(\$ 1,230) = (.8%)

PUBLIC DEFENDER OFFICE
ROANOKE, VIRGINIA
July 1, 1978 - June 30, 1979.

Expenditures of the Office:

Personal Service	\$123,155	
Contractual Services	8,145	
Supplies and Materials	595	
Equipment	4,250	
Other	<u>25,915</u>	\$162,060

Estimated cost of Court-Appointed Counsel -
based on actual office caseload:

393 certified felonies @ \$200	\$78,600	
24 indictments w/o preliminary hearings @ \$150	3,600	
320 noncertified felonies (juvenile) @ \$75	24,000	
286 noncertified felonies (adult) @ \$50	14,300	
1,552 misdemeanors @ \$50	77,600	
163 misdemeanor appeals @ \$75	12,225	
6 petitions for appeal to Virginia Supreme Court @ \$150	<u>900</u>	<u>211,225</u>

Estimated Savings of Public Defender Office \$49,165

Less: 1/3 expenses of Commission Members
and Administration 15,230

Net Savings of Public Defender Office \$33,935 =
16.1%

OFFICE OF THE PUBLIC DEFENDER
STAUNTON, VIRGINIA
July 1, 1977 - June 30, 1978

Expenditures of the Public Defender Office:

Personnel	\$ 66,250
Travel	695
Equipment	740
Other supplies and operating expenses	<u>5,425</u>
Cost of office operation	\$ 73,110

Estimated cost of Court-Appointed Counsel
(based on actual office caseload):

150 certified felonies @ \$200	\$ 30,000
233 noncertified felonies @ \$65	15,145
744 misdemeanors @ \$65	48,360
20 misdemeanor appeals @ \$75	1,500
14 Supreme Court appeals @ \$150	<u>2,100</u>
Estimated cost of court-appointed counsel	\$ 97,105

Estimated savings of Public Defender Office \$ 23,995 = 24.7%

Less: Share of expenses of Administration and Public
Defender Commission

6,885

Net savings of Public Defender Office

\$ 17,110 = 17.6%

PUBLIC DEFENDER OFFICE
STAUNTON, VIRGINIA
July 1, 1978 - June 30, 1979.

Expenditures of the Office:

Personal Service	\$70,845	
Contractual Services	3,155	
Supplies and Materials	415	
Equipment	1,585	
Other	<u>10,675</u>	\$86,675

Estimated cost of Court-Appointed Counsel-
based on actual office caseload:

174 certified felonies @ \$200	\$34,800	
22 indictments w/o preliminary hearings @ \$150	3,300	
413 noncertified felonies @ \$75	30,975	
800 misdemeanors @ \$75	60,000	
27 misdemeanor appeals @ \$75	2,025	
1 appeal to Virginia Supreme Court (petition for appeal granted) @ \$300 plus expenses	475	
11 petitions for appeal to Virginia Supreme Court @ \$150	<u>1,650</u>	<u>133,225</u>

Estimated Savings of Public Defender Office \$46,550

Less: 1/3 expenses of Commission Members
and Administration 15,230

Net Savings of Public Defender Office \$31,320 =
23.5%

PUBLIC DEFENDER OFFICE
VIRGINIA BEACH, VIRGINIA
July 1, 1977 - June 30, 1978

Expenditures of the Public Defender Office:

Personnel	\$ 84,290
Travel	690
Equipment	835
Other Supplies and Operating Expenses	<u>6,155</u>
Cost of office operation	\$ 91,970

Estimated cost of Court-Appointed Counsel
(based on actual office caseload):

210 certified felonies @ \$200	\$ 42,000
774 noncertified felonies @ \$75	58,050
837 misdemeanors @ \$75	62,775
78 misdemeanor appeals @ \$75	5,850
4 Supreme Court appeals @ \$150	<u>600</u>
Estimated cost of court-appointed counsel	\$ 169,275

Estimated savings of Public Defender Office \$ 77,305 = 45.7%

Less: Share of expenses of Administration and Public
Defender Commission

6,885

Net savings of Public Defender Office

\$ 70,420 = 41.6%

PUBLIC DEFENDER OFFICE
VIRGINIA BEACH, VIRGINIA
July 1, 1978 - June 30, 1979

Expenditures of the Office:

Personal Service	\$89,570	
Contractual Services	2,295	
Supplies and Materials	375	
Equipment	2,520	
Other	<u>13,665</u>	\$108,425

Estimated cost of Court-Appointed Counsel -
based on actual office caseload:

229 certified felonies @ \$200	\$45,800	
167 indictments w/o preliminary hearings @ \$150	25,050	
690 noncertified felonies @ \$75	51,750	
1,080 misdemeanors @ \$75	81,000	
61 misdemeanor appeals @ \$75	4,575	
2 petitions for appeal to Virginia Supreme Court @ \$150	<u>300</u>	<u>208,475</u>

Estimated Savings of Public Defender Office \$100,050

Less: 1/3 expenses of Commission Members
and Administration 15,230

Net Savings of Public Defender Office \$84,820 =
40.7%

COURT APPOINTED ATTORNEYS
STATEWIDE COSTS

July 1, 1968 - June 30, 1969	\$1,087,943.78
July 1, 1969 - June 30, 1970	1,325,352.48
July 1, 1970 - June 30, 1971	1,655,788.64
July 1, 1971 - June 30, 1972	1,920,070.14
July 1, 1972 - June 30, 1973	2,140,622.40
July 1, 1973 - June 30, 1974	1,883,190.50
July 1, 1974 - June 30, 1975	2,703,750.06
July 1, 1975 - June 30, 1976	4,299,466.18
July 1, 1976 - June 30, 1977	4,634,596.10
July 1, 1977 - June 30, 1978	4,919,389.74
July 1, 1978 - June 30, 1979	4,265,260.63

COURT-APPOINTED ATTORNEYS
COST BY LOCATION

<u>Location</u>	<u>July 1, 1974- June 30, 1975</u>	<u>July 1, 1975- June 30, 1976</u>	<u>July 1, 1976- June 30, 1977</u>	<u>July 1, 1977- June 30, 1978</u>	<u>July 1, 1978- June 30, 1979</u>
Alexandria ³	\$ 117,460.51	\$ 196,123.71	\$ 198,047.79	\$ 254,376.23	\$ 230,166.86
Arlington ³	93,645.00	178,777.40	175,314.38	177,295.77	237,430.98
Augusta ¹	4,884.82	3,109.64	4,899.50	5,662.75	5,185.80
Chesapeake ³	74,182.48	100,078.60	122,228.43	125,218.00	158,598.40
Chesterfield ³	32,233.67	54,282.39	58,477.40	64,691.91	91,004.70
Danville	42,286.00	34,874.75	41,664.00	47,575.50	67,773.22
Fairfax ³ (county & city)	197,093.76	304,842.49	320,588.99	359,701.45	417,733.51
Hampton ³	107,417.01	142,827.23	150,418.75	156,473.59	163,429.16
Henrico ³	56,933.00	88,672.50	102,045.55	122,458.85	124,925.27
Lynchburg	53,414.70	103,888.75	104,136.99	107,823.91	100,281.72
Newport News ³	114,553.81	188,160.08	165,037.39	193,943.16	245,766.15
Norfolk ³	185,220.60	311,784.95	342,557.48	317,979.79	418,112.64
Petersburg	24,540.85	91,118.00	115,918.55	89,364.41	114,166.65
Portsmouth ³	155,001.70	181,733.63	208,273.62	192,841.58	170,100.45
Prince William ³	24,954.50	66,652.73	79,296.67	99,356.82	107,426.20
Richmond ^{2,3}	322,989.00	456,409.88	524,429.34	512,633.47	472,134.84

Court-Appointed Attorneys

Cost By Location - page 2

Roanoke ¹ (city)	\$107,173.30	\$183,845.35	\$ 95,701.58	\$ 72,417.15	\$ 58,490.36
Roanoke (county)	27,920.49	48,798.75	56,735.00	36,547.00	44,759.65
Staunton ¹	1,165.00	320.00	4,116.08	8,674.80	6,650.62
Virginia Beach ¹	9,290.78	16,104.03	11,128.05	23,018.18	29,281.85
Waynesboro ¹	1,543.10	3,127.21	831.50	985.00	3 350 00

¹These areas are served by public defender offices.

²Because the state penitentiary is located in Richmond, criminal proceedings against convicts (such as recidivist cases) are heard in the Circuit Court of the City of Richmond (pursuant to §53-295 of the Code of Virginia), and the cost of counsel in those proceedings is included. Also, the appointment of counsel to assist indigent inmates (pursuant to §53-21.2) would increase the costs in areas where penal institutions are located.

³Counties or cities eligible for the fifth office.

**NATIONAL STUDY COMMISSION ON DEFENSE SERVICES'
MODEL STATE DEFENDER ACT**

1 SECTION 1 (Declaration of Purpose)

2 It is declared to be the policy of this State to provide for uniform, high
3 quality, legal representation of eligible persons in criminal and related
4 proceedings consistent with constitutional and public policy requirements of
5 fairness, equal protection, and due process of law.

6 SECTION 2 (Definitions)

7 In this Act, the term(s):

8 (a) "eligible person" means a person who falls within the financial
9 guidelines for legal representation at public expense prescribed in Section 9
10 of this Act;

11 (b) "Commission" means the State Defender Commission;

12 (c) "Director" means the State Defender Director;

13 (d) "Deputy Director" means the head of a local or a regional office of
14 the state defender system;

15 (e) "defender(s)" includes both attorneys who serve as staff attorneys
16 in the state defender system and assigned counsel who provide defense
17 services on a case basis, but does not include secretarial, investigative, social
18 work, or paraprofessional staff;

19 (f) "state defender system" means a system for providing defense
20 services to every jurisdiction within a state by means of a centrally-admin-
21 istered organization having full-time staff;

22 (g) "assigned counsel program" means an organized defense program,
23 administered by a full-time administrator, utilizing the services of private
24 attorneys who handle the cases of eligible persons from time to time on a
25 case basis;

26 (h) "panel attorney(s)" means private attorneys who are hired by the
27 State Defender Director to handle the cases of eligible persons from time to
28 time on a case basis;

29 (i) "Administrator" means the Assigned Counsel Administrator in a
30 dual system county;

31 (j) "dual system counties" means counties which have elected to
32 establish a separate, independent, coordinated assigned counsel program to
33 augment the services provided by the state defender system; and

34 (k) "he," "him," and "his" shall include the terms "she," "her," and
35 "hers."

36 SECTION 3 (State Defender Commission Established, Functions, Meetings)

37 (a) There is created a State Defender Commission to consist of nine (9)
38 members who shall serve staggered terms. In selecting the Commission, the
39 primary consideration shall be that of ensuring that the defenders are as inde-
40 pendent of political and judicial influence as are lawyers in private practice.

41 (1) A majority of the Commission shall consist of practicing
42 attorneys who have had substantial experience in the representation of per-
43 sons accused of crime within the five year period immediately preceding the
44 time that they are designated to serve on the Commission. Judges, prosecutors
45 and law enforcement officials shall not serve on the Commission. One-third
46 of the members of the Commission shall consist of representatives of groups
47 whose members derive a particular benefit from the proper functioning of the
48 defender system.

49 (2) The State Defender Director shall, upon appointment, become
50 an ex-officio member of the Commission without vote and shall participate
51 in all meetings of the Commission save for during the course of discussions

1 relating to renewal of his term or to his removal.

2 (3) The terms of the original members of the Commission shall be
3 as follows:

4 Three one year terms and until a successor is appointed and qualified;

5 Three two year terms and until a successor is appointed and qualified;

6 and

7 Three three year terms and until a successor is appointed and qualified.

8 Thereafter, all terms shall be for three years and until a successor is
9 appointed and qualified. The Chairperson shall, at the first meeting of the
10 Commission, conduct a drawing by lot to determine the length of each original
11 member's term. No member may serve more than two full consecutive three
12 year terms. Vacancies in the membership of the Commission shall be filled
13 in the same manner as original appointments. Appointments to fill vacancies
14 occurring before the expiration of a term are for the remainder of the un-
15 expired term.

16 (b) Commission members shall serve without compensation, but shall
17 be reimbursed for actual expenses incurred while engaged in the duties of the
18 Commission.

19 (c) The primary function of the Commission shall be the selection of
20 the State Defender Director. The Commission shall also:

21 (1) Assist the State Defender Director in drawing up procedures
22 for the selection of Deputies and staff assistants;

23 (2) Receive client complaints when not resolved by the de-
24 fender agency, review office performance by requesting relevant data and sta-
25 tistics, and monitor the performance of the Director;

26 (3) Maintain a continuing dialogue with the Director in order to
27 provide input and advice;

28 (4) Assist in ensuring the independence of the defender system
29 by educating the public regarding constitutional requirements and the func-
30 tions of the defenders;

31 (5) Serve as liaison between the legislature and the defender system
32 upon request of the Director;

33 (6) Remove the Director from office in the event that good cause is
34 shown;

35 (7) Review the budget request prepared by the Director, provide
36 advice on the budget request before its submission, and provide support for
37 the request before the legislature;

38 (8) Approve the fee schedule for payment of panel attorneys; and

39 (9) Determine matters affecting the compensation, vacations and
40 employment benefits of the State Defender Director.

41 In no event shall the Commission or its members interfere with the dis-
42 cretion, judgment or advocacy of defenders in their handling of individual
43 cases.

44 (d) The Commission shall meet on a regular basis and shall be
45 presided over by a Chairperson elected by its members. A majority of Com-
46 mission members shall constitute a quorum, and decisions shall require a
47 vote of a majority of those present; *provided that*, selection of the Director
48 shall require the vote of at least $\frac{2}{3}$ of the entire Commission. Each member
49 of the Commission shall have one vote, and voting by proxy shall be prohibited.
50 SECTION 4 (Qualifications of State Defender Director and Terms of Em-
51 ployment)

52 (a) The Commission shall appoint as Director only a person with the
53 following qualifications: An attorney whose practice of law has clearly

1 demonstrated experience in the representation of persons accused of crime;
2 who has been licensed to practice law in this State or, with the approval of the
3 Board of Governors of this State's Bar Association, in another state, for at
4 least five years; who has been engaged in the practice of criminal law during
5 the entire five-year period immediately preceding his appointment; who has
6 had extensive experience in administration of personnel; and who is dedicated
7 to the goals of providing high quality representation for eligible persons and
8 to improving the quality of defense services generally.

9 (b) The Director shall devote full time to the duties of the state de-
10 fender system and shall not otherwise engage in the practice of law.

11 (c) The Director's term of office shall be four years and until the
12 appointment and qualification of a successor. The Director's term shall be
13 renewable in the discretion of the State Defender Commission. During the
14 course of a term of office, the Director may be removed only for good cause
15 shown after notice and a fair hearing before the Commission.

16 (d) The Director's compensation shall be set at a level which is com-
17 mensurate with his qualifications and experience, and which recognizes the
18 responsibility of the position. The Director's compensation shall be com-
19 parable with that paid to presiding State Supreme Court judges, shall be pro-
20 fessionally appropriate when compared with that of the private bar, and shall
21 in no event be less than that of the Attorney General of this State.

22 SECTION 5 (Duties of the State Defender Director)

23 Except in the case of pre-existing defense agencies, the planning and creation
24 of state, local and regional defender offices shall be undertaken by the State
25 Defender Director. The Director may, in his discretion, delegate the authority
26 and duties vested in him to subordinate attorneys and employees serving
27 under his supervision. The following authority and duties are vested in the
28 Director:

29 (a) to appoint Deputy Defenders and to establish general policy and
30 guidelines regarding the operation of local and regional offices and the
31 handling of cases;

32 (b) to ensure that on-site evaluations of each defender office in the state,
33 whether organized as part of the state defender system or as a preexisting
34 entity, are conducted not less than once a year. The Director is authorized to
35 contract with outside agencies where necessary for this purpose;

36 (c) to visit each defender office and preexisting assigned counsel pro-
37 gram in the state on a frequent basis and review case files for purposes of
38 ensuring full and competent representation;

39 (d) to provide initial training and continuing education for all de-
40 fender staff and assigned counsel in the state, which training may be aug-
41 mented by programs sponsored by institutes of continuing education;

42 (e) to establish such divisions, facilities and offices, and hire such pro-
43 fessional, technical and other personnel as the Director deems necessary for
44 the efficient operation and discharge of the duties of the state defender system,
45 subject to existing appropriations;

46 (f) to apply for and accept any funds which may be offered or which
47 may become available from government grants, private gifts, donations or
48 bequests or from any other source to effectuate the purposes of this Act;

49 (g) to prepare annually a budget request which shall include all antici-
50 pated costs of the state defender system and to submit such request directly
51 to the state legislature for appropriation;

52 (h) In the event that the budget allocation of the state defender
53 system for the compensation of assigned counsel becomes exhausted, to re-

1 ceive additional funds from the state treasury to meet such contingency;

2 (i) to maintain one or more panels of attorneys who shall be available
3 to serve on a case basis as needed; and to engage counsel from such panels
4 as may be necessary to meet caseload demands, to avoid conflicts of interest,
5 and to stimulate the continual professional development and interest of the
6 private bar in the administration of justice; and furthermore, to compensate
7 said counsel from the budget of the state defender system;

8 (j) to establish guidelines for the qualifications of panel attorneys so as
9 to include all attorneys who display a willingness to participate in the program
10 and manifest the ability to perform criminal defense work at a competent
11 level;

12 (k) to establish guidelines for the assignment of panel attorneys by
13 Deputy Defenders;

14 (l) at any stage, including appeal or post-conviction proceedings, to
15 assign a replacement attorney when necessary or advisable to ensure effective
16 representation;

17 (m) in his discretion, to contract with other agencies for the provision of
18 all or a portion of this State's prisoner legal services;

19 (n) to accept services by volunteer workers or consultants at no com-
20 pensation or at partial compensation and to reimburse them for their proper
21 and necessary expenses;

22 (o) to prepare an annual report of the operations of the state defender
23 system, including a statement of the number of persons represented, the
24 crimes and other proceedings involved, the status of such cases, and the
25 amount and categories of expenditures made by the defender system;

26 (p) to establish procedures for ensuring that staff attorneys maintain
27 reasonable workload levels in order to provide a high quality of services;

28 (q) to establish the compensation of defenders and other personnel,
29 subject to budgetary appropriations;

30 (r) to keep and maintain proper financial records with respect to the
31 provision of defense services for use in calculating the direct and indirect costs
32 of any and all aspects of the operation of the state defender system;

33 (s) to develop programs and administer activities in order to achieve
34 the purposes of this Act; and

35 (t) at his discretion, to consult and cooperate with professional bodies
36 and groups concerning the causes of criminal conduct, means for reducing
37 the commission of crimes, the rehabilitation and correction of those convicted
38 of crimes, and the overall improvement of the administration of justice and the
39 criminal laws and procedures.

40 SECTION 6 (Defender System Structure, Preexisting Agencies, Funding
41 Authority)

42 (a) The state defender system shall be centrally administered by the State
43 Defender Director, and shall provide services by means of city, county,
44 district or multi-county defender offices to every jurisdiction in this State.
45 All defenders, with the exception of members of assigned counsel panels, shall
46 be full-time staff, prohibited from engaging in the private practice of law. No
47 defender office shall be served by fewer than two full-time attorneys.

48 (b) The Director may contract with preexisting qualified full-time de-
49 fender offices and preexisting coordinated assigned counsel programs for all
50 or part of a local jurisdiction's indigent caseload; *provided that*, such sys-
51 tems maintain standards set by the Director for defense services in this State.
52 In the event that the preexisting program meets such standards, it shall be
53 eligible to receive adequate funding from the budget of the state defender

1 system and to utilize back-up services provided by said system. However,
2 should the pre-existing defender or coordinated assigned counsel program fail
3 to comply with said standards, it shall have 120 days from the date of notifica-
4 tion in which to comply. In the event that the program fails to comply within
5 the given period, the State Defender Director shall establish a local office of
6 the state defender system which shall replace the preexisting program.

7 (c) A complete budget for the state defender system shall be provided
8 through an annual appropriation subject to approval by the state legislature.
9 The budget request for the state defender system shall be submitted directly
10 to the state legislature by the Director and shall not be subject to diminution
11 or alteration by any branch of government other than the appropriating au-
12 thority. Following the granting of an appropriation for the state defender sys-
13 tem, the Director shall have the sole authority to reallocate line items within
14 said budgetary appropriation.

15 SECTION 7 (Assigned Counsel Programs Apart from State Defender Di-
16 rector's Panels, Assigned Counsel Administrator, Governing Board, Client
17 Choice of Program, Pilot Defender Agencies)

18 (a) Should any county or group of counties in the state determine that,
19 because of inherent conflicts of interest or for other valid reason, assigned
20 counsel cases should be administered independently of the state defender sys-
21 tem, such jurisdiction may establish a coordinated assigned counsel program
22 which may handle a portion of the jurisdiction's eligible caseload, thereby
23 establishing a dual defender and assigned counsel system.

24 (b) In such dual system counties, the cases of clients seeking represen-
25 tation by the assigned counsel program shall be assigned to attorneys by the
26 Assigned Counsel Administrator. The Administrator shall devote full-time
27 to the duties of the assigned counsel program and shall not otherwise engage
28 in the practice of law. The Administrator shall select and monitor the panel of
29 attorneys to be appointed under the assigned counsel program.

30 (c) In dual system counties, funds for the assigned counsel program
31 shall be provided by the county or counties served. In all other counties,
32 the assigned counsel panel shall be administered by the State Defender
33 Director and funds therefor shall be included in the budget of the state de-
34 fender system.

35 (d) In dual system counties, the Administrator of the assigned counsel
36 program shall be selected locally by a governing board which includes mem-
37 bers of the local bar association and representatives of the local client
38 community. Judges, prosecutors and law enforcement officials shall not
39 serve on the governing board.

40 (e) Eligible persons in dual system counties shall have the option of
41 electing to be represented by either the local office of the state defender
42 system or the assigned counsel program. However, cases handled by the
43 assigned counsel program shall include those cases involving a conflict of
44 interest with the state defender system.

45 (f) This Act shall in no way prohibit the establishment in this State
46 of pilot local defender agencies designed to test national standards or to
47 experiment with innovative approaches to providing legal defense services
48 for the poor.

49 SECTION 8 (Scope of Services, Time of Entry, Procedures for Ensuring
50 Early Representation)

51 (a) Effective representation shall be provided to all eligible persons in:

52 (1) any governmental fact-finding proceeding the purpose of which
53 is to establish a person's culpability or status which might result in the loss of

1 liberty or in a legal disability of a criminal or punitive nature; and

2 (2) any proceeding to take affirmative remedial action relative to
3 the scope of services set forth in sub-section (a)(1) of this Section.

4 (b) Such representation shall include, but shall not be limited to, the
5 following matters: felonies, misdemeanors, juvenile delinquency proceedings,
6 mental commitment proceedings, probation revocation proceedings, parole
7 release and revocation proceedings, criminal extradition proceedings, all pos-
8 sible appeals, and post-conviction hearings, including proceedings at the
9 trial and appellate levels. However, after the first appeal the defender shall
10 not be required to pursue appeals or post-conviction remedies which, in his
11 opinion, are of a frivolous nature.

12 (c) Representation shall be available as soon as the person is arrested
13 or detained or when the person reasonably believes that a process will com-
14 mence resulting in a loss of liberty or in a legal disability of a criminal or
15 punitive nature, and shall continue through the exhaustion of remedies.

16 (d) In commencing representation, the defender system shall:

17 (1) respond to all inquiries made by, or on behalf of, any eligible
18 person whether or not such person is in the custody of law enforcement
19 officials;

20 (2) establish the capability to provide emergency representation on
21 a 24-hour basis;

22 (3) implement systematic procedures, including daily checks of all
23 detention facilities, to ensure that prompt representation is available to all
24 persons eligible for services;

25 (4) provide adequate facilities for interviewing prospective clients
26 who have not been arrested or who are free on pre-trial release;

27 (5) prepare, distribute and make available by posting in con-
28 spicuous places in all police stations, courthouses and detention facilities a
29 brochure that describes in simple, cogent language or languages the rights of
30 eligible persons and the nature and availability of defense services, including
31 the telephone number(s) and address(es) of the local defender office and,
32 where applicable, of the assigned counsel program; and

33 (6) publicize its services in the media.

34 (e) Upon initial contact with a prospective client, defenders shall offer
35 specific advice as to relevant constitutional or statutory rights, elicit matters
36 of defense, and direct investigators to commence fact investigations, collect
37 information relative to pre-trial release, and make a preliminary determina-
38 tion of eligibility for publicly provided defense services.

39 (f) In the event that the defender interviews a prospective client and
40 determines that said person is ineligible for publicly provided representation,
41 the attorney shall decline the case and, in accordance with appropriate pro-
42 cedure, assist the person in obtaining private counsel. However, the defender
43 shall continue to render services which are necessary to protect the per-
44 son's interests until private counsel is retained.

45 (g) Personnel of any law enforcement authority having custody of any
46 person shall determine whether such person has an attorney upon taking the
47 person into custody. If the person has no attorney, the law enforcement au-
48 thority shall:

49 (1) clearly inform the person of the right to be represented by an
50 attorney at public expense if he is unable to afford the cost of representation;
51 and

52 (2) immediately contact the local defender office or assigned
53 counsel program and notify it of the name and location of the needy person.

1 SECTION 9 (Financial Eligibility, How Determined, Partial Eligibility)

2 (a) An eligible person is one who is unable, without substantial financial
3 hardship to himself or his dependents, to obtain effective representation. The
4 determination of eligibility shall be made by computing the amount of the
5 person's liquid assets and subtracting therefrom the amount needed for the
6 payment of current obligations and for the support of the person and his
7 dependents. The person shall be deemed eligible for representation at public
8 expense if the remaining assets are insufficient to cover the anticipated costs
9 of counsel at prevailing rates charged by competent criminal defense counsel
10 in the jurisdiction, including the cost of such investigatory, expert or other
11 services necessary for effective representation. The accused's own assessment
12 of his financial ability to obtain effective representation shall be accorded
13 great weight.

14 (b) Liquid assets include cash in hand, stocks and bonds, bank ac-
15 counts, and any other property which can be readily converted to cash. The
16 person's home, car, household furnishings, clothing, and any property which
17 is by law exempt from attachment or execution shall not be considered in
18 determining eligibility. Representation shall not be denied to any person merely
19 because of his friends or relatives have resources adequate to retain counsel
20 or because he has posted or is capable of posting bond.

21 (c) Financial eligibility determinations shall be made by the defender
22 office or assigned counsel program. Determinations of ineligibility shall be
23 subject to review by a court at the request of the prospective client. Any
24 information or statements used for the initial determination shall be con-
25 sidered privileged under the attorney-client relationship.

26 (d) A decision of ineligibility which is affirmed by a judge shall be
27 reviewable by means of an expedited interlocutory appeal. The person shall
28 be informed of his right to appeal, and if he desires to exercise it, the clerk
29 of the court shall perfect the appeal. The record on appeal shall include all
30 evidence presented to the court on the issue of eligibility and the judge's
31 findings of fact and conclusions of law denying eligibility.

32 (e) If the accused is determined to be eligible for defense services in
33 accordance with approved financial eligibility criteria and procedures, and
34 if, at the time that the determination is made, he is able to provide a limited
35 cash contribution toward the cost of his defense without imposing a sub-
36 stantial financial hardship upon himself or his dependents, such contribution
37 shall be required as a condition of continued representation at public expense.

38 (1) The defender office or assigned counsel program shall deter-
39 mine the amount to be contributed under this Section, but such contribution
40 shall be paid directly into the state treasury in the case of the defender
41 office and into the county treasury in the case of an assigned counsel program
42 in a dual system county. The contribution shall be made in a single lump
43 sum payment at the time that eligibility is determined.

44 (2) The amount of contribution to be made under this Section
45 shall be in accordance with predetermined standards and administered in an
46 objective manner; *provided, however*, that the amount of the contribution
47 shall not exceed the lesser of ten (10) percent of the total maximum amount
48 which would be payable for the representation in question or a sum equal
49 to the fee generally paid to assigned counsel for one trial day in a comparable
50 case.

51 SECTION 10 (Assigned Counsel Fees, Budgetary Allocations, Defender
52 System Salaries, Personnel and Facilities)

53 (a) No attorney serving as assigned counsel in this State may receive

1 any fee for his services in addition to that provided in this Section.

2 (b) Fees paid to assigned counsel shall be consistent with prevailing
3 rates received by retained counsel for similar services. Attorneys shall be
4 compensated on the basis of effort, skill and time actually, properly and
5 reasonably expended. A fee schedule shall be prepared and periodically
6 revised by the State Defender Director and approved by the State Defender
7 Commission and, in the case of local assigned counsel programs in dual system
8 counties, such schedule shall be prepared by the Assigned Counsel Adminis-
9 trator subject to approval by the program's governing board. Said fee schedule
10 shall establish separate in-court and out-of-court rates with stated maxima for
11 felonies, misdemeanors, juvenile delinquency proceedings, appeals and other
12 matters.

13 (c) In the event of lengthy or complex litigation, the maxima may be
14 exceeded upon approval of the Deputy Defender or the Assigned Counsel
15 Administrator.

16 (d) In dual system counties, the governing board of the local assigned
17 counsel program, or a committee of attorneys appointed by said board, shall
18 review appeals from denial of compensation in excess of stated maxima by the
19 Assigned Counsel Administrator. In all other counties or multi-county
20 regions, a local advisory committee shall be established to review appeals
21 from denial of additional compensation by the Deputy Defender. Attorneys
22 participating in assigned counsel panels shall be excluded from serving
23 on such boards or committees.

24 (e) The budgetary allocation of the state defender system for payment
25 of assigned counsel and the budget for any assigned counsel program in a dual
26 system county shall include the cost of investigatory, expert and other sup-
27 port services as well as necessary expenses including, but not limited to, travel
28 expenses.

29 (f) The budget of the state defender system shall include funds for
30 personnel, professional quality offices, libraries and equipment comparable to
31 those of private law firms. Facilities and resources shall be, at a minimum,
32 comparable to those provided for other components of the justice system.
33 Said budget shall include a reasonable sum for the procurement of experts
34 and consultants, ordering of minutes and transcripts on an expedited basis,
35 and for the procurement of other necessary services.

36 (g) The personnel of the state defender system shall include attorneys,
37 secretarial and clerical personnel, investigators, social workers, paraprofes-
38 sionals and law students. In addition, where deemed necessary or advisable,
39 the staff may be augmented with professional business management personnel.
40 Supervising attorneys shall be included in the defender system budget at the
41 rate of one full-time supervisor for each ten staff attorneys or one part-time
42 supervisor for each five staff attorneys.

43 (h) The starting levels of compensation for defender system staff
44 attorneys shall be sufficient to attract qualified personnel. Salary levels there-
45 after shall be no less than those of assistant prosecutors and shall be pro-
46 fessionally appropriate when analyzed or compared with the compensation
47 of the private bar.

48 (i) The salaries of support personnel shall be comparable to those paid
49 by the private bar and related positions in the private sector and no less than
50 salaries for similar positions in the court system and prosecution offices.

51 (j) In no event shall defender offices or assigned counsel programs be
52 required to utilize office space in governmental buildings or to utilize the State's
53 experts or facilities for the evaluation of evidence. Private facilities shall be

1 furnished to defenders in courthouses, detention centers and correctional
2 facilities for client interviews.

3 SECTION 11(Personnel Policies)

4 (a) The State Defender Director and staff shall be exempt from the
5 classified service of this State and shall be hired solely on the basis of merit.

6 (b) Removal of defender staff attorneys shall be only for cause except
7 for an initial period during which they shall serve at the pleasure of the
8 Director.

9 (c) Deputies and defender staff attorneys shall devote full-time to their
10 duties and shall not engage in the private practice of law.