JOINT REPORT OF THE
JOINT SUBCOMMITTEES STUDYING

Virginia's Public Defender Program and Alternative Indigent Defense Systems

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

House Document No. 15 and Senate Document No. 11

COMMONWEALTH OF VIRGINIA
RICHMOND
1986

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Joint Report of the
Joint Subcommittees Studying
Virginia's Public Defender Program and
Alternative Indigent Defense Systems
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1986

To: Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

INTRODUCTION

The 1985 Session of the General Assembly created a joint subcommittee to study the methods of providing criminal defense services to indigent persons. House Joint Resolution No. 324, Appendix A. The joint subcommittee was created in response to indications that attorneys were becoming increasingly reluctant to take court-appointed criminal cases. Specifically, the joint subcommittee was directed to conduct a review of the costs to the Commonwealth of providing such services and the means to ensure that quality legal representation continues to be available to indigent persons.

The membership of the joint subcommittee was appointed in accordance with House Joint Resolution No. 324. The Speaker of the House of Delegates appointed Owen B. Pickett, Alan A. Diamonstein, and Franklin P. Hall from the House Appropriations Committee, Ralph L. Axselle, Jr., and William P. Robinson, Jr., from the House Committee for Courts of Justice, and Dennis W. Dohnal, Esquire, as a representative of the Virginia State Bar. The Senate Committee on Privileges and Elections appointed Howard P. Anderson and Elmo G. Cross, Jr., from the Senate Committee on Finance and Johnny S. Joannou from the Senate Committee for Courts of Justice. At its initial meeting, the joint subcommittee unanimously elected William P. Robinson, Jr., as chairman and Howard P. Anderson as vice-chairman.

In 1985 the General Assembly also created a joint subcommittee to study Virginia's Public Defender Program. Senate Joint Resolution No. 137, Appendix B. This joint subcommittee was specifically directed to study the operations of the existing public defender offices and to consider the feasibility and desirability of establishing additional public defender offices. The impetus for this study also was a need to determine how the Commonwealth could ensure that high quality and cost effective representation continues to be available to indigent criminal defendants.

The membership of the joint subcommittee was appointed in accordance with Senate Joint Resolution No. 137. The Senate Privileges and Elections Committee appointed William F. Parkerson, Jr., and Johnny S. Joannou from the Senate Committee for Courts of Justice and Elmon T. Gray from the Senate Finance Committee. The Speaker of the House of Delegates appointed C. Hardaway Marks, William P. Robinson, Jr., and Kenneth B. Rollins from the House Committee for Courts of Justice and L. Cleaves Manning from the House Appropriations Committee. Johnny S. Joannou and L. Cleaves Manning were unanimously elected chairman and vice-chairman, respectively, at the initial meeting of the joint subcommittee.

The issues under consideration by these joint subcommittees were necessarily similar. After holding separate organizational meetings, the joint subcommittees met jointly on two occasions.

The joint subcommittees express their gratitude for the research and invaluable assistance provided by Kathy Mays, Office of the Executive Secretary, Supreme Court of Virginia; Kathy Reynolds, Budget Analyst, House Appropriations Committee Staff; O. P. Pollard, Executive Director, Virginia Public Defender Commission; and Robert L. Spangenburg, The Spangenburg Group of Newton Centre, Massachusetts.

EXECUTIVE SUMMARY

Following a comprehensive evaluation of the methods of providing indigent services and the financial impact of these methods, the joint subcommittees make the following recommendations:

1. That a fifth pilot public defender program be established in the city of Portsmouth to allow an evaluation of the cost and the impact of a public defender program in a core city

which is experiencing severe availability problems with the court-appointed counsel system;

2. That the maximum fees allowed to court-appointed counsel for indigent persons be increased by 15% to alleviate the financial hardships placed on these attorneys and to encourage them to continue to make themselves available for court-appointed work (Appendix C);

3. That the statutes governing compensation to be paid to attorneys appointed by the court to represent juveniles in certain cases be clarified (Appendix C); and

4. That the joint subcommittee studying indigent defense systems be allowed to continue its study to evaluate the effects of implementation of its recommendations and to afford the members an opportunity to (i) address the particular problems faced by counsel appointed for indigent defendants charged with capital offenses and for juveniles, (ii) evaluate the need to develop uniform statewide eligibility standards for court-appointed counsel, (iii) determine the appropriate methods for selecting court-appointed counsel, and (iv) continue its review and evaluation of the administrative procedures of the public defender program (Appendix D).

BACKGROUND

In 1972, the General Assembly established the Virginia Public Defender Commission.FN#1 Since that time, four pilot programs have been established. There are currently public defender programs in the Staunton-Waynesboro area, and the cities of Virginia Beach, Roanoke and Petersburg. In 1978, the General Assembly authorized the creation of up to five pilot programs. Chapter 698, 1978 Acts of Assembly. The Commission expressed interest in establishing the fifth program in Alexandria or Richmond. However, because of local opposition to the program in each of these jurisdictions, a fifth office has not yet been funded.

The salaries for public defenders range from approximately $40,000 to approximately $56,000. The public defenders are hired by and serve at the pleasure of the Commission. Each office employs assistant public defenders, one investigator, and one or two secretaries. Some of the offices allow part-time assistant public defenders to share a full-time position. For example, the Petersburg office is funded for one full-time assistant public defender position. Three part-time assistants share this position. Sharing of these positions allows the public defender program to provide better coverage of the courts served by the office.

The public defenders and investigators who addressed the subcommittee indicated that in the jurisdictions with pilot programs, court-appointed counsel is needed in approximately 10-20% of the indigent defendant cases due to conflicts of interests, as in cases involving indigent co-defendants, or excessive caseloads in the public defender offices. Nationally, it is estimated that a backup system for a public defender program is necessary to handle approximately 25% of the indigent defendant caseload.FN#2

In the Roanoke City office, each of the six full-time attorneys handles approximately one jury trial per month. Based upon a review of national data and available caseload data for Virginia, it is estimated that each full-time public defender could handle 200 adult felony cases, 425 adult misdemeanor cases, and 250 juvenile cases annually. These estimates do not include Class 1 felonies, nor do they include appeals.FN#3 Subsequent analysis of the actual caseload data for the existing pilot programs in Fiscal Year 1984-1985 established that each full-time public defender handled 313 adult felonies, 400 adult misdemeanors, and 142 juvenile cases. The number of charges actually tried by the public defender offfices was not available.

The Spangenburg Group estimates that a statewide public defender program would cost the Commonwealth $7,804,617. This projection is based upon an assumed 10% increase in the overall statewide criminal caseload and a 25% conflict or case overload rate. The figure includes a one-time start-up cost of $386,099 and excludes any consideration of Class 1 felonies.FN#4 In Fiscal Year 1984-1985, there were ninety-one Class 1 felonies for which counsel was appointed by the court. The average amount paid to counsel in these cases was $785.

In Virginia, indigent defense services are provided primarily through court-appointed counsel. The schedule for compensating court-appointed counsel is set out in § 19.2-163 of the Code of Virginia. The funds for compensating court-appointed counsel are paid out of the Criminal Fund. In 1978, authority over the Criminal Fund was transferred from the Comptroller to the General Assembly. A chronology of legislative actions affecting the Criminal Fund is included in this report as Appendix E.

In the spring of 1984, Abt Associates of Cambridge, Massachusetts, undertook a study of the court-appointed counsel system in Virginia at the request of the Virginia State Bar. The findings of this study were as follows: (i) $7,081,746.96 was spent to compensate court-appointed counsel in Fiscal Year 1984-1985, (ii) 64,395 criminal defendants were represented by court-appointed counsel in Virginia courts on a total of 88,920 charges, (iii) the average compensation received by court-appointed counsel was $110 per defendant, or $80 per charge, and (iv) Virginia has the lowest fee schedule for compensating court-appointed counsel in the nation.FN#5 See also Appendix F.

Nationally, seventeen states use assigned counsel as the primary method of providing indigent defense services. See Appendix G. A subsequent analysis prepared by Mr. Spangenberg at the request of the joint subcommittees compared Virginia with nine of those seventeen states having total populations comparable to Virginia and with four of those nine states geographically closest to Virginia. Again, Virginia ranked last. See Appendix H, page 6.

The State Bar and individual members of the Bar have become alarmed by the increasing number of attorneys who are withdrawing their names from the lists of court-appointed counsel. As the number of experienced attorneys willing to take these cases dwindles, the quality of representation afforded to indigent defendants may suffer. Thus, there is concern about the ability of the Commonwealth to continue to meet the Constitutional obligation to provide counsel to indigent criminal defendants. Powell v. Alabama, 287 U.S. 45 (1932); Gideon v. Wainwright, 372 U.S. 335 (1963); and Argersinger v. Hamlin, 407 U.S. 25 (1972).

There is also concern about the liability of the Commonwealth should the situation continue to deteriorate. Suit was filed against the Commonwealth in the United States District Court for the Eastern District of Virginia, Alexandria Division in August, 1985. Weston, et al. v. Commonwealth of Virginia, Civil Action No. 85-0947-A. The suit alleged that as a matter of law, the compensation which court-appointed counsel for plaintiffs could reasonably be expected to receive was inadequate to afford plaintiffs charged with capital murder and first degree, non-capital murder, the representation to which they were entitled. The suit was dismissed on the grounds that the plaintiffs' claim was speculative and they lacked proper standing. However, the joint subcommittees were advised that other suits were being considered.

FINDINGS AND CONSIDERATIONS

The joint subcommittees began their deliberations by identifying their concerns with respect to the primary systems of providing indigent defense in Virginia. With respect to the public defender system, the joint subcommittees noted a reluctance to expand to a statewide program and thereby create an additional bureaucracy in the absence of a demonstrated need and evidence of cost effectiveness and accountability. However, the general feeling was that the existing pilot programs were working well. The joint subcommittees heard testimony that members of the Bar and the judiciary in the jurisdictions which have pilot programs are pleased with the system. Overton P. Pollard advised the joint subcommittees of the belief of the Public Defender Commission that a statewide public defender program is feasible and would be cost effective. The Commission concedes that the costs of such a system will be higher than current costs in a limited number of jurisdictions. Nonetheless, they believe that overall the costs to the state would be less than the costs of a primarily court-appointed counsel system. (For a comparison of the estimated costs of a statewide public defender system and current costs of the court-appointed system see Appendix E, page 12; for a comparison of the estimated costs of a public defender program in twelve identified jurisdictions with the current costs of the court-appointed counsel system, See Appendix F, pages 5-6.)

Furthermore, it was suggested that the specialization of attorneys in the public defender offices and their access to investigatory resources improved the efficiency of the indigent defense system. The joint subcommittees heard testimony that Commonwealth's attorneys found their jobs to be much more difficult where a criminal defendant is represented by inexperienced counsel. The clerks' offices in the jurisdictions having pilot programs have noted a reduction in the amount of their time used in processing vouchers for court-appointed counsel and improved efficiency with respect to docket calls. The effect of the improved efficiency was viewed by the joint subcommittees as an intangible cost benefit.

The joint subcommittees also expressed concern that a primary public defender system limits opportunities for young lawyers to become involved in the criminal justice system and limits the opportunities for those private attorneys who truly enjoy criminal defense work. In discussing the probable costs of a statewide public defender system, concern was expressed over the need to provide a back-up system to handle conflict cases and case overloads. However, it was noted that if such a back-up system consisted of the use of court-appointed counsel those attorneys who

wished to become involved in the criminal justice system would be given the opportunity.

The joint subcommittees concluded that a more comprehensive analysis of the public defender program would be necessary before any recommendation could be made with respect to adopting the public defender system as the primary indigent defense system for the Commonwealth. In addition to requiring more financial analysis of the existing pilot programs and projections of future costs, the joint subcommittees believe that the administrative procedures of the Public Defender Commission should be studied more fully.

It was noted that nationally, twenty-two states utilize a predominantly public defender system. In most jurisdictions the localities have responsibility for choosing and operating the program. They are generally organized on a county or judicial circuit or district level. The joint subcommittees heard testimony that circuit-wide organization of the pilot programs in Virginia would be desirable. The difficulty and increased costs to the state in defending a person charged with multiple counts in contiguous jurisdictions, one with and one without a public defender program, were noted.

Additionally the joint subcommittees expressed a belief that if the existing public defender system is to be expanded, the personnel and administrative rules of the Commission should be reviewed. The public defenders now are hired by and serve at the pleasure of the Commission. The budgetary process for the local offices is very informal. Hiring for authorized positions in the local offices is done by the public defender for that office. It was suggested that uniform personnel and administrative rules would increase accountability and, therefore, be desirable.

The joint subcommittees believe that establishment of a fifth pilot public defender program would be desirable at this time for a number of reasons. First, it would provide an opportunity to review the procedures utilized by the Commission in establishing a new office. This would help in evaluating the need for uniform administrative and personnel rules. Second, it would allow a close review of the methods used in projecting the costs of such programs and a comparison of these projections with actual costs. This will facilitate future determinations with respect to expanding the public defender program. Third, and perhaps most significantly, it would provide a unique opportunity to evaluate the effects of a public defender program on the costs and the quality of representation provided to indigent criminal defendants.

In order to accomplish those goals, the joint subcommittees believe it is necessary to establish the fifth program in a jurisdiction with a high criminal caseload. The joint subcommittees recommend that the fifth pilot program be established in the City of Portsmouth. Portsmouth has a high criminal caseload. A significant percentage of these cases involve indigent persons. Additionally, and most significantly, Portsmouth is experiencing severe availability problems with the court-appointed counsel system. Of the over 100 attorneys who are members of the Portsmouth Bar, only thirty remain on the court-appointed counsel list. The joint subcommittees believe the existing conditions in Portsmouth make it the ideal place to test the costs and efficiency of the public defender program and assess the impact of such a program on the costs to the state of the primary alternative indigent defense systems and the quality of representation afforded indigent persons.

Valid assessments of differences in the quality of legal representation afforded are difficult to make. The Virginia Bar Association is developing a comprehensive survey of judges, Commonwealth's attorneys, public defenders and private practitioners. The survey seeks responses to questions dealing with the current methods used to select court-appointed counsel, methods and procedures used to determine indigency, accessibility of court-appointed counsel and public defenders, experience and quality of defense counsel and general comments and recommendations. The joint subcommittees believe the results of this survey will provide them with a broad range of data on experiences with the current systems. The joint subcommittees recommend that their study be continued to allow an evaluation of this data, as well as for the reasons stated elsewhere in this report.

The joint subcommittees identified a number of specific problems associated with the court-appointed counsel system. The most immediate problem concerned the decreasing availability of experienced attorneys willing to accept appointments. The joint subcommittees devoted a considerable amount of time to an attempt to evaluate the effects of the current maximum fee schedule for court-appointed counsel.

Specifically, the joint subcommittees are concerned about the impact of the schedule on the availability of quality representation. It was noted that a 100% increase in the maximum fee schedule would be necessary to bring the schedule up to the national average for compensation paid to court-appointed counsel. The joint subcommittees recognize that such an increase is not feasible at this time. However, the joint subcommittees believe that a mimimum 15% increase in

the maximum fees is feasible and essential.

The maximum fees allowed in Virginia have not been significantly increased in fifteen years. During that period, however, an attorney's overhead costs, including the costs of malpractice insurance, legal secretaries, office equipment, rent, etc., have increased substantially. It was noted that the maximum fees do not even cover the attorney's fixed overhead expenses attributable to a court-appointed case. This presents a hardship for the attorney and discourages attorneys from volunteering to take court-appointed cases.

The joint subcommittees heard testimony that the problem is particularly severe in the juvenile courts. Because proceedings in the juvenile courts generally involve multiple adjudicatory and disposition hearings, a court-appointed attorney is required to spend a significant period of time on the case. Professor Robert Shepard of the T. C. Williams School of Law conducted an informal study of court-appointed attorney time for delinquency proceedings in the Richmond area. According to Professor Shepard, a significant percentage of the cases he reviewed required in excess of seventy hours. The maximum fee allowed for these appointments is seventy-five dollars.

The joint subcommittees also heard testimony that a number of attorneys, otherwise willing to accept court appointments in criminal cases, are refusing to accept appointments in capital cases. It was noted that in 1980 the General Assembly had deleted the maximum fee for counsel in capital cases and granted the courts discretion in awarding compensation. The joint subcommittees were told that nonetheless a number of judges continue to use the $400 maximum fee as the standard. A majority of the joint subcommittees do not believe that, in general, such a fee is reasonable for capital cases. In comparison it was noted that the customary fee for privately retained counsel in cases involving the possible loss of a driver's license is in the range of $500 to $700.

The joint subcommittees do not believe that the fees for court-appointed counsel should be equal to the fees charged for similar services by the private bar. However, the fees should be sufficient to cover fixed overhead expenses and should not be so artificially low as to discourage qualified counsel from accepting appointments. The joint subcommittees recommend that the maximum fees for court-appointed counsel be increased by 15%. See Appendix C. It is estimated that this fee increase will cost the Commonwealth an additional $1 million. See Appendix H, page 10 and Appendix I, page 2.

The joint subcommittees were advised of an apparent discrepancy between § 19.2-163 and § 16.1-167 of the Code of Virginia. Section 19.2-163 sets the maximum compensation for court-appointed counsel in the district courts at $75. Section 16.1-167 provides that counsel appointed for a juvenile in certain cases may be allowed a maximum of $100. Additionally, § 16.1-167 authorizes the court to assess attorneys fees against the parent or guardian of a juvenile if such person is financially able to pay. Because of the wording used in that section, questions have arisen regarding the authority of the courts to assess the parent or guardian an amount less than or in excess of the amount awarded to the attorney as compensation. The joint subcommittees recommend clarifying amendments to these sections (Appendix C). The amount awarded to the attorney under § 16.1-167 should not exceed the maximum amounts allowed under § 19.22-163 for proceedings in district courts. The parent or guardian should be assessed only the amount awarded to the attorney.

The joint subcommittees further recommend that the study of indigent defense systems be continued to allow an evaluation of the effects of the fee increase on the availability of counsel and quality of representation for indigent criminal defendants. Because of the complexity of the issues under study and the lack of reliable historical data, the joint subcommittees were unable to complete the study and make recommendations with respect to (i) the particular problems involved in capital and juvenile cases, (ii) the need for uniform statewide eligibility standards for court-appointed counsel, (iii) an evaluation of the methods used in selecting court-appointed counsel and (iv) an evaluation of the administrative procedures and personnel rules governing the public defender programs. The joint subcommittees recommend that the continued study focus on these issues (See Appendix D).

CONCLUSION

Substantial progress has been made evaluating the available data on the primary indigent defense systems. A unique opportunity exists for continued evaluation of these systems due to the (i) recommended establishment of a fifth public defender program in a core-city having a high indigent caseload and experiencing significant problems under the existing court-appointed counsel system, and (ii) concurrent increase in court-appointed counsel fees. A more realistic

evaluation and comparison of these systems will further be facilitated by the data provided from the Virginia Bar Association survey.

The joint subcommittees strongly believe that the minimal fifteen percent increase in the maximum fees allowed to court-appointed counsel is essential if Virginia is to continue to meet its Constitutional obligation to provide counsel for indigent criminal defendants. The joint subcommittees caution that this is only a beginning.

Respectfully submitted,

INDIGENT DEFENSE SYSTEMS

William P. Robinson, Jr., Chairman
Howard P. Anderson, Vice-Chairman
Ralph L. Axselle, Jr.
Elmo G. Cross, Jr.
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Kenneth B. Rollins

FOOTNOTES

1. For background on the creation of the Public Defender Commission see House Document No. 3, 1974.
2. See, *Projecting Costs for Various Indigent Defense Systems in Virginia, Preliminary Report,* October, 1985, Robert L. Spangenberg, Patricia A. Smith and Norma Casner, the Spangenberg Group, Newton Centre, Mass., p. 44.
3. *Id* , pp. 41-47.
4. *Id* , p. 55.
5. See, *Analysis of Costs for Court-Appointed Counsel in Virginia,* Robert L. Spangenberg, William J. Rose, Patricia A. Smith, Richard Thayer, Abt Associates, Inc., Cambridge, Mass. (April 1985).

INDEX TO APPENDICES

1985 SESSION

LD9012555

HOUSE JOINT RESOLUTION NO. 324

Offered January 22, 1985

Requesting a joint subcommittee to study defense of the indigent in the Commonwealth.

Patrons–Robinson, W. P., Woodrum, DeBoer, Moore, Ackerman, Finney, Cranwell, Axselle, Moncure, Putney, Moss, Jennings, Miller, C., and Miller, Y. B.; Senator: Wilder

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Referred to Committee on Rules

WHEREAS, the Sixth Amendment of the Constitution of the United States guarantees the right of counsel to an individual charged with a criminal offense; and

WHEREAS, the Commonwealth is responsible for paying the costs of such counsel for indigent defendants; and

WHEREAS, The Commonwealth will expend more than eight million dollars each year for indigent criminal defense, and these costs will only continue to increase; and

WHEREAS, the fees paid to attorneys by the Commonwealth for this defense are among the lowest in the nation and have not been increased for fifteen years; and

WHEREAS, the quality and availability of indigent defense counsel may be in jeopardy, as a result of such fee schedule; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee is hereby created to study the issue of defense of the indigent in the Commonwealth with particular emphasis upon the cost and quality of defense.

The joint subcommittee shall consist of nine members to be appointed as follows: three members from the House Appropriations Committee and two from the House Courts of Justice Committee to be appointed by the Speaker of the House of Delegates, two members from the Senate Finance Committee and one from the Senate Courts of Justice Committee to be appointed by the Senate Committee on Privileges and Elections, and one member to be appointed by the Speaker from the membership of the Virginia State Bar.

The joint subcommittee shall be assisted by the staffs of the House Appropriations Committee and the Senate Finance Committee and conclude its study in time to submit its recommendations to the 1986 Session of the General Assembly.

All direct and indirect costs of this study are estimated to be $13,745.

Official Use By Clerks	
Agreed to By The House of Delegates	**Agreed to By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the House of Delegates	Clerk of the Senate

1985 SESSION

LD9150142

SENATE JOINT RESOLUTION NO. 137

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rules on February 1, 1985)

(Patron Prior to Substitute–Senator Joannou)

Requesting a joint subcommittee to study the public defender system.

WHEREAS, House Bill No. 714 of the 1972 Session of the General Assembly created a Public Defender Commission in Virginia whose duties include the establishment of public defender offices; and

WHEREAS, public defender offices have been established and serve four areas of the Commonwealth; and

WHEREAS, the operations of the offices, including funding, possible expansion, and other matters relative thereto, need to be evaluated in order to ensure that the best methods of providing defense services to indigent defendants are accomplished; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee is hereby created to study the operations of the present public defender offices, including, but not limited to, the current compensation and appointment procedures for public defenders and their staffs and further to consider establishment of offices in other areas.

The joint subcommittee shall consist of seven members to be appointed as follows: two members of the Senate Committee for Courts of Justice and one from the Senate Committee on Finance, all to be appointed by the Senate Committee on Privileges and Elections; and three members of the House Committee for Courts of Justice and one from the House Committee on Appropriations, all to be appointed by the Speaker of the House of Delegates.

The joint subcommittee shall make its recommendations to the 1986 Session of the General Assembly.

The direct and indirect costs of this study are estimated to be $12,245.

Official Use By Clerks

Agreed to By The Senate		Agreed to By The House of Delegates	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐
Date: _____		Date: _____	
Clerk of the Senate		Clerk of the House of Delegates	

APPENDIX C

LD0442555

D 12/4/85 Devine C 12/23/85 jds

SENATE BILL NO. ..... HOUSE BILL NO. .....

A BILL to amend and reenact §§ 16.1-267 and 19.2-163 of the Code of Virginia, relating to compensation for court-appointed counsel.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-267 and 19.2-163 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-267. Compensation of appointed counsel.—A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in ~~an~~ *the* amount ~~deemed appropriate~~ *awarded the attorney* by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed $100 *if the action is in circuit court or the maximum amount specified in paragraph (1) of § 19.2-163 if the action is in district court* .

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in ~~an~~ *the* amount ~~not to~~ *awarded the attorney by the court. Such amount shall not* exceed $100 *if the action is in circuit court or the maximum amount specified in paragraph (1) of § 19.2-163 if the action is in district court* . In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, counsel appointed to represent a child shall be compensated for his services ~~pursuant to § 19.2-163 of the Code~~ *in an amount not to exceed $100* .

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163 of the Code.

§ 19.2-163. Compensation of court-appointed counsel.— Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services in an amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case, not to exceed the amounts specified in the following schedule:

(1) In a district court, a sum not to exceed ~~seventy-five~~ *eighty-six* dollars;

(2) In a circuit court to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; and to defend a felony charge that may be punishable by confinement in the penitentiary for a period of more than ~~20~~ *twenty* years, a sum not to exceed $ ~~400~~ *460* ; and to defend any other felony charge, a sum not to exceed $ ~~200~~ *230* ; and to defend any misdemeanor charge punishable by confinement in jail, a sum not to exceed $ ~~100~~ *115* . In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial.

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed attorney as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding.

The circuit or district court shall direct that the foregoing payments shall be paid out by the

Commonwealth, if the defendant is charged with a violation of a statute or, by the county, city or town, if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to defend such person as compensation for such defense.

When such directive is entered upon the order book of the court, the Commonwealth, county, city or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by such court.

APPENDIX D

LD 4015555

D 12/4/85 DEVINE C 12/6/85 llh

HOUSE JOINT RESOLUTION NO.....

Continuing the joint subcommittee studying defense systems for the indigent.

WHEREAS, the 1985 Session of the General Assembly created a joint subcommittee to study issues involving the cost and quality of criminal defense services provided to indigent persons; and

WHEREAS, the joint subcommittee heard testimony from a number of persons with respect to the inadequacy of the current fee schedule for court-appointed counsel, and a substantial reduction in the numbers of attorneys volunteering for court-appointed work; and

WHEREAS, the joint subcommittee met on a number of occasions with the joint subcommittee studying Virginia's Public Defender Program; and

WHEREAS, the joint subcommittees have recommended (i) an increase in the maximum fees allowed to court-appointed counsel in order to ensure that quality court-appointed representation continues to be available to indigent persons and (ii) creation of a fifth pilot Public Defender Program in Portsmouth in order to evaluate the efficiency and effect of a Public Defender System in a core city; and

WHEREAS, the joint subcommittees believe that the effects of their recommendations should be monitored during the next year to evaluate whether the problems involved in providing cost effective quality representation have been ameliorated; and

WHEREAS, because of the complexity of the issues involved the joint subcommittees were unable to complete their study and formulate recommendations with respect to (i) the particular problems for counsel in capital cases, (ii) the need to establish uniform statewide eligibility standards for court-appointed counsel, (iii) an evaluation of the methods for selecting court-appointed counsel and (iv) an evaluation of the administrative procedures of the Public Defender Commission; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint subcommittee studying indigent defense systems is continued. The membership of the joint subcommittee will remain the same, with any vacancy being filled in the same manner as the original appointment. The joint subcommittee shall complete its study in time to submit its recommendations, if any, to the 1987 Session of the General Assembly.

The direct and indirect costs of this study are estimated to be $11,370.

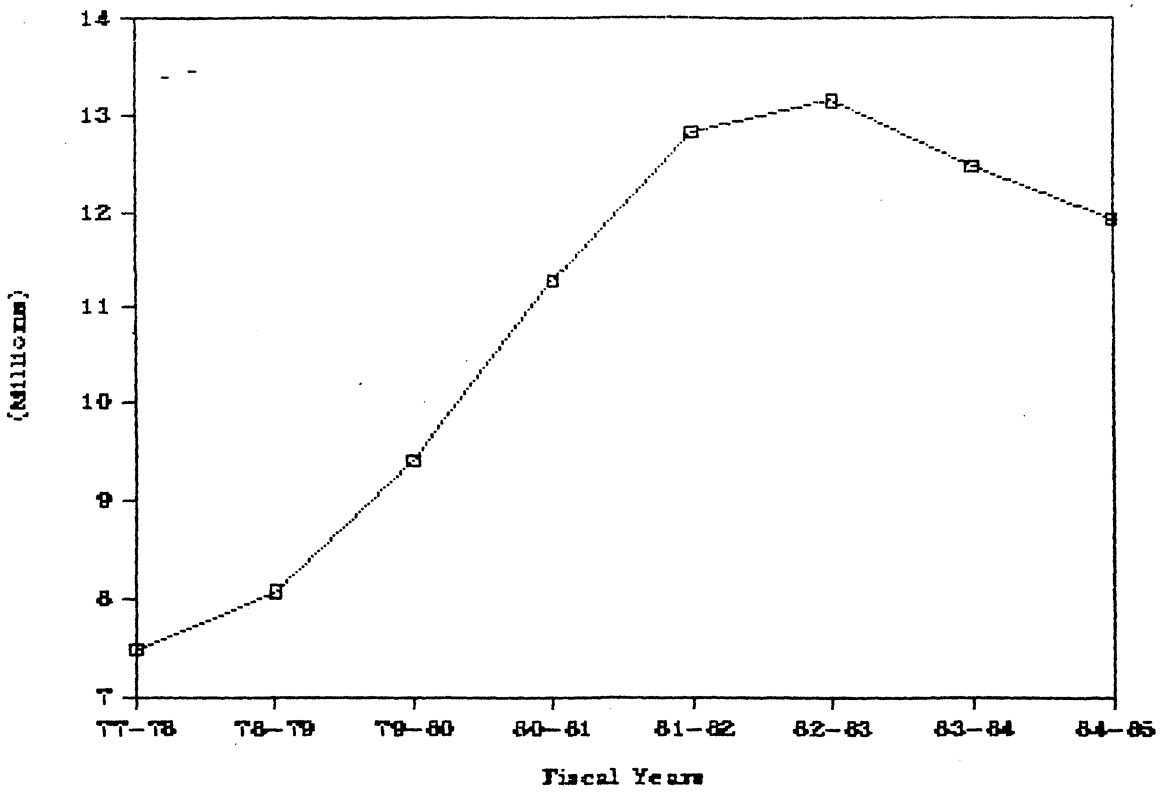
APPENDIX E

Chronology of Legislative Actions Related to the Criminal Fund

Presented to the Joint Subcommittee
Studying Defense of the Indigent
HJR 324

Kathy J. Reynolds
House Appropriations
Committee Staff
September 17, 1985

CRIMINAL FUND EXPENDITURE



CRIMINAL FUND EXPENDITURES -- FISCAL YEARS 1978-1985

Fiscal Year	Expenditure	Annual % Change C.F.
1977-78	$7,470,499	
1978-79	$8,061,968	7.92
1979-80	$9,412,877	16.76
1980-81	$11,253,214	19.55
1981-82	$12,834,462	14.05
1982-83	$13,154,009	2.49
1983-84	$12,487,005	(5.07)
1984-85	$11,934,860	(4.42)

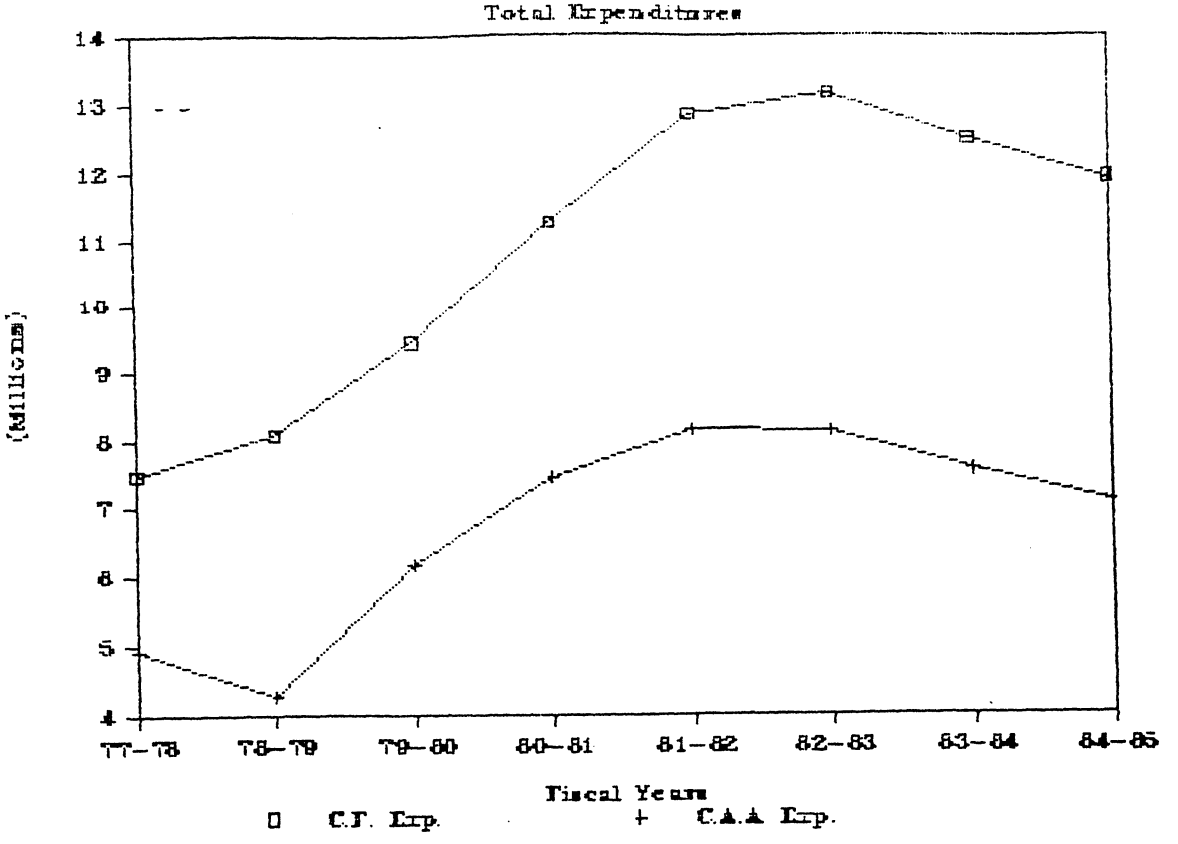
BACKGROUND

- Prior to 1978, criminal fund was administered by the Comptroller

- Mechanism to pay expenses related to trial activities in the judicial circuits

- About 2/3 of total expenditures are related to court assigned counsel

PORTION OF CRIMINAL FUND FOR C.A.A.



SUMMARY OF CRIMINAL FUND EXPENDITURES--FISCAL YEARS 1978-1985

Fiscal Year	Crim. Fund Exp.	Annual % Change C.F.	C.A.A. Exp.	Annual % Change C.A.A.
1977-78	$7,470,499		$4,919,389	
1978-79	$8,061,968	7.92	$4,265,260	(13.30)
1979-80	$9,412,877	16.76	$6,154,907	44.30
1980-81	$11,253,214	19.55	$7,432,238	20.75
1981-82	$12,834,462	14.05	$8,140,795	9.53
1982-83	$13,154,009	2.49	$8,117,254	(0.29)
1983-84	$12,487,005	(5.07)	$7,547,052	(7.02)
1984-85	$11,934,860	(4.42)	$7,078,928	(6.20)

CRIMINAL FUND REPORT - COMMONWEALTH TOTALS
SUPREME COURT OF VIRGINIA

OFFICE OF EXECUTIVE SECRETARY — JUNE 1985 — FISCAL SERVICES

STATUTE CODE	ELEMENT DESCRIPTION	TYPE OF CHARGE	THIS MONTH INDIV	YTD INDIV	THIS MONTH CHARGE	YTD CHARGES	THIS MONTH COSTS	YTD COSTS	
APPROP ACT	CIRCUIT JUDGES OFFICE ALLOWANCE		0	0	0	0	2,144.11	25,416.83	
APPROP ACT	HABEAS CORPUS		2	67	0	1	471.85	43,366.71	
14.1-112.2	CERTIFICATION OF ORIGINAL RECORD		79	664	0	0	253.50	6,339.16	
14.1-189	WITNESS FOR COMMONWEALTH		36	408	0	1	15,637.37	144,387.56	
14.1-190	EXPERT WITNESS		34	360	0	0	4,346.33	51,275.01	
14.1-195.1	JURORS PER DIEM		0	114	0	2	119,622.00	1,556,793.69	
14.1-5	TRAVEL GENERAL		0	9	0	0	.00	595.91	
15.1-131.6	ATTY CONSTITUTIONAL OFFICER CRIMINAL		0	1	0	0	.00	834.00	
15.1-66.4	ATTY CONSTITUTIONAL OFFICER CIVIL		3	46	0	0	9,122.49	106,813.05	
16.1-267	COURT APPOINTED ATTY J/DR	ADULT FEL/JUV VICTIM	83	728	212	1,367	8,016.04	67,854.24	✓
16.1-267	COURT APPOINTED ATTY J/DR	ADULT MIS/JUV VICTIM	196	1,779	315	2,325	14,562.95	136,275.66	✓
16.1-267	COURT APPOINTED ATTY J/DR	JUVENILE CASE	713	12,084	924	15,714	55,271.43	943,434.37	✓
16.1-276	TRAVEL OUT-OF-STATE WITNESS		4	37	0	0	1,310.15	6,047.70	
19.2-268	BLOOD WITHDRAWAL AND ANALYSIS		979	12,534	0	0	13,242.00	164,082.43	
19.2-122	EXTRADITION ALLOWANCE		0	0	0	0	62,749.78	555,974.54	
19.2-155	ACTING COMMONWEALTH ATTY EXPENSE		15	328	0	7	15,997.23	172,695.03	
19.2-163	COURT APPOINTED ATTY	ALL MISDEMEANORS	1,291	17,942	1,905	26,003	115,188.76	1,519,619.49	✓
19.2-163	COURT APPOINTED ATTY	CIR CT - JUV CASES	70	236	56	226	6,996.04	25,872.90	✓
19.2-163	COURT APPOINTED ATTY	CIR CT-UNCLAS FELONY	264	3,817	370	5,421	55,095.68	765,212.48	✓
19.2-163	COURT APPOINTED ATTY	CLASS I FELONY	3	91	3	110	5,118.52	71,395.28	✓
19.2-163	COURT APPOINTED ATTY	CLASS II FELONY	191	2,672	299	4,364	48,951.45	679,849.82	✓
19.2-163	COURT APPOINTED ATTY	CLASS III-VI FELONY	549	6,583	914	11,749	103,340.20	1,311,671.07	✓
19.2-163	COURT APPOINTED ATTY	DISTRICT CT - FELONY	937	12,691	1,562	20,083	86,750.41	1,154,962.31	✓
19.2-163	COURT APPOINTED ATTY	JUVENILE CASE	39	536	44	745	2,905.68	46,835.89	✓

CRIMINAL FUND RE. COMMONWEALTH TOTALS
SUPREME COURT OF VIRGINIA

OFFICE OF EXECUTIVE SECRETARY — JUNE 1985 — FISCAL SERVICES

STATUTE CODE	ELEMENT DESCRIPTION	TYPE OF CHARGE	THIS MONTH INDIV	YTD INDIV	THIS MONTH CHARGE	YTD CHARGES	THIS MONTH COSTS	YTD COSTS
19.2-164	INTERPRETERS NON-ENGLISH/CRIMINAL		30	313	0	0	2,414.08	28,390.95
19.2-164.1	INTERPRETERS DEAF/CRIMINAL		8	124	0	0	471.08	7,222.83
19.2-165.1	MEDICAL FEES - GATHERING EVIDENCE		65	1,038	0	0	7,952.45	114,974.54
19.2-166	COURT REPORTERS - FELONY ONLY		2,809	28,945	0	0	119,308.42	1,360,739.65
19.2-169.1-7	COMMUNITY MENTAL HEALTH CENTER FEES		29	281	0	0	6,680.00	63,416.51
19.2-175	DOCTOR'S FEE ON SANITY COMMISSION		84	737	0	0	10,542.00	102,949.25
19.2-182	ATTY FEE FOR COMMITMENT/CRIMINAL		0	2	0	0	.00	50.00
19.2-215	COSTS FOR SPECIAL GRAND JURY		0	336	0	0	249.40	12,662.21
19.2-326	INDIGENT APPEALS ATTY FEE AND EXPENSES		32	635	55	812	10,474.21	164,344.83
19.2-328	GUARDS FOR SAFEKEEPING OF PRISONER		0	74	0	0	.00	7,846.58
19.2-329	OUT-OF-STATE WITNESS		1	11	0	0	50.86	3,134.62
19.2-330	WITNESS FROM OUT-OF-STATE MILEAGE		25	322	0	0	3,091.61	48,477.72
19.2-332	MISC. NOT OTHERWISE COMPENSABLE		11	156	0	0	13,091.84	92,214.67
19.2-347	CIRCUIT COURT CLERK'S FILING FEE		0	3,237	0	0	.00	2,426.54
19.2-390	CENTRAL CRIM RECORDS EXCHANGE FEE		140	2,741	0	0	247.00	5,985.25
20.61-2	BLOOD TESTS FOR PATERNITY		70	539	0	0	6,948.00	66,478.00
37.1-128.1	GAURDIAN AD LITEM - CIRCUIT COURT		3	18	0	0	200.00	1,872.00
46.1-2	COST OF REMOVAL/STORAGE OF VEHICULES		0	18	0	0	.00	5,216.75
46.1-351.2	SEIZED VEHICULE STORAGE COSTS		4	31	0	0	1,737.00	9,646.30
46.1-397.5	HABITUAL OFFENDER PUBLICATION COSTS		0	0	0	0	.00	45.20
53.1-210	AGREEMENT ON DETAINERS		28	207	0	0	12,533.20	92,916.16
53.1-40	COURT APPOINTED ATTY FOR INDIGENT CONVICTS		301	4,566	0	0	14,944.15	191,602.86
53.1-76	BOARD OF PRISONER IN ANOTHER COUNTY OR CITY		0	2	0	0	.00	30.74
53.1-94	SPECIAL GUARDS		1	70	0	1	52.19	5,057.50

CRIMINAL FUND REPORT - COMMONWEALTH TOTALS
SUPREME COURT OF VIRGINIA

OFFICE OF EXECUTIVE SECRETARY — JUNE 1985 — FISCAL SERVICES

STATUTE CODE	ELEMENT DESCRIPTION	TYPE OF CHARGE	THIS MONTH INDIV	YTD INDIV	THIS MONTH CHARGE	YTD CHARGES	THIS MONTH COSTS	YTD COSTS
63.1-55.6	GUARDIAN AD LITEM - ORDER FOR PROTECTIVE SERVICES		0	7	0	0	.00	868.76
8.01-384.1	INTERPRETERS FOR DEAF - CIVIL		1	22	0	0	54.92	1,474.00
99	OTHER CF EXPENDITURES		(552)	3	(210)	1	(45,564.44)	(12,789.71
GRAND TOTAL			8,578	118,162	6,449	88,932	912,471.94	11934860.84

1981 GENERAL ASSEMBLY ACTION

- Annual deficit was estimated at $480,000 for fiscal years 1981 and 1982

- Appropriated funds sufficient to avert projected deficit

- Requested study of statutory and administrative changes which could contain costs of the criminal fund

1982 GENERAL ASSEMBLY ACTION

- For 1980–82 biennium, estimated deficit increased to $7.2 million
  - $2.5 million in addition to $480,000 for FY 1981
  - $3.7 million in addition to $480,000 for FY 1982
- Set appropriation for each year of next biennium at level equal to 1980–82 expenditures plus annual caseload increase
- Stipulated appropriation for criminal fund in the Act
- Recommended establishment of income eligibility criteria

1982 GENERAL ASSEMBLY ACTION (CON'T)

- Reviewed study on cost containment submitted by Office of the Executive Secretary, which recommended establishing statewide public defender system
  - Study challenged on two basic issues:
    - Percentage of criminal caseload requiring public defense
    - Argument of improved quality
- Requested follow up study on areas where public defender offices would be most cost effective
- Rejected the proposal to establish public defender office in Alexandria
- Provided general fund support to public defender office in Petersburg, which was about to lose federal funding

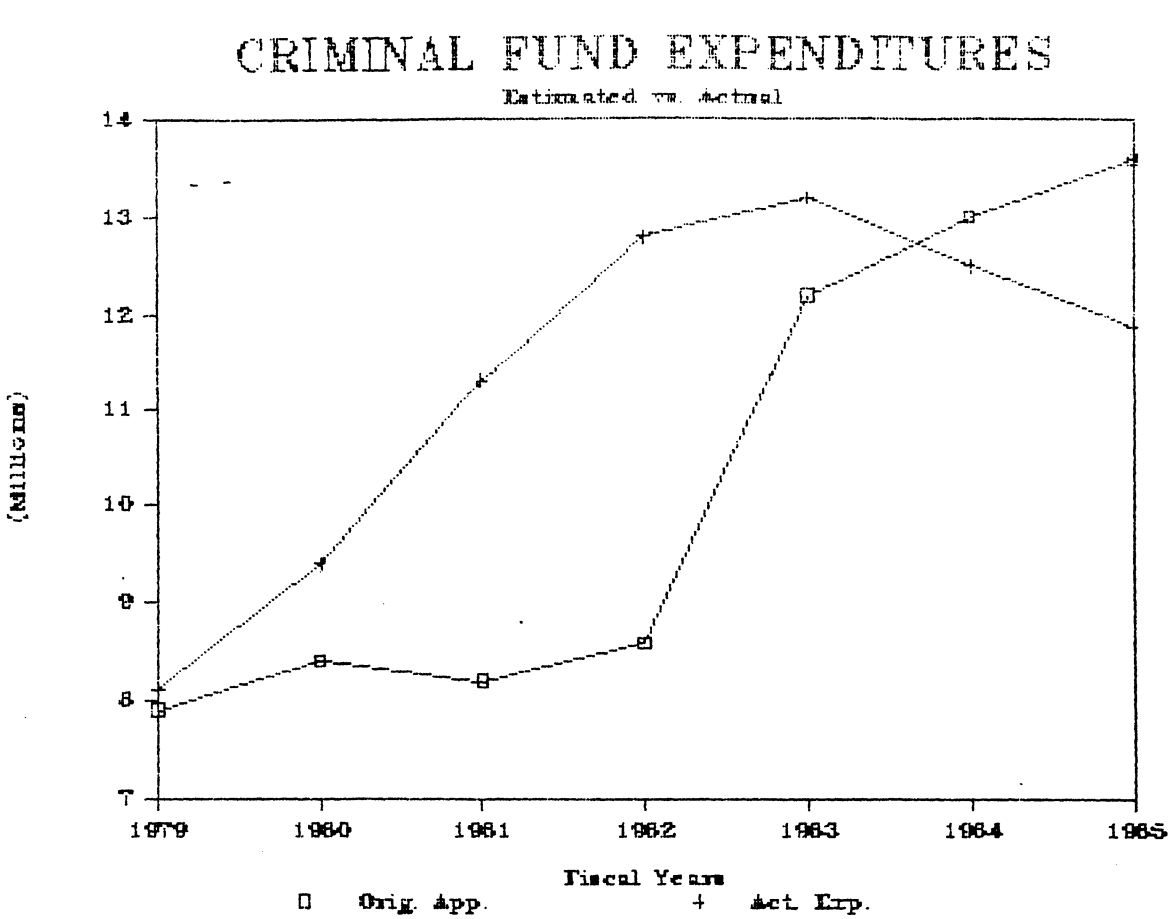
1983 GENERAL ASSEMBLY ACTION

- Projected criminal fund deficit for FY 1983 was $2,869,500

- At 18% annual growth rate, estimated deficit for FY 1984 was $4.8 million

- Appropriated funds necessary to avert the first year's estimated deficit

- Instituted cost containment measures, including;
  - 4% across the board reduction in fees was consistent with reductions taken statewide due to nationwide recession
  - Provided indigency standard and required response from Executive Secretary's Office on modification and implementation of such eligibility criteria
  - Placed a cap on the stacking of payments for defense of multiple counts of the same offense



CRIMINAL FUND EXPENDITURES
Estimated vs. Actual
(in millions)

Fiscal Year	Original Appropriation	Actual Expenditure	Difference
1979	7.9	8.1	(0.2)
1980	8.4	9.4	(1.0)
1981	8.2	11.3	(3.1)
1982	8.6	12.8	(4.2)
1983	12.2	13.2	(1.0)
1984	13.0	12.5	0.5
1985	13.6	11.9	1.7

1983 GENERAL ASSEMBLY ACTION (CON'T)

- Projected no savings in FY 1983, but year end expenditures were $1.9 million less than the adjusted appropriation

- Projected second year savings from the 4% reduction in fee schedule and reduced appropriation by $352,000

    - Second year expenditures were $100,000 less than reduced appropriation
    - Cost avoidance estimated at between $2.5 million to $5.3 million

- Requested an audit of expenditures in the criminal fund related to indigent defense

- Reviewed second report on areas where public defender offices would be more cost effective

- Determined that information provided was still inadequate to document either savings or improved quality

- Refused to approve establishment of offices in Richmond, Fairfax, and Alexandria

1984 GENERAL ASSEMBLY ACTION

- Appropriation level for criminal fund continued at level of previous biennium, plus annual caseload increase

- Adjusted cost containment measures to address inequities
  - Removed 4% reduction on fee schedule
  - Adjusted cap on payments for defense of multiple counts from one to three.

- Allowed fees for defense of capital murder to be set in discretion of the court

- Required collection of client level information

- Required creation of separate accounting entity

- Reviewed and approved criterion for income eligibility

- Recommended adoption of policy and procedures for administering the fund consistent with Auditor's recommendations

- Failed to approve a 5th public defender office in Richmond

1985 GENERAL ASSEMBLY ACTION

- Faced estimated surplus of $2 million in FY 1985
  - Reduced appropriation level accordingly
  - Expenditures for fiscal year exceeded the reduced appropriation by $371,000

- Replaced restriction on multiple count payments with less restrictive limit included in the Code

- Clarified responsibility for payment of certain expenses related to constitutional officers and transferred from fund to Compensation Board

SUMMARY

- Course of action taken is similar to course taken on many issues
  - Identify problem
  - Discuss concern with responsible agency
  - Request study and information
  - Review annually agency's progress in resolving problem
  - Implement remedial action, as required

- Attempt balanced assessment
  - Action has:
    - Halted dramatic increase in costs
    - Improved accountability
    - Standardized procedures
    - Formalized eligibility determination
    - Supplied needed information on services and clients
    - Aggravated existing problems with court assigned counsel system

APPENDIX F

New York State Defenders Association
March 1985

Assigned Counsel Rates

STATE	AVERAGE RATES OUT-OF-COURT/ IN-COURT	MAXIMUMS					COMMENTS
		CAPITAL CASE	FELONY	MISD.	OTHER	APPEAL	
Alabama[1]	20/40	No maximum	1000	—	—	40/40 1000 Max	—
Alaska	40/40	—	—	—	—	—	No Maximums set
Arizona Dima Co. Maricopa Co.	 25/25 30/30	 1000 + trial 1500	 500 + trial 1500	 500 + trial 1500	 — 1500	 — —	 150 Max day for trial 150 Max day for trial
Arkansas	—	—	—	—	—	—	Max set at not less than 25 & no more than 350 per case
California	*20-40/25-45	—	—	—	—	—	*Hourly rate dependent on Co, wide range of max
Colorado	25/35	—	—	—	—	—	Max depends on class & grade of offense & trial or non-trial
Connecticut[2]	25/30 as of July 1, 1985	—	—	—	—	—	No overall maximums
Delaware	*25/35	—	—	—	—	—	*Varies with county, no max set, if between 500-1000 Ct. must give permission. Beyond 1000 must be reviewed by County Attorney
Dist Columbia	40/60	—	2000	800	—	2000	—
Florida	*20-25/50-65	2500	2000	—	—	1000	*Varies w/Co. 1000 max for juvenile cases
Georgia	*20/40	—	1000-2000	500-1000	—	20/30 1000 Capital case, 500 Felony	*Most counties
Hawaii	30/40	—	serious fel. 1500, reg. 750	300	—	1500	—
Idaho	*30-35/30-45	—	—	—	—	—	*fees depend on county
Illinois[1]	30/30	2000	1250	750	—	1500 max	—
Indiana	*35/50	—	**—	**—	—	—	*Max 300/day for trial. **No max, but have min. murder—2500—Class B or C misd. 250
Iowa	35/40	—	—	—	—	—	180 per day flat rate
Kansas[1]	30/30	—	—	—	—	—	*1000 max—tried cases 250 max—nontried. *in exceptional cases involving A/B felony & at least 25 hrs in-court time max may raise to 9000.

1. Fees in these states were amended since the Lefstein report. The new data were reported by ABA Consultant Jayne B. Tyrrell in a March 4, 1985 telephone conversation with Donna Hall, NYSDA Director of Research.
2. The increase in Connecticut's fees, effective July 1, 1985, was reported to Donna Hall by Robert Spangenberg, Abt Associates, Inc.

Assigned Counsel Rates

(continued)

STATE	AVERAGE RATES OUT-OF-COURT/ IN-COURT	MAXIMUMS					COMMENTS
		CAPITAL CASE	FELONY	MISD.	OTHER	APPEAL	
Kentucky	25/35	2500	1250	500	—	25/25 750 max	—
Louisiana	25/35	—	1000	500	—	—	Min. fee set for felony = 100 & misd. = 50. No hrly. rate set for appeals
Maine	25/30 Super Ct 20/25 Dist. Ct	3000, 4500 w/counsel	1500	185	—	25/30	—
Maryland	20/25	—	1000	250	500-mental health, 250 juvenile	500	—
Massachusetts	35/hr if evidentiary hearing or trial 25/hr other time	—	1000	300	—	—	—
Michigan	*10-50/hr Avg. $31 hr	—	—	—	—	—	*Varies by county
Minnesota	*20-25/20-60	—	—	—	—	—	*Varies by county Maximums vary
Mississippi	*20/30	1000	500	100	—	500	*Varies by county
Missouri[3]	20/20	—	—	—	—	—	No maximum fees set
Montana	*30/30	—	1000	1000	—	—	*Varies by county
Nebraska	*25/25	1000	1000	1000	1000	—	*Varies by county
Nevada	20/30	2500	1000	300	300	1000	—
N. Hampshire	25/35	7500	1500	500	500	—	Maximum daily rate for all cases 200
New Jersey	15/23	35 hrs max for resrch. none in-ct.	35 hrs max for resrch. none in-ct.	—	—	—	—
New Mexico	20/30	800	800	800	800	1000	—
New York	15/25	1500-2000	750	500	500	500-2000	—
No. Carolina	*20/30	—	500-1000	200	—	*—	*fees fixed by Superior Court
No. Dakota	50/50	—	—	—	—	—	*No maximum
Ohio	30/40	—	1000	500	300-700	35/35	Max for aggrevated murder 4000/1, 6000/2; murder 3000
Oklahoma	*—	2500	500	500	—	**—	*State issues no guidelines for hrly fees. **No max. set for appeals
Oregon	30/30	—	—	—	—	35/35	Maximum depends upon judge's discretion and varies by county
Pennsylvania	15/25	25/35 hrly max at court's discretion	800	500	500	500	—

3. The Missouri fees were changed since the Lefstein report. The revised fees were reported in ABT Associates, *National Criminal Defense Systems Study*.

Assigned Counsel Rates

(continued)

STATE	AVERAGE RATES OUT-OF-COURT/ IN-COURT	MAXIMUMS					COMMENTS
		CAPITAL CASE	FELONY	MISD.	OTHER	APPEAL	
Puerto Rico	*—	*—	*—	*—	*—	*—	*Public finan. support of indigent defense services is exclusive to Legal Aid Society, which has broad discretion in how its funds are allocated
Rhode Island	20/25 20/30 (fel.)	—	2000 very serious 1000 less serious	250	1500	750	—
So. Carolina	10/15	750	500	500	—	500	—
So. Dakota	30/40	750	750	750	100	750	—
Tennessee[1]	20/30	individually determined	1000	—	—	500	Max for adults 100/ day. Max for juven. 50/day
Texas	none provided by statute Dallas reported 10/15	*minimum 250/day	minimum 50/day	minimum 50/day	minimum 350	minimum death penalty appeal 500	*Does not have max, but does have daily minimum. The daily minimum frequently serves as maximum.
Utah	35/35	—	—	—	—	—	No maximums set
Vermont	15/15 non-trial cases only	1500	500	300	300	*—	These maxs are frequently lifted and higher rates of compensation are given. *No max set for appeals
Virginia	30/30	1000	more than 20 yrs. 400 less than 20 yrs. 200	75, 100 if punishable by jail	—	150	—
Washington	*22-30/22-30	No limit	1800	500	—	**1000	*Varies by county **No statewide max fee but most freq. reported
West Virginia	20/25	—	1000	1000	—	—	—
Wisconsin	35/35	*—	*—	*—	*—	*—	*No maximums set
Wyoming	*35-60/35-60	**—	—	—	—	—	*Rates vary depending on judge. No discrimination between out-of-court & in-court. **Max not set by statute. 2 dists. have set 1500-trial and 500 non-trial

Source: Lefstein, Criminal Defense Services for the Poor, May 1982.

APPENDIX G

TYPE OF PREDOMINANT DEFENSE SYSTEM BY STATE

STATE	PUBLIC DEFENDER	ASSIGNED COUNSEL	CONTRACT	COMBINED
Alabama		X		
Alaska	X			
Arizona				X
Arkansas		X		
California	X			
Colorado	X			
Connecticut	X			
Delaware	X			
Florida	X			
Georgia		X		
Hawaii	X			
Idaho				X
Illinois	X			
Indiana				X
Iowa		X		
Kansas		X		
Kentucky	X			
Louisiana	X			
Maine		X		
Maryland	X			
Massachusetts				X
Michigan				X
Minnesota				X
Mississippi		X		
Missouri	X			

APPENDIX G (Continued)

STATE	PUBLIC DEFENDER	ASSIGNED COUNSEL	CONTRACT	COMBINED
Montana		X		
Nebraska		X		
Nevada	X			
New Hampshire	X			
New Jersey	X			
New Mexico				X
New York	X			
North Carolina		X		
North Dakota			X	
Ohio		X		
Oklahoma		X		
Oregon				X
Pennsylvania	X			
Rhode Island	X			
South Carolina	X			
South Dakota		X		
Tennessee		X		
Texas		X		
Utah				X
Vermont	X			
Virginia		X		
Washington			X	
West Virginia		X		
Wisconsin	X			
Wyoming	X			
TOTALS	22 (44%)	17 (34%)	2 (.3%)	9 (18%)

APPENDIX H

PROJECTING COSTS FOR VARIOUS INDIGENT DEFENSE SYSTEMS IN VIRGINIA FOR FY 1986

October 1985

Preliminary Report

The Spangenberg Group

Robert L. Spangenberg
Patricia A. Smith
Norma Casner

Financial support provided by the ABA Bar Information Project and the Virginia General Assembly

Prepared for the Joint Subcommittees Studying Methods of Providing Legal Defense Services for the Indigent and Virginia's Public Defender System, of the Commonwealth of Virginia General Assembly

OVERALL SYSTEMS FOR PROVIDING INDIGENT DEFENSE SERVICES

Level of Organization

- Indigent defense services are organized on a statewide basis in 17 states: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kansas, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, West Virginia, Wisconsin and Wyoming.

- 3 states have a central organization but are not responsible for providing services throughout the entire state: Kentucky, Nevada and Ohio.

- Half of the states place the responsibility for providing defense services with the counties.

- 2 states organize services on a judicial district or circuit level: Florida and Minnesota.

- Several states are organized on both a county and judicial district basis: Arkansas, Georgia, Louisiana, and North Carolina.

Type of System

- Public defender programs were utilized by 34% of the counties across the United States in 1982-83.

- In 22 states, public defender programs are the predominant system of delivery. There is at least one public defender program in every state but Maine and North Dakota.

- 60% of all counties in the nation are served by assigned counsel programs, but they serve only about one third of the population because they are found most frequently in the smaller counties.

- Approximately 25% of all assigned counsel programs are coordinated.

- Assigned counsel programs predominate in 17 states. Maine is the only state which relies exclusively on private assigned counsel.

- In 1982-83 contract programs existed in 6% of the counties, most clustered in a few states. At that time, 32 states had no contract programs at all.

- Use of contract programs has grown so substantially in at least two states--North Dakota and Washington--that those states can be characterized as predominantly contract states at the present time.

- A number of states provide indigent representation through a mixed system such that no one type of program predominates: Arizona, Idaho, Indiana, Massachusetts, Michigan, Minnesota, New Mexico, Oregon and Utah.

NATIONWIDE TRENDS IN THE PROVISION OF INDIGENT DEFENSE SERVICES

General Trends

- Increased centralization of both funding and administration of services.
- Increased fees for the private bar and overall increases in the funds appropriated for indigent defense.
- Emphasis on cost containment procedures in response to rising costs.
- Emphasis on alternative sources of revenue, including recoupment.
- Standardization of indigent defense practices and procedures, such as the development of indigency guidelines.
- Greater attention to management issues, such as creating management information systems.

Specific Changes

- Oregon established a State Indigent Defense Board and an Office of the State Indigent Defense Administrator on August 1, 1985. This followed a shift from county to state funding on January 1, 1983.
- The Kansas legislature created the State Board of Indigent Defense Services in 1983. At the same time, responsibility for funding in all felony cases was shifted from the county to the state.
- Major changes occurred in the indigent defense system in Massachusetts when the Committee for Public Counsel Services was created on July 1, 1984.
- The Missouri legislature created the State Public Defender Commission on April 1, 1982. At the same time all costs of indigent defense were transferred from the counties to the state.
- There is legislation pending in Indiana to create a State Public Defender Commission and to reimburse the counties for half of the costs of indigent defense services.
- The Maine State Bar has created a Commission on Court Appointments that is currently reviewing the present system and evaluating the alternatives.

- In Iowa, the legislature has voted to shift the costs of all indigent defense services from the counties to the state in 1987.

- Fee levels for court-appointed counsel have substantially increased in a number of states since 1982-83: Kansas, Connecticut, Oregon, North Dakota, Iowa, Alabama, Illinois, Tennessee, The District of Columbia and Texas. Most of these states have increased both the hourly rates and the maximum permitted in individual cases.

- Oregon, Iowa and Connecticut have completely removed any maximum fee.

- Fees under the federal criminal justice act were doubled in 1984 to $40/hour out-of-court and $60/hour in-court.

COMPARING VIRGINIA WITH SIMILAR JURISDICTIONS

- Virginia's statewide Guidelines for Indigency are among the best in the country.

- Efforts to recoup the costs of court-appointed counsel from defendants have resulted in the largest returns (16.4%) of any state in the country.

- The new Management Information System for court appointed counsel implemented by the Executive Secretary's Office on July 1, 1984 is the best in the country.

- All of these and other procedures have resulted in successfully containing the costs of indigent defense services in recent years.

- In 1982-83 the average cost per case was $111 in Virginia effectively numbering 50th in the nation. Since that time, this figure has actually decreased to $109.97 while in other states it has continued to increase, resulting in a widening of the gap between Virginia and the rest of the 50 states in recent years.

- Compared to the 8 states nearest in population, Virginia has the lowest cost per case of all, 20% below the $131.48 per case expended in Indiana, the state closest to Virginia. (See Table 2)

- Compared to the states nearest in population, Virginia is also the only one that has experienced a reduction in overall expenditures for indigent defense. All other states shown on Table 2 have experienced increases of between 15% and 51% (for an average of approximately 30%) compared to the 5% reduction in Virginia.

- The maximum allowable fees per case are significantly lower in Virginia than in any of the other states with assigned counsel systems listed in table 3. This is clearly the key factor in determining Virginia's dismally low cost/case.

- Virginia has retained the same fees for private appointed counsel for the last 15 years, while 5 of the other 9 states listed in Table 3 have increased their fees since 1982-83 by raising their hourly rates, increasing or eliminating their maximum fees, or both.

TABLE 2
A COMPARISON OF COSTS AND COSTS/CASES IN STATES WITH COMPARABLE POPULATION

STATE	1980 POPULATION	TYPE OF SYSTEM	WHO FUNDS?	EXPENDITURES FY 1982	EXPENDITURES FY 1985	EXPENDITURES % INCREASE	EXPENDITURES FY 1985 PER CAPITA	FY 1982 COST/CASE	1985 COST/CASE	% INCREASE DECREASE
WISCONSIN	4,706,000	State Public Defender	State	$13,350,200	$17,814,474	+33.4%	$3.79	$230	$263.56	+14.6%
NORTH CAROLINA	5,882,000	Mixed A/C & P/D	State & County	$11,004,038	(a) $12,673,701 (FY 1984)	+15.2%	$2.15	$187	$202.27	+ 8.2%
MARYLAND	4,217,000	State P/D	State	$10,270,310	$15,139,614	+38.8%	$3.38	$131	$183.13	+39.8%
MISSOURI	4,917,000	State P/D & Contracts	State & County[b]	$4,408,413	(b) $5,800,000	+31.6%	$1.18	$138	$173.13	+25.5%
MASSACHUSETTS	5,737,000	State Administered; Mixed A/C and P/D	State	$13,092,198	$15,872,588	+22.2%	$2.70	$177	$155.00	-12.0%
TENNESSEE	4,591,000	Mixed A/C, P/D & Contract	State (fel.); County (Juv. & (Misd.)	$3,732,880	$5,651,070	+51.4%	$1.23	$144	(c) $143.41	- 0 -
GEORGIA	5,463,000	Mixed P/D & A/C	Counties	$5,672,712	$6,949,072	+22.5%	$1.27	$131	$136.32	+ 4.1%
INDIANA	5,490,000	Mixed P/D & A/C	Counties	$5,551,430	$6,700,000 (FY 1984)	+20.7%	$1.22	$131	$131.48	- 0 -
VIRGINIA	5,347,000	A/C by County w/ 4 Pilot P/D's	State	$8,289,380	$7,900,767	- 5.0%	$1.48	$111	$109.97	-1.0%

[a] Cost figure does not include office expenses, which are paid for by the counties.

[b] Office expenses & utilities (except for phone) covered by counties; thus, overall cost estimate is low.

[c] Based on trial court cases only; no general session courts caseload data available.

TABLE 3
A COMPARISON OF FEE SCHEDULES IN STATES WITH AN ASSIGNED COUNSEL SYSTEM

STATE	WHO FUNDS	FY 1985 TOTAL COST	FY 1985 ASSIGNED COUNSEL COST	WHO SETS FEE	HOURLY RATE (OUT OF (COURT/IN COURT)	MAXIMUMS	CHANGES SINCE FY 1982
ALABAMA	State (Fair Trial Tax)	$4,580,110	$4,122,099	State	$20/40	$1,000	Increased hourly fees from $15/30 in 1984
GEORGIA	Counties	$6,949,072	N/A	Judge Discretion	$35/50 range	None	None
KANSAS	State (Felonies) County (Misd.)	$4,809,548	$3,741,102	State Board	$30 (Felonies)	Non-Tried: $250 or $400 Tried: $1,000 Exceptional:$5,000 (Felonies)	Added higher fee of $400 for more serious felonies (non-tried) as of 5/1/84
MAINE	State	$1,765,089	$1,765,089	Supreme Judicial Court	$20/25 (Misd. & Juv.) $25/30 (Felonies)	Misd. & Juv.: $185 Felony: $500(w/o trial; $1,000 (w/trial)	None
NORTH CAROLINA	State	$12,673,701 (FY 1984)	$8,301,679	Judge Discretion	None	None	Eliminated informal hourly fees & maximums set by judges
SOUTH DAKOTA	County	$1,352,047 (FY 1982)	N/A	Court Rule and Judge	$30/40	$750	None
TENNESSEE	State (Felonies) County (Misd. & Juvenile)	$5,651,070	N/A	Statute	$20/30 (Felonies)	$500 (Felonies) $200/day (Capital; in-court) $100/day (Non-cap; in-court)	Raised maximum daily rate for capital cases (in court) from $150 to $200
VIRGINIA	State	$7,897,841	$7,078,474	Statute	$30 (Recomm. by Exec. Secy.)	$75/100 (Misd. & Juv.) $200/400 (Felonies)	Uniform hourly rate suggested as of 7/1/84
WASHINGTON	County	$16,000,000	N/A	County Commissioners	Varies by County $22/30 range	None	None
WEST VIRGINIA	State	$4,877,000	$4,452,000	Statute	$20/25	$1,000	None

PROJECTING COSTS FOR THE VARIOUS INDIGENT DEFENSE SYSTEM OPTIONS

- All projections are based on an estimated 10% increase in indigent caseloads in FY 1986 compared to FY 1985.

- All caseload data are presented in terms of the number of actual defendants, rather than the numbers of counts or charges.

Continuation of the Present Assigned Counsel System with Various Increases in the Fee Levels

- Table 6 sets out the various projected increases in overall expenditures as a result of raising fees 10%, 20%, 30%, enough to bring them up to the national average (100%), and an in-between figure of 50%.

- Additional appropriations in the amount of $8 million would be required to meet the national average cost per case. A 50% increase in fees would require almost $4 million in additional funds, while a 20% increase in fees would necessitate additional appropriations of approximately $1.6 million. Table 7 outlines the cost implications of each of the projected levels of increased fees.

Statewide Public Defender System

- Recommended annual caseloads per full-time attorney are as follows:

  200 felonies
  425 misdemeanors
  250 juvenile cases

- Cost projections for a statewide public defender system are based upon the assumption that the public defenders would handle 75% of the total indigent defense cases, while the private bar would continue to handle the remaining 25% of cases where the public defender is in conflict or experiencing an overload situation.

- Applying the above caseload standards, we estimate that 153 attorneys would be required to provide representation in all 41,068 projected public defender cases.

- Public defender attorneys would require the support of secretarial and investigative staff. Following is a projection of the attorney unit cost, incorporating these staff at given salary levels, plus fringes and overhead:

Table 6

COST PROJECTIONS FOR VARIOUS LEVELS OF INCREASED FEES

Court & Case Type	1986 Baseline			1986 Baseline + 10%		1986 Baseline + 20%		1986 Baseline + 30%		1986 National Average		1986 Baseline + 50%	
	Number of Cases	Total Expenditures	Cost Per Case	Cost Per Case	Total Expenditures	Cost Per Case	Total Expenditures	Cost Per Case	Total Expenditures	Cost Per Case	Total Expenditures	Cost Per Case	Total Expenditures
Circuit Court													
Felony													
Class I	100	78,456-	784.56	863.02	86,302-	941.47	94,147-	1019.73	101,993-	1569.12	156,912-	1176.84	117,684-
Class II	2939	747,770-	254.43	279.87	822,538-	305.32	897,335-	330.76	972,104-	508.86	1,495,540-	381.16	1,120,229-
Class III-VI	7241	1,442,769-	199.25	219.18	1,587,082-	239.10	1,731,323-	259.03	1,875,636-	398.50	2,885,539-	298.88	2,164,190-
Unclassified	4199	841,774-	200.47	220.52	925,963-	240.56	1,010,111-	260.61	1,094,301-	400.94	1,683,547-	300.71	1,262,812-
Misdemeanors	2212	230,380-	104.15	114.57	253.429-	124.98	276,456-	135.40	299,505-	208.30	460,760-	156.23	345,581-
Juvenile	260	28,504-	109.63	120.59	31,353-	131.56	34,206-	142.52	37,055-	219.26	57,008-	164.45	42,757-
Appeals	699	180,908-	258.87	284.69	198,998-	310.57	217,081-	336.45	235,179-	517.62	361,816-	388.22	271,365-
Court Appointments for Convicts	5019	210,597-	41.96	46.16	231,677-	50.35	252,707-	54.55	273,786-	83.92	421,194-	62.94	315,896-
TOTAL	22,669	3,761,158-	165.92	182.51	4,137,342-	199.10	4,513,366-	215.69	4,889,559-	331.83	7,522,316-	248.82	5,640,514
District/J&OR Courts													
Felony/Preliminary Hearings	14,761	1,345,170	91.13	100.24	1,479,643-	109.36	1,614,263-	118.47	1,748,736-	182.26	2,690,340	136.70	2,017,829-
Misdemeanors	19,481	1,591,013	81.67	89.84	1,750,173-	98.-	1,909,138	106.17	2,068,298	163.34	3,182.027-	122.51	2,386,617-
Juvenile	13,882	1,089,321	78.47	86.32	1,198,294-	94.16	1,307,129	102.01	1.416.103	156.94	2,178,641	117.71	1,634,050-
TOTAL	48,124	4,025,504	83.65	92.01	4,428,110-	100.38	4,830,530	108.74	5,233,137	167.30	8,051,008	125.48	6,038,496-
GRAND TOTALS	70,793	7,786,662-	109.99	121.98	8,565,452	131.99	9,343,896-	142.99	10,122,696	219.98	15,573,324	164.97	11,697,010

Table 7

COST IMPLICATIONS FOR THE RANGE OF FEE INCREASES

	Total Number of Cases	Average Cost per Case	Total Annual Expenditure	Additional Annual Appropriation Needed to Meet Projected Increases
1986 Baseline	70,793	$109.99	$ 7,786,662	--
1986 Baseline + 10%	70,793	120.98	8,565,452	$ 778,790
1986 Baseline + 20%	70,793	131.99	9,343,896	1,557,234
1986 Baseline + 30%	70,793	142.99	10,122,696	2,336,034
1986 National Average	70,793	219.98	15,573,324	7,786,662
1986 Baseline + 50%	70,793	164.97	11,697,010	3,892,348

Full-time trial attorney	$26,500
1/4-time of a secretary	2,843
1/8-time of an investigator	2,638
	31,981
Fringes @ 18.3%	5,853
	37,834
Overhead @ 15%	5,675
TOTAL ATTORNEY UNIT COST	$43,509

- Total public defender program costs (without a necessary back-up system) would be as follows, based on the above formulas:

Total trial atty. unit cost	$6,656,877
Total appellate atty. unit	402,170
Central administrative cost	359,471
One-time start-up costs	386,099
TOTAL	$7,804,617

- Table 12 provides a comparison of the overall costs of a statewide public defender system (including an assigned counsel system as a back-up) with the costs of the present assigned counsel system, both based on the levels of projected fee increases discussed above.

- An analysis of Table 12 indicates that as the private bar fee levels increase a public defender system becomes more cost effective, the breakeven point being a 21.5% increase in private bar fees. A 30% increase in fees would result in a public defender system realizing savings of $412,000, while such a system would result in savings of $4.4 million compared to an increase in the current fee schedule to bring it up to the national average.

- Because contract programs are a recent innovation in providing indigent defense services, it is not possible at this time to estimate the cost of such programs as back-up for a public defender system.

Contract System

- Again, because contract programs are a relatively new phenomenon in this country there are no reliable data available to develop a national cost estimate. Further, there is no state in the country that has a statewide contract system coordinated or administered by a single body. Thus, it is not possible at this time to project the costs of such a system in Virginia.

Table 12
Comparison of Costs Under the Present System and a Statewide Public Defender System

Project Fee Schedule	Avg. Cost for Private Bar	Costs Under the Present System	Costs Under Statewide Public Defender System			Increase/Decrease from Costs Under Present System
			Public Defender Cost	Private Bar Cost	Total Cost	
No Increase	$110	8,605,682	7,804,617	2,096,270	9,900,877	1,295,205
10% Fee Increase	120.98	9,384,472	7,804,617	2,305,516	10,110,133	725,661
20% Fee Increase	131.99	10,162,916	7,804,617	2,515,333	10,319,950	157,034
30% Fee Increase	142.99	10,941,716	7,804,617	2,724,960	10,529,577	(412,139)
Fee Increase Up to National Average	219.98	16,392,344	7,804,617	4,192,159	11,996,776	(4,395,568)
50% Fee Increase	164.97	12,498,030	7,804,617	3,143,833	10,948,450	(1,549,580)

Coordinated Assigned Counsel System

- Assuming that 38.5 administrators would be needed for a statewide coordinated assigned counsel system, with appropriate support services, plus fringes and overhead expenses, the total administrative cost would be $1.5 million.

- Adding the administrative cost to the costs of assigned counsel, the overall costs of a coordinated assigned counsel system at the various levels of increases would be:

Coordinated assigned counsel system (w/no fee increase)	$ 9,286,662
10% fee increase	$10,065,452
20% fee increase	$10,843,896
30% fee increase	$11,622,696
National average	$17,073,324
50% fee increase	$13,197,010

Combined Public Defender and Private Bar System

- A number of states operate under combined systems whereby the local county or judicial district is free to determine which type of system it would like to operate: Alabama, Arizona, Arkansas, California, Georgia, Idaho, Indiana, Iowa, Kansas, Michigan, Mississippi, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, and Washington.

- The most successful of the combined systems have some kind of state board or commission charged with developing standards and guidelines for program operations. Such commissions now exist in Georgia, Kansas, North Dakota, Ohio, and Oregon and are under consideration in California, Indiana, Iowa, South Carolina and Washington.

- A number of states with a developed state-administered system also have a statewide commission: Alaska, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, West Virginia, Wisconsin, and Wyoming. Thus, 22 states have some form of central commission overseeing the provision of defense services.

- It is difficult to accurately predict with the data presently available the costs of a combined system with a central commission. We predict that a state commission could be operated with considerable efficiency at an annual level of $200,000. It is also important to remember that the costs of such a system would be offset by the savings that would accrue from increased uniformity and accountability and from a reduction in judges' and court officers' workloads.

CONCLUSIONS

- There is a crisis in the indigent defense system in Virginia as a result of substantial underfunding of the current assigned counsel system:

  -- Lawyers are dropping out of the system because of low fees;

  -- Judges are finding it increasingly difficult to find competent counsel to appoint in indigent cases; and

  -- At least one lawsuit has been filed challenging the present level of compensation for private attorneys.

- Cost containment measures instituted in recent years have been successful in keeping expenditures low, but they may have run their course, resulting in the necessity for increased expenditures in the near future.

- In comparing the available system options and their costs, it is important to remember that private bar assigned counsel programs appear cost effective as long as fees are low, as is presently the case in Virginia. As private bar fees increase, public defender programs begin to be relatively more cost effective.

- Short of a statewide public defender system, a combined system with a state-level commission can provide many of the same cost benefits that accrue from increased standardization and centralization, while also providing more local autonomy.

- There are 4 absolute requirements for a system in Virginia that will provide adequate representation in a cost-efficient in FY 1986 and in the years to come:

  1) There must be an increase in the overall expenditures for indigent defense.

  2) There must be an increase in the fees paid to private assigned counsel, particularly in the maximum allowable fees, in order to ensure the continued involvement of the private bar.

  3) The state should establish some kind of central administrative component to continue to build on the efforts of the Supreme Court Task Force and the Executive Secretary's Office in developing statewide standards for defense services.

  4) Special attention needs to be paid to the unique requirements of death penalty cases, and the substantial costs that they can represent to the system.

APPENDIX I

Presentation to the Joint Subcommittees Studying Defense of the Indigent and Public Defender Offices in Virginia

Kathy J. Reynolds
House Appropriations
Committee Staff
November 26, 1985

Updated Estimates on the Cost
of Increasing Fees for
Court Assigned Attorneys

- At the October meeting, the Joint Subcommittees received estimates from Robert Spangenberg on the cost of increasing fees for court assigned attorneys.

- The data available at the time reflected changes in caseload through August. A projected caseload increase of 10% was built into the cost estimates for fiscal year 1986.

- The most recent data, now available through October, indicates that the number of counts for which court assigned attorneys were paid has increased by nearly 34% (year to date July to October FY86 over July to October FY 85). In addition, the average payment per count has increased by 9%.

- Therefore, the cost estimates provided by Mr. Spangenberg should be compared to the cost estimates which result from projecting our experience in the first 4 months throughout the remainder of the fiscal year.

Table I displays the cost projections for the criminal fund under these two scenarios.

TABLE 1
COST PROJECTIONS FOR THE CRIMINAL FUND
FY 1986 AND FY 1987

		SPANGENBERG ESTIMATES		Y-T-D EXPERIENCE	
	ACTUAL FY 85	1985 + 10% = FY 86	1985 + 14.4% = FY 87	1985 + 34% = FY 86	1985 + 39% = FY 87
No. of Counts paid CAA	93,485	102,833	106,946	125,270	129,944
@ Average Payment	@ 75.72	@ 75.72	@ 75.72	@ 82.77	@ 82.77
Total Expenditure CAA	$7,078,816	$7,786,514	$8,097,951	$10,368,597	$10,755,465
Other Criminal Fund Expenditures	$4,856,044	$4,856,044	$4,856,044	$4,856,044	$4,856,044
Total	$11,934,860	$12,642,558	$12,953,995	$15,224,641	$15,611,509
Less Appropriation	$11,563,850	$14,008,845	$14,008,845	$14,008,845	$14,008,845
Balance (Deficit)	($371,010)	$1,366,287	$1,054,850	($1,215,796)	($1,602,664)
Cost of Fee Increase					
5%		106,946 @ 3.78	- $404,255	129,944 @ 4.13	- $536,669
Balance (Deficit)			$650,595		($2,139,003)
10%		@ 7.56	- $404,255	@ 8.26	- $536,669
Balance (Deficit)			$246,340		($2,675,672)
15%		@ 11.34	- $404,255	@ 12.39	- $536,669
Balance (Deficit)			($157,915)		($3,212,341)
20%		@ 15.12	- $404,255	@ 16.52	- $536,669
Balance (Deficit)			($562,170)		($3,749,010)
25%		@ 18.90	- $404,255	@ 20.65	- $536,669
Balance (Deficit)			($966,425)		($4,285,679)
50%		@ 37.80	- $2,024,487	@ 41.30	- $2,683,343
Balance (Deficit)			($2,990,912)		($6,969,022)

Review of the Cost of Public Defender Offices
Alternative I-Spangenberg Technique

- The report received by the Joint Subcommittees at the October meeting included estimates of the cost of establishing public defender offices statewide.

- Under Alternative I, cost estimates were calculated using the methodology developed by the consultant, Mr. Robert Spangenberg, with two exceptions:

  a. No one-time costs were included in order to get a more accurate comparison of operational costs for a given year.
  b. No central administrative costs were included. The addition of any one office would not require increased expenses at the Public Defender Commission.

- Table 2 summarizes the cost for each circuit with a population over 100,000 if a public defender office had been operational in fiscal year 1985 in that circuit.

- Given these assumptions, in fiscal year 1985 public defender offices would have been less expensive than the court assigned attorney system in 3 of these circuits: Henrico, Arlington and Alexandria.

- Table 3 projects the cost of public defender offices in each of the same circuits for fiscal year 1987. This cost estimate is based on a cumulative 14.4% caseload increase over fiscal year 1985 and constant fees. Salary costs have been increased by 6%.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system in 2 of these circuits: Henrico and Alexandria.

- Table 4 compares the cost of public defender offices as projected in Table 3 to the cost of the court assigned attorney system given a 10% increase in fees.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system with a 10% fee increase in 3 of these circuits: Henrico, Arlington and Alexandria.

- Table 5 projects the cost of public defender offices in each of the same circuits for fiscal year 1987. This cost estimate is based on a cumulative 39% caseload increase over fiscal year 1985 and constant fees. Salary costs have been increased by 6%.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system in 6 of these circuits: Norfolk, Newport News, Richmond, Henrico, Arlington and Alexandria.

- Table 6 compares the cost of public defender offices as projected in Table 5 to the costs of the court assigned attorney system given a 10% increase in fees.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system with a 10% fee increase in 7 of these circuits: Norfolk, Newport News, Richmond, Henrico, Arlington, Alexandria and Fairfax.

TABLE 2

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FOR FISCAL YEAR 1985 VS.
ACTUAL COST OF FISCAL YEAR 1985 C.A.A. EXPENDITURES

CIRCUIT	P. D. COST EST. FY 1985	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	ACTUAL CAA COST FY 1985	EXPENSE (SAVINGS)
Chesapeake 3.12 FTE Attorney .78 FTE Clerical .39 FTE Investg.	$135,704	$66,094	$201,799	$169,711	$32,088
Portsmouth 4.15 FTE Attorney 1.04 FTE Clerical .52 FTE Investg.	$180,541	$120,593	$301,133	$244,535	$56,598
Norfolk 10.25 FTE Attorney 2.56 FTE Clerical 1.28 FTE Investg.	$445,982	$236,402	$682,384	$649,535	$32,849
Newport News 3.88 FTE Attorney .97 FTE Clerical .49 FTE Investg.	$168,900	$76,311	$245,210	$223,197	$22,013
Hampton 3.50 FTE Attorney .88 FTE Clerical .44 FTE Investg.	$152,436	$63,393	$215,829	$150,238	$65,591
Chesterfield 4.13 FTE Attorney 1.03 FTE Clerical .52 FTE Investg.	$179,814	$64,387	$244,201	$126,952	$117,249

TABLE 2 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FOR FISCAL YEAR 1985 VS.
ACTUAL COST OF FISCAL YEAR 1985 C.A.A. EXPENDITURES

CIRCUIT	P. D. COST EST. FY 1985	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	ACTUAL CAA COST FY 1985	EXPENSE (SAVINGS)
Richmond 10.25 FTE Attorney 2.56 FTE Clerical 1.28 FTE Investg.	$446,029	$235,138	$681,167	$640,982	$40,185
Henrico 3.13 FTE Attorney .78 FTE Clerical .39 FTE Investg.	$118,513	$74,038	$192,551	$220,164	($27,613)
Arlington 4.60 FTE Attorney 1.15 FTE Clerical .58 FTE Investg.	$200,328	$122,515	$322,843	$331,853	($9,010)
Alexandria 3.78 FTE Attorney .95 FTE Clerical .47 FTE Investg.	$164,478	$97,808	$262,286	$274,548	($12,262)
Fairfax 9.47 FTE Attorney 2.37 FTE Clerical 1.18 FTE Investg.	$412,122	$152,897	$565,018	$489,812	$75,206
Prince William 4.75 FTE Attorney 1.19 FTE Clerical .59 FTE Investg.	$206,687	$88,140	$294,828	$208,269	$86,559

TABLE 3

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 3.57 FTE Attorney .89 FTE Clerical .45 FTE Investg.	$164,123	$75,612	$239,735	$194,149	$45,586
Portsmouth 4.75 FTE Attorney 1.19 FTE Clerical .59 FTE Investg.	$218,349	$137,958	$356,307	$279,748	$76,559
Norfolk 11.73 FTE Attorney 2.93 FTE Clerical 1.47 FTE Investg.	$539,378	$270,444	$809,822	$743,068	$66,754
Newport News 4.44 FTE Attorney 1.11 FTE Clerical .56 FTE Investg.	$204,270	$87,299	$291,569	$255,337	$36,232
Hampton 4.01 FTE Attorney 1.00 FTE Clerical .50 FTE Investg.	$184,359	$72,521	$256,880	$171,872	$85,008
Chesterfield 4.73 FTE Attorney 1.18 FTE Clerical .59 FTE Investg.	$217,470	$73,659	$291,129	$145,283	$145,846

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 11.73 FTE Attorney 2.93 FTE Clerical 1.47 FTE Investg.	$539,435	$268,998	$808,433	$733,283	$75,150
Henrico 3.58 FTE Attorney .90 FTE Clerical .45 FTE Investg.	$164,832	$84,699	$249,531	$251,867	($2,336)
Arlington 5.27 FTE Attorney 1.32 FTE Clerical .66 FTE Investg.	$242,281	$140,157	$382,438	$379,640	$2,798
Alexandria 4.32 FTE Attorney 1.08 FTE Clerical .54 FTE Investg.	$198,923	$111,892	$310,815	$314,083	($3,268)
Fairfax 10.84 FTE Attorney 2.71 FTE Clerical 1.35 FTE Investg.	$498,427	$174,914	$673,341	$560,345	$112,996
Prince William 5.43 FTE Attorney 1.36 FTE Clerical .68 FTE Investg.	$249,971	$100,833	$350,804	$238,859	$111,945

TABLE 4

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 3.57 FTE Attorney .89 FTE Clerical .45 FTE Investg.	$164,123	$82,822	$246,945	$213,563	$33,382
Portsmouth 4.75 FTE Attorney 1.19 FTE Clerical .59 FTE Investg.	$218,349	$151,223	$369,572	$307,723	$61,849
Norfolk 11.73 FTE Attorney 2.93 FTE Clerical 1.47 FTE Investg.	$539,378	$296,448	$835,826	$817,375	$18,451
Newport News 4.44 FTE Attorney 1.11 FTE Clerical .56 FTE Investg.	$204,270	$95,694	$299,964	$280,871	$19,093
Hampton 4.01 FTE Attorney 1.00 FTE Clerical .50 FTE Investg.	$184,359	$79,494	$263,853	$189,059	$74,794
Chesterfield 4.73 FTE Attorney 1.18 FTE Clerical .59 FTE Investg.	$217,470	$80,742	$298,212	$159,811	$138,401

TABLE 4 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 11.73 FTE Attorney 2.93 FTE Clerical 1.47 FTE Investg.	$539,435	$294,863	$834,298	$806,611	$27,687
Henrico 3.58 FTE Attorney .90 FTE Clerical .45 FTE Investg.	$164,832	$92,843	$257,675	$277,054	($19,379)
Arlington 5.27 FTE Attorney 1.32 FTE Clerical .66 FTE Investg.	$242,281	$153,633	$395,914	$417,604	($21,690)
Alexandria 4.32 FTE Attorney 1.08 FTE Clerical .54 FTE Investg.	$198,923	$122,651	$321,574	$345,491	($23,917)
Fairfax 10.84 FTE Attorney 2.71 FTE Clerical 1.35 FTE Investg.	$498,427	$191,732	$690,159	$616,379	$73,780
Prince William 5.43 FTE Attorney 1.36 FTE Clerical .68 FTE Investg.	$249,971	$110,528	$360,499	$262,744	$97,755

TABLE 5

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 4.34 FTE Attorney 1.08 FTE Clerical .54 FTE Investg.	$199,415	$91,871	$291,286	$269,867	$21,419
Portsmouth 5.77 FTE Attorney 1.44 FTE Clerical .72 FTE Investg.	$265,302	$167,624	$432,926	$388,849	$44,077
Norfolk 14.25 FTE Attorney 3.56 FTE Clerical 1.78 FTE Investg.	$655,364	$328,599	$983,963	$1,032,864	($48,901)
Newport News 5.40 FTE Attorney 1.35 FTE Clerical .67 FTE Investg.	$248,196	$106,072	$354,268	$354,918	($650)
Hampton 4.87 FTE Attorney 1.22 FTE Clerical .61 FTE Investg.	$224,003	$88,116	$312,119	$238,902	$73,217
Chesterfield 5.74 FTE Attorney 1.44 FTE Clerical .72 FTE Investg.	$264,233	$89,498	$353,731	$201,943	$151,788

TABLE 5 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 14.25 FTE Attorney 3.56 FTE Clerical 1.78 FTE Investg.	$655,432	$326,842	$982,274	$1,019,263	($36,989)
Henrico 4.35 FTE Attorney 1.09 FTE Clerical .54 FTE Investg.	$174,153	$102,913	$277,066	$350,095	($73,029)
Arlington 6.40 FTE Attorney 1.60 FTE Clerical .80 FTE Investg.	$294,379	$170,295	$464,674	$527,699	($63,025)
Alexandria 5.25 FTE Attorney 1.31 FTE Clerical .66 FTE Investg.	$241,698	$135,953	$377,651	$436,575	($58,924)
Fairfax 13.17 FTE Attorney 3.29 FTE Clerical 1.65 FTE Investg.	$605,606	$212,526	$818,132	$778,879	$39,253
Prince William 6.60 FTE Attorney 1.65 FTE Clerical .83 FTE Investg.	$303,724	$122,515	$426,239	$332,014	$94,225

TABLE 6

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 4.34 FTE Attorney 1.08 FTE Clerical .54 FTE Investg.	$199,415	$101,058	$300,473	$296,854	$3,619
Portsmouth 5.77 FTE Attorney 1.44 FTE Clerical .72 FTE Investg.	$265,302	$184,386	$449,688	$427,733	$21,955
Norfolk 14.25 FTE Attorney 3.56 FTE Clerical 1.78 FTE Investg.	$655,364	$361,459	$1,016,823	$1,136,150	($119,327)
Newport News 5.40 FTE Attorney 1.35 FTE Clerical .67 FTE Investg.	$248,196	$116,679	$364,875	$390,410	($25,535)
Hampton 4.87 FTE Attorney 1.22 FTE Clerical .61 FTE Investg.	$224,003	$96,927	$320,930	$262,792	$58,138
Chesterfield 5.74 FTE Attorney 1.44 FTE Clerical .72 FTE Investg.	$264,233	$98,448	$362,681	$222,137	$140,544

TABLE 6 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE I - SPANGENBERG TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUB. DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 14.25 FTE Attorney 3.56 FTE Clerical 1.78 FTE Investg.	$655,432	$359,526	$1,014,958	$1,121,189	($106,231)
Henrico 4.35 FTE Attorney 1.09 FTE Clerical .54 FTE Investg.	$174,153	$113,204	$287,357	$385,105	($97,748)
Arlington 6.40 FTE Attorney 1.60 FTE Clerical .80 FTE Investg.	$294,379	$187,325	$481,704	$580,469	($98,765)
Alexandria 5.25 FTE Attorney 1.31 FTE Clerical .66 FTE Investg.	$241,698	$149,548	$391,246	$480,233	($88,987)
Fairfax 13.17 FTE Attorney 3.29 FTE Clerical 1.65 FTE Investg.	$605,606	$212,526	$818,132	$856,767	($38,635)
Prince William 6.60 FTE Attorney 1.65 FTE Clerical .83 FTE Investg.	$303,724	$134,767	$438,491	$365,215	$73,276

Cost of Public Defender Offices
Alternative II--Model Office Technique

- In applying Spangenburg's technique at the individual circuit level, several adjustments to the methodology are required.

- The caseload per attorney standards used by Spangenberg differ from the actual experience of public defenders and their assistants in Virginia. Alternative II used a workload mix of cases based upon the average caseload per authorized position in Virginia's existing public defender offices.

- Alternative I estimates were based upon an attorney unit of 1/4 clerical and 1/8 investigator position for each attorney. At the individual circuit level, however, such finite levels of employment are not practical. Therefore, in Alternative II staff levels were rounded to the nearest .5 full time equivalent and each office was funded for at least 1 full time clerical position.

- Alternative II developed a technique to project positions, salaries and office expenses within a framework of 3 "model" offices: small, medium and large. Appendix A contains a summary of how each component of the cost was calculated for Alternative I and Alternative II.

- Table 7 compares the cost for each circuit with a population over 100,000 using the model office technique if a public defender office had been operational in fiscal year 1985 in that circuit.

- Given these assumptions, in fiscal year 1985 public defender offices would have been less expensive than the court assigned attorney system in 6 of these circuits: Norfolk, Newport News, Richmond, Henrico, Alexandria and Fairfax.

- Table 8 projects the cost of public defender offices in each of the same circuits for fiscal year 1987. This cost estimate is based on a cumulative 14.4% caseload increase over fiscal year 1985 and constant fees. Salary costs have been increased by 6%.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system in 6 of these circuits: Norfolk, Newport News, Richmond, Henrico, Alexandria and Fairfax.

- Table 9 compares the cost of public defender offices as projected in Table 8 to the costs of the court assigned attorney system given a 10% increase in fees.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system with a 10% fee increase in 7 of these circuits: Norfolk, Newport News, Richmond, Henrico, Arlington, Alexandria, and Fairfax.

- Table 10 projects the cost of public defender offices in each of the same circuits for fiscal year 1987. This cost estimate is based on a cumulative 39% caseload increase over fiscal year 1985 and constant fees. Salary costs have been increased by 6%.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system all but 2 of these circuits: Portsmouth and Chesterfield.

- Table 11 compares the cost of public defender offices as projected in Table 10 to the costs of the court assigned attorney system given a 10% increase in fees.

- Given these assumptions, public defender offices would be less expensive than the court assigned attorney system with a 10% fee increase in all of these circuits, except Chesterfield.

TABLE 7

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FOR FISCAL YEAR 1985 VS.
ACTUAL COST FOR C.A.A. IN FISCAL YEAR 1985

CIRCUIT	P. D. COST EST. FY 1985	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	ACTUAL CAA COST FY 1985	EXPENSE (SAVINGS)
Chesapeake 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$131,375	$66,094	$197,469	$169,711	$27,758
Portsmouth 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$179,000	$120,593	$299,593	$244,535	$55,058
Norfolk 5.5 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$305,450	$236,402	$541,852	$649,535	($107,683)
Newport News 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$112,850	$76,311	$189,161	$223,197	($34,036)
Hampton 1.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$112,850	$63,393	$176,243	$150,238	$26,005
Chesterfield 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$145,750	$64,387	$210,137	$126,952	$83,185

TABLE 7 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FOR FISCAL YEAR 1985 VS.
ACTUAL COST FOR C.A.A. IN FISCAL YEAR 1985

CIRCUIT	P. D. COST EST. FY 1985	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	ACTUAL CAA COST FY 1985	EXPENSE (SAVINGS)
Richmond 7.0 FTE Attorney 3.0 FTE Clerical 1.5 FTE Investg.	$382,475	$235,138	$617,613	$640,982	($23,369)
Henrico 1.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$112,850	$74,038	$186,888	$220,164	($33,276)
Arlington 2.25 FTE Attorney 1.50 FTE Clerical 1.00 FTE Investg.	$232,925	$122,515	$355,440	$331,853	$23,587
Alexandria 2.50 FTE Attorney 1.00 FTE Clerical .50 FTE Investg.	$131,375	$97,808	$229,183	$274,548	($45,365)
Fairfax 5.50 FTE Attorney 2.50 FTE Clerical 1.50 FTE Investg.	$326,075	$152,897	$478,972	$489,812	($10,840)
Prince William 2.50 FTE Attorney 1.00 FTE Clerical .50 FTE Investg.	$131,375	$88,140	$219,515	$208,269	$11,246

TABLE 8

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$75,612	$213,925	$194,149	$19,776
Portsmouth 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$188,450	$137,958	$326,408	$279,748	$46,660
Norfolk 6.0 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$336,963	$270,444	$607,407	$743,068	($135,662)
Newport News 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$118,925	$87,299	$206,224	$255,337	($49,113)
Hampton 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$118,925	$72,521	$191,446	$171,872	$19,574
Chesterfield 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$174,538	$73,659	$248,197	$145,283	$102,914

TABLE 8 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 8.0 FTE Attorney 3.0 FTE Clerical 1.5 FTE Investg.	$438,688	$268,998	$707,686	$733,283	($25,597)
Henrico 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$118,925	$84,699	$203,624	$251,867	($48,243)
Arlington 4.5 FTE Attorney 1.5 FTE Clerical 1.0 FTE Investg.	$245,338	$140,157	$385,495	$379,640	$5,855
Alexandria 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$153,550	$111,892	$265,442	$314,083	($48,641)
Fairfax 6.5 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$357,350	$174,914	$532,264	$560,345	($28,081)
Prince William 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$153,550	$100,833	$254,383	$238,859	$15,524

TABLE 9

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$82,882	$221,195	$213,563	$7,632
Portsmouth 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$188,450	$151,223	$339,673	$307,723	$31,950
Norfolk 6.0 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$336,963	$296,448	$633,411	$817,375	($183,965)
Newport News 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$118,925	$95,694	$214,619	$280,871	($66,252)
Hampton 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$118,925	$79,494	$198,419	$189,059	$9,360
Chesterfield 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$174,538	$80,742	$255,280	$159,811	$95,469

TABLE 9 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 14.4%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 8.0 FTE Attorney 3.0 FTE Clerical 1.5 FTE Investg.	$438,688	$294,863	$733,551	$806,611	($73,060)
Henrico 2.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$118,925	$92,843	$211,768	$277,054	($65,286)
Arlington 4.5 FTE Attorney 1.5 FTE Clerical 1.0 FTE Investg.	$245,338	$153,633	$398,971	$417,604	($18,634)
Alexandria 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$153,550	$122,651	$276,201	$345,491	($69,290)
Fairfax 6.5 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$357,350	$191,732	$549,082	$616,379	($67,297)
Prince William 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$153,550	$110,528	$264,078	$262,744	$1,334

TABLE 10

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$153,550	$91,871	$245,421	$269,867	($24,446)
Portsmouth 4.0 FTE Attorney 1.5 FTE Clerical 1.0 FTE Investg.	$225,550	$167,624	$393,174	$388,849	$4,325
Norfolk 7.5 FTE Attorney 2.5 FTE Clerical 1.5 FTE Investg.	$384,363	$328,599	$712,962	$1,032,864	($319,902)
Newport News 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$106,072	$244,385	$354,918	($110,533)
Hampton 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$88,116	$226,429	$238,902	($12,473)
Chesterfield 4.0 FTE Attorney 1.5 FTE Clerical 1.0 FTE Investg.	$225,550	$89,498	$315,048	$201,943	$113,105

TABLE 10 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 9.5 FTE Attorney 3.0 FTE Clerical 1.5 FTE Investg.	$523,850	$326,842	$850,692	$1,019,263	($168,571)
Henrico 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$102,913	$241,226	$350,095	($108,869)
Arlington 5.5 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$292,575	$170,295	$462,870	$527,699	($64,829)
Alexandria 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$174,538	$135,953	$310,491	$436,575	($126,084)
Fairfax 7.5 FTE Attorney 2.5 FTE Clerical 1.5 FTE Investg.	$382,375	$212,526	$594,901	$778,879	($183,978)
Prince William 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$174,538	$122,515	$297,053	$332,014	($34,961)

TABLE 11

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Chesapeake 3.0 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$153,550	$101,058	$254,608	$296,854	($42,246)
Portsmouth 4.0 FTE Attorney 1.5 FTE Clerical 1.0 FTE Investg.	$225,550	$184,386	$409,936	$427,733	($17,797)
Norfolk 7.5 FTE Attorney 2.5 FTE Clerical 1.5 FTE Investg.	$384,363	$361,459	$745,822	$1,136,150	($390,328)
Newport News 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$116,679	$254,992	$390,410	($135,418)
Hampton 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$96,927	$235,240	$262,792	($27,552)
Chesterfield 4.0 FTE Attorney 1.5 FTE Clerical 1.0 FTE Investg.	$225,550	98,448	$323,998	$222,137	01,861

TABLE 11 (cont)

COST COMPARISON OF PUBLIC DEFENDER OFFICES
ALTERNATIVE II - MODEL OFFICE TECHNIQUE
ESTIMATED COST FISCAL YEAR 1987 VS.
PROJECTED COST FOR C.A.A. FISCAL YEAR 1987
CUMULATIVE CASELOAD INCREASE FY 85-87 = 39%
FEE INCREASE 10%

CIRCUIT	COST EST. FY 1987	COST OF CAA 25% CONFLICT	PUBLIC DEF. + 25% CONFLICT	EST. CAA COST FY 1987	EXPENSE (SAVINGS)
Richmond 9.5 FTE Attorney 3.0 FTE Clerical 1.5 FTE Investg.	$523,850	$359,526	$883,376	$1,121,189	($237,813)
Henrico 2.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$138,313	$113,204	$251,517	$385,105	($133,588)
Arlington 5.5 FTE Attorney 2.0 FTE Clerical 1.0 FTE Investg.	$292,575	$187,325	$479,900	$580,469	($100,569)
Alexandria 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$174,538	$149,548	$324,086	$480,233	($156,147)
Fairfax 7.5 FTE Attorney 2.5 FTE Clerical 1.5 FTE Investg.	$382,375	$212,526	$594,901	$856,767	($261,866)
Prince William 3.5 FTE Attorney 1.0 FTE Clerical .5 FTE Investg.	$174,538	$134,767	$309,305	$365,215	($55,910)

SUMMARY

- The various cost projections included in this report give an indication of which circuits may prove the most cost effective if an additional public defender office were established. The cost figures are only estimates and, if any additional offices were established, more circuit-specific budgets would be required to insure that the office would be staffed and funded adequately.

- The cost of the court assigned counsel system is a function of two factors: the number of cases and the fees. Even with stagnant fees, the cost of the system increased dramatically from 1978 to 1982. The increases did not subside until the cost containment measures were instituted over the last three years. Now that these restrictions have been lifted, the number of cases is again rising at an alarming rate.

- Public defender offices can provide some insulation from the unitary increases which plaque the court assigned system during periods of increasing numbers of cases. Staffing patterns and office costs tend to follow a step-like pattern in public defender offices, as compared to an upward sloping line for court assigned attorney costs. The state benefits from the lower cost whenever the number of cases lies on the "tread" of the stair. This is especially true when the inflationary cost of maintaining an office, including salary and fringe benefit adjustments, is lower than the annual increase in caseloads.

- Clearly, any substantial increase in court assigned attorney fees will tend to make public defender offices cost effective in a greater number of circuits.

- However, cost cannot be the only factor in determining the feasibility of a given site. The support and cooperation of the judiciary, court personnel, and the local bar will influence the success of any public defender office.

- Any large expansion of public defender offices may justify a program evaluation of the quality and effectiveness of counsel.

Potential for Establishing a Commission on Indigent Defense

- Several states are considering the establishment of a state commission charged with a range of policy and management functions related to the provision of indigent defense. In Virginia, a state commission could be charged with:

  Developing uniform standards and guidelines to operate a variety of programs which provide indigent defense services, including court assigned attorneys, public defender, and contract systems. Included could be procedures for appointment, minimum standards for attorney appointment, personnel policies, procedures for recoupment, indigency criteria, training, caseload standards, and procedures on the availability of investigative assistance and expert witnesses.

  Monitoring and evaluating the effectiveness of these systems, standards and guidelines.

  Receiving the state appropriation for indigent defense and performing all planning, budgeting, disbursements, reporting and accounting of those funds.

  Assisting localities in identifying a system of indigent defense which meets statutory and constitutional requirements as economically as possible in that locality.

  Proposing to the executive and the legislature various policy options to improve the quality of service, to achieve compliance with judicial decisions pertaining to effective counsel, or reduce the cost of services.

APPENDIX A

Comparison of Estimation Techniques

Component	Alternative I-Spangenberg Technique	Alternative II-Model Office Technique
Caseload	Indigency Rate=(# concluded criminal cases)/(# counts paid C.A.A.) Indigent Caseload=(# commenced criminal cases) x (indigency rate) Public Defender Caseload=(75% indigent caseload) - (preliminary hearing adjustment) Preliminary Hearing Adjustment=(district court felonies)-(80% circuit court felonies).	SAME
# FTE attorneys	1 FTE attorney for each: 320 felony counts 595 misdemeanor counts 325 juvenile counts	1 FTE attorney for each: 473 felony counts 471 misdemeanor counts 471 juvenile counts adjustment for trial or travel
Attorney Salary	$26,500	Small Office 1 Pub. Def. @ $35,000 1 or 2 ass't. @ $23,000 Medium Office 1 Pub. Def. @ $40,000 1 ass't @ $28,500 2 or 3 ass't. @ $23,000 Large Office 1 Pub. Def. @ $45,000 1 deputy @ $40,000 1 or 2 ass't @ $28,500 3 to 5 ass't @ $23,000

Component	Alternative I-Spangenberg Technique	Alternative II-Model Office Technique
Support Staff	1/4 clerical per attorney @ $11,371 1/8 investigator per attorney @ $21,104	Small Office 1 clerical @ $13,000 and .5 invest. @ $20,000 Medium Office 1.5 to 2.0 clerical @ $13,000 and 1 invest. @ $20,000 Large Office 2.5 to 3 clerical @ $13,000 and 1.5 invest. @ $20,000
Fringe Bene.	18% of salary	25% of salary
Operating	15 % of salary + fringe	Small Office: $3300 + ($4150 x #att.) Medium Office:$3300 + ($4550 x #att.) Large Office: $3300 + ($5150 x #att.)
Set Up Cost	5.8% Office budget	Small Office: $6790 + ($1780 x # of att.and inv.) + ($2800 x # clerical) Medium and Large Office: $9193 + ($1782 x # of att. and inv.) + ($2800 x # clerical)
Cost of CAA 25% Conflict	Counts for CAA= 25 % x Indigent Caseload Cost for CAA=$400 x (Cir.fel.I and II) + $200 x (other cir. fel.) + $100 x (cir. mis.) + $75 x (all Dist.).	SAME

INDIGENT DEFENSE COSTS
FISCAL YEAR 1985

CIRCUIT/ DISTRICT	CIRCUIT COURTS	GENERAL DISTRICT COURTS	J DR DISTRICT COURTS	COMBINED DISTRICT COURTS	TOTAL COURT APPOINTED COUNSEL	NUMBER OF INDIVIDUALS	NUMBER OF CHARGES	PUBLIC DEFENDER	TOTAL INDIGENT DEFENSE
01	67,734.60	48,223.07	53,753.10		169,710.77	1,368	2,146		169,710.77
02	20,983.31	4,397.16	24,783.05		50,163.52	459	673	216,085.55	266,249.07
03	134,202.61	59,375.11	51,356.77		244,934.49	2,055	3,023		244,934.49
04	341,680.30	137,407.57	170,448.00		649,535.87	5,279	7,752		649,535.87
05	82,686.15	30,321.70	31,567.21	18,317.85	162,892.91	1,300	1,789		162,892.91
06	45,440.79			83,254.18	128,694.97	1,255	1,786		129,694.97
07	121,459.22	64,827.30	36,911.20		223,197.72	1,856	2,613		223,197.72
08	67,030.98	36,360.00	46,847.32		150,238.30	1,259	2,167		150,238.30
09	78,300.51	79,703.26	19,374.35		177,378.12	1,429	2,124		177,378.12
10	81,852.18	25,360.18	15,051.06	24,429.09	146,692.51	1,175	1,740		146,692.51
11	42,348.23	15,129.00	11,289.51	33,511.49	102,278.23	1,018	1,371	131,213.73	233,491.96
12	47,762.15	50,798.88	20,056.65	8,334.10	126,951.78	1,205	1,843		126,951.78
13	331,686.14	210,048.09	99,246.97		640,981.20	5,473	7,895		640,981.20
14	107,696.35	76,177.00	36,291.00		220,164.35	1,749	2,605		220,164.35
15	122,097.97	97,513.82	36,735.69	20,992.68	277,340.16	2,333	3,704		277,340.16
16	90,897.64	62,231.99	32,574.81	42,825.12	228,529.56	2,187	3,511		228,529.56
17	148,959.26	159,524.48	23,369.00		331,852.74	2,475	3,338		331,852.74
18	130,883.30	113,208.11	30,456.50		274,547.91	2,504	3,149		274,547.91
19	205,764.73	172,117.25	106,334.09	5,596.00	489,812.07	4,284	5,815		489,812.07
20	48,639.64	16,451.22	15,062.15		80,153.01	525	898		80,153.01
21	38,370.89	44,420.32	14,837.25		97,628.46	939	1,709		97,628.46
22	90,808.03	39,124.61	29,752.50		159,685.14	1,479	2,405		159,685.14
23	93,870.31	29,176.65	49,905.08	22,012.15	194,964.19	1,842	2,927	225,676.60	420,640.79
24	135,494.18	135,400.64	99,874.09		370,768.91	3,277	4,945		370,768.91
25	47,775.38	1,171.50	10,287.70	51,094.61	110,329.19	1,210	2,136	151,062.93	261,392.12
26	102,008.44	46,314.32	26,780.62		175,103.38	1,443	2,181		175,103.38
27	102,362.18			103,342.67	205,704.85	1,936	3,103		205,704.85
28	45,033.35	30,328.85	16,254.25		91,616.45	905	1,331		91,616.45
29	75,956.16	24,485.60	18,167.35	68,722.68	187,333.79	1,659	2,286		187,333.79
30	48,581.03	27,754.07	30,791.15	54,216.83	161,343.68	1,701	2,432		161,343.68
31	102,593.33	68,619.10	37,057.45		208,269.88	1,679	2,441		208,269.88
32	26,916.70			21,888.53	48,805.23	546	1,082		48,805.23
COURT APPT IND CONVT	191,485.77	115.59		1.30	191,602.86	4,566			191,602.86
GUARDIAN AD LITEM	2,495.76		75.00	170.00	2,740.76	25			2,740.76
SUBTOTAL	3,421,860.57	1,906,086.44	1,195,090.87	558,709.28	7,081,746.96	64,395	88,920	724,038.81	7,805,785.77
PUB DEF ADMIN								94,981.50	94,981.50
TOTAL	3,421,860.57	1,906,086.44	1,195,090.87	558,709.28	7,081,746.96	64,395	88,920	819,020.31	7,900,767.27