

**REPORT OF THE
DEPARTMENT OF PLANNING AND BUDGET**

Indigent Defense Systems in Virginia

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 44

**COMMONWEALTH OF VIRGINIA
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This study was conducted by the Department of Planning and Budget in close cooperation with the Department of Criminal Justice Services and the Department of Personnel and Training. Principal contributors were Robert Watts (Project Manager), J. Norbert Federspiel (DCJS), William A. Dodl (DPT), Tom Reeves (DPB), and Phil Leveque (DPB).

The study team acknowledges and appreciates the contributions of the following people:

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Kathy Mays and Richard Parker - Office of the Executive Secretary,
Supreme Court of Virginia
Robert L. Spangenburg - Spangenburg and Associates
Ron Jordan - House Appropriations Committee
Mary P. Devine - Division of Legislative Services

Finally, the study team acknowledges and appreciates the members of the Judiciary, Public Defender Commission, Commonwealth's Attorneys, Clerks of Court and staff in the Public Defender Offices who were interviewed by the study team as part of this effort.

EXECUTIVE SUMMARY

Overview and Purpose of Study

The Public Defender Commission oversees the operations of 11 offices serving 23 jurisdictions across the state. Four additional offices are to be established in FY 1989-90. The scope of services provided in the offices includes assisting the court in determining indigency, providing legal counsel and investigative services to those determined to be indigent, and providing appellate defense up to and including appeals to the Supreme Court of Virginia.

Since 1985, the Joint Subcommittee Studying Alternative Indigent Defense Systems in Virginia has conducted several studies of the costs of providing legal defense services to indigents charged with criminal offenses. These studies have focused on expanding the public defender system as a cost-avoidance mechanism, payment rates for private bar attorneys appointed by the courts, national trends in relation to how indigent defense systems are structured, and the potential cost of expanding Virginia's public defender system to a statewide system.

The 1989 Session of the General Assembly passed House Joint Resolution 280, which required the Department of Planning and Budget, in cooperation with other state agencies, to study the feasibility of establishing a statewide public defender system. The objectives of this study were:

- To recommend appropriate workload standards, staffing levels, and salary levels for the existing and future public defender offices;
- To identify judicial circuits in which the establishment of a public defender office would be less costly than providing indigent defense through private bar court appointments; and,
- To evaluate the feasibility of establishing a state appellate defender office.

Previous Studies Relating to Public Defender Offices

Previous studies prepared for or conducted by the Joint Subcommittee Studying Alternative Indigent Defense Systems have shown that in some jurisdictions public defender offices are one way to contain costs associated with indigent defense. For example, House Document 40 (1989) concluded that as fees to private bar court appointed counsel increase, the savings shown

by public defender offices increase. Also, a 1985 report by Robert Spangenburg, consultant to the American Bar Association and to the Joint Subcommittee, showed that public defender offices would be cheaper to operate than appointing private bar counsel if fees paid to private bar counsel were increased in Virginia to approximate the national average fees.

The issue of fees paid to private bar counsel has been a continuing point of debate. A 1986 national survey conducted by the Bureau of Justice Statistics concluded that Virginia ranked 48th out of the 50 states in the per case cost of providing defense counsel to indigents. Although the 1989 Session of the General Assembly passed an increase in the maximum allowable fees for private bar attorneys, Virginia still ranks near the bottom of all states in terms of costs associated with indigent defendants. According to Spangenburg, two additional 20% increases in the maximum allowable fees would be required to put Virginia near the midpoint in terms of the average cost for indigent defense services.

Finally, the 1989 *Report of the Commission of the Future of Virginia's Judicial System* recommended that "Public defender offices should be established in each judicial circuit as the primary means of providing legal representation to indigent defendants in criminal cases." The report also recommended increases in the fees paid to court appointed attorneys "so that experienced and capable criminal defense lawyers will be more likely to accept such assignments."

Workload in the Public Defender Offices

One limitation of the methodology used in this study is that work, measurement instruments, such as time logs, and time-motion work sampling were not utilized. Instead, workload was measured using existing data from the public defender system, and the adequacy of the current statewide staffing pattern was compared to standards developed by Robert Spangenburg, judges' perceptions of the current staffing pattern, and Public Defenders' requests for additional staff.

Existing public defender offices are handling significantly more defendants per attorney than recommended by the National Legal Aid and Defender Association and by Robert Spangenburg, a nationally recognized expert on indigent defense systems. Additionally, there is a perception among judges served by public defenders that the offices need more attorneys to provide coverage to courts, reduce waiting time in court, and increase the amount of time given to indigent defendants. Based on structured interviews with judges, the most pressing need in public defender offices is for additional attorneys. All of the public defenders interviewed as part of this study also indicated the need for additional attorneys. However, the public defenders indicated that fewer attorneys were needed than the level of staffing required by the Spangenburg standards.

A forecast based on exponential smoothing of the workload in public defender offices indicates that the workload increased by 17.5% in FY 1988-89 over that experienced in FY 1987-88. The forecast indicates that the workload will continue to increase through FY 1991-92. The projected increase in workload will be 10.3% in FY 1989-90, 11.6% in FY 1990-91 and 10.5% in FY 1991-92. These figures reflect the assumption that the staff in existing public defender offices could serve a workload of that magnitude. It is more likely, however, that an increasing proportion of cases will be referred to private bar court appointed counsel, and that continued increases in the Criminal Fund will be required.

Table 1 displays workload standards recommended by Spangenburg, the current average number of defendants per attorney, the projected workload for FY 1991-92, and a recommended adjusted caseload.

TABLE 1
NUMBER OF DEFENDANTS PER FTE ATTORNEY

<u>Type of Defendant</u>	<u>Spangenburg Standard</u>	<u>Avg. Per Virginia Public Defender*</u>	<u>Projected FY 1991-92**</u>	<u>Adjusted Standard</u>
Juvenile	250	443	737	325
Adult Misdemeanant	400	708	1,231	520
Class 1 Felon (Capital)	5	9	12	7
All other Felons	185	328	432	240
Appellant	20	35	58	26

* Average caseload based on FY 1987-88 data from jurisdictions with all types of cases. Figures are to be interpreted as "250 juvenile defendants = 1 FTE attorney, 400 adult misdemeanants = 1 FTE attorney", etc.

** Projected by DPB based on data from Virginia Supreme Court, FY 1985-86 through March, 1989.

The current average public defender caseload deviates significantly from the caseload standards developed by Spangenburg. While the Spangenburg standards are a worthy goal to attempt to achieve, they are based on a national view. Local judicial practices, docketing, and the degree of cooperation between the Commonwealth's Attorneys, local law enforcement officials, court clerks and administrators, and the public defender offices will impact the number of defendants which can be served by the public defender. In Virginia, a workload average higher than that recommended by Spangenburg, but lower

than the current workload may improve the quality of representation and ensure court coverage, and at the same time prove to be cost-effective.

Given variances in local court practices, the caseload limits recommended by the indigent defense systems expert are lower than required to provide adequate representation to indigents in Virginia. However, the current caseload averages in existing offices are too high, and additional staff are needed in those offices. The cost of increasing the number of attorneys to the adjusted caseload standard is estimated to be \$1.6 million for FY 1990-91, based on the current salary structure. An additional 26 attorneys, 4 investigators, and 7 clerical staff would be required in existing offices to meet the adjusted caseload standard. For FY 1991-92, eleven additional FTEs would be required (8 attorneys, 1 investigator, and 2 clerical), at a cost in that year of \$2.2 million.

In lieu of adding attorneys in the public defender offices, the Commonwealth may choose to continue to appoint private bar attorneys to handle excess workload in those jurisdictions with public defender offices. However, the FY 1990-91 cost of appointing attorneys to represent defendants who could otherwise be represented by the public defender office would be approximately \$2.5 million. This figure includes the 15% increase in fees approved by the 1989 Session of the General Assembly, but does not include any other increases in fees for court appointed attorneys which may be under consideration. In jurisdictions which already have public defender offices, expanding those offices appears to be an efficient cost-avoidance mechanism.

Compensation Levels in the Public Defender Offices

A review of salary levels, conducted by the Department of Personnel and Training, concludes that compensation for full time public defender attorneys appears to be comparable to the state-paid portion of Commonwealth's Attorneys salaries, and to public defenders in other states. Investigator salaries also favorably compare to similar classified positions in Virginia. However, the ranges for some classifications within public defender offices should be expanded to approximate the recommended 50% spread. Compensation for clerical personnel in the public defender offices appears low in comparison to clerical personnel in Commonwealth's Attorneys' offices.

Although compensation levels compare favorably to similar classified positions, a more formalized personnel plan is needed. Job descriptions should be more specific, and formal salary ranges for all classifications should be developed.

Establishment of a Statewide Public Defender System

Major reasons for previous expansions of the public defender system in Virginia have included decreasing numbers of private attorneys willing to be appointed to indigent criminal cases, declining numbers of experienced criminal counsel, and the belief that the offices were more cost effective in large urban jurisdictions.

Interviews with judges in jurisdictions where private bar court appointments are the primary means of indigent defense revealed a divergent pattern of views towards the public defender offices. Judges in jurisdictions with declining numbers of qualified private attorneys indicated interest in the establishment of a public defender office, while judges in jurisdictions with stable or increasing numbers of available private attorneys did not view the establishment of a public defender office positively.

In some jurisdictions, judges prefer the court appointment system because it affords them the opportunity to hear varying styles of legal representation. These judges voiced a concern that familiarity between judges and attorneys may lead to "legal shortcuts", i.e. that legal arguments which should be brought to the judge would not be brought because the attorney would know in advance whether the judge would approve of the argument or not.

Judges who wished to continue the private bar court appointment system most frequently gave the following reasons:

- A belief that it is the private bar's responsibility to be available for court appointment;
- A belief that public defender offices were not more cost effective than private bar court appointments, given the current reimbursement structure;
- A belief that the current staffing levels in public defender offices would not be adequate to cover the jurisdiction's courts;
- A belief that private bar attorneys provided better quality defense services; and,
- A belief that there would be little opportunity for newly licensed attorneys to gain trial experience without the court appointment system.

The degree to which caseload standards can vary affects the cost effectiveness of public defender offices. If the adjusted caseload limit were adopted by the Public Defender Commission, and a 20% increase in court

appointed attorneys fees were approved by the General Assembly for FY 1990-91, a statewide public defender system could be established at a net cost savings over the 1990-92 Biennium of \$5.9 million in relation to the anticipated cost of continuing private bar court appointments and increasing the fees. An additional 233 positions would be added to the FY 1989-90 MEL of 119 positions for the Public Defender Commission. Additional savings could be expected if public defender offices were established only in those jurisdictions where it is clearly the cost-effective alternative.

Expanding the public defender system to cover the entire state would require broad consensus, including support of the judiciary. Public defenders and members of the judiciary agree that the efficiency of a public defender office depends in large part on gaining the support and cooperation of the judiciary, court clerks and administrators, the private bar, and local law enforcement officials. Court docketing and scheduling is a critical factor in determining the number of defendants which can be served by a public defender office, and those functions are largely out of the control of the office.

Based on interviews with members of the judiciary in localities not served by public defenders, a major effort is needed to gain the support of those judges. The Public Defender Commission can play a more active role in determining the rate of expansion and areas of the state in which expansion of the public defender offices is cost effective. Part of this role should include actively seeking the support of the judiciary and local bar associations in developing a more comprehensive system of indigent defense.

The establishment of public defender offices in those jurisdictions where it would be cost effective appears to be an efficient cost saving mechanism. In addition, if the Commonwealth chooses to continue to increase fees for private bar court appointed attorneys, the establishment of a statewide public defender system becomes more attractive as a cost containment strategy.

Establishing a Statewide Appellate Defender Office

Currently, appeals from indigent defendants are carried through the Virginia court system either by the private bar attorney appointed by the court or by the public defender attorney assigned to the defendant. In recognition of the differing approaches to trial law and appellate law, some states have initiated statewide appellate centers for indigent defendants.

The establishment of a statewide appellate defender office serving all jurisdictions does not appear to be a cost effective solution to the appellate defense issue. Although the issue is clouded to some degree by the low fees paid to private bar counsel, even with additional increases in those fees it would be cheaper to continue the present system. However, the Public Defender Commission may wish to examine the feasibility of regionalizing appellate cases, and attaching regional appellate specialists to one or more existing public defender offices within a region.

Recommendations

Recommendation 1: The Public Defender Commission should develop objective workload standards for public defender attorneys, and use those standards to determine an appropriate staffing level in existing and future offices. The standards should take into consideration types of defendants, numbers of preliminary hearings on felony charges, numbers of misdemeanor appeals, numbers of felony appeals, and numbers of jury trials.

Recommendation 2: The Public Defender Commission, in cooperation with the Office of the Executive Secretary of the Supreme Court of Virginia, should develop a method for tracking the fees paid to court appointed counsel in each jurisdiction, with the goal of recommending areas in which new public defender offices would be more cost effective than continuing the court appointment system.

Additionally, an annual report focused on the activities of the Public Defender Commission, and including potential areas for future expansion, should be developed and shared with the Governor, Senate Finance Committee, House Appropriations Committee, and the Senate and House Courts of Justice Committees.

Recommendation 3: Additional public defender offices should be considered in jurisdictions where they will be less costly than continuing the court appointment system. While issues other than cost efficiency are important, the following ten jurisdictions would have the most impact on reducing indigent defense costs:

Arlington-Falls Church	Norfolk
Prince William-Manassas	Chesterfield-Colonial Heights
Newport News	Henrico
Lynchburg Area	Lee-Scott-Wise
Fredericksburg Area	Tazewell-Buchanan-Russell-Dickenson

Recommendation 4: Should the General Assembly approve additional 20% increases in the fees paid to court appointed counsel in Fiscal Years 1990-91 and 1991-92, the establishment of a statewide public defender system should be strongly considered.

Recommendation 5: The current system of providing appellate counsel to indigent defendants appears to be cost effective in relation to establishing a statewide appellate defense office. However, the Public Defender Commission may wish to examine the feasibility of regionalizing appellate cases, and attaching regional appellate specialists to one or more existing public defender offices within a region.

Recommendation 6: Staff of the Public Defender Commission should collect monthly workload information using numbers of defendants rather than numbers of charges as the basis for determining workload.

Recommendation 7: The Public Defender Commission, with assistance from the Department of Personnel and Training, should develop uniform job descriptions and salary scales and ranges for all its employees.

Recommendation 8: The Public Defender Commission, with assistance from the Department of Criminal Justice Services, should develop a case tracking system for use in all public defender offices. Additionally, the expanded use of office automation systems should be encouraged in all offices.

Recommendation 9: The Public Defender Commission should increase the availability of continuing legal education for public defenders and assistant public defenders, and should examine ways to cooperate with local private bar associations in the development of seminars focused on current issues in the practice of criminal law.

Recommendation 10: The Public Defender Commission should examine the potential use of paralegal staff and clerical staff in lieu of investigative staff in those offices where investigative staff are performing functions other than investigations.

Recommendation 11: The Public Defender Commission and staff can play a more active role in the development of policies related to legal defense strategies, appeals, and in policies related to how court costs are determined for indigent clients. Additionally, central office staff of the Public Defender Commission should play a more visible and active role in training staff in the public defender offices in relation to state policies regarding travel and purchasing, budget development timeframes, and monthly reporting procedures. Finally, input from the public defender offices regarding budget development should be actively sought by central office staff.

1989 SESSION

LD9022555

HOUSE JOINT RESOLUTION NO. 280

Offered January 18, 1989

Requesting the Department of Planning and Budget, with assistance from other agencies and organizations, to study certain indigent criminal defense cost issues.

Patrons—Robinson; Senator: Anderson

Referred to the Committee on Rules

WHEREAS, defendants in criminal cases have a constitutionally guaranteed right to competent counsel; and

WHEREAS, the costs to the Commonwealth of providing constitutionally sufficient counsel to indigent criminal defendants has increased by 167 percent over the last ten fiscal years; and

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

WHEREAS, the Joint Subcommittee found that despite recent increases in the maximum fees for court-appointed attorneys in criminal cases, Virginia still ranks forty-eighth among states in the average amount paid for representation in each case; and

WHEREAS, the Joint Subcommittee found that low fees have resulted in a dwindling pool of attorneys who are willing and able to accept court appointment in criminal cases involving indigent defendants, thereby impairing the ability of the Commonwealth to meet the constitutional mandate under the current system to provide legal representation for indigent defendants; and

WHEREAS, the Virginia Bar Association Special Committee on Indigent Defendants has recommended that the maximum fees allowed to court-appointed counsel be immediately increased by fifteen percent and that further increases be approved to ensure that by 1992 the Commonwealth is allowing court-appointed counsel compensation which approximates the national average; and

WHEREAS, preliminary analysis indicates that, upon implementation of the recommended fee increase, a statewide public defender system will be more cost effective than the court-appointed counsel system; and

WHEREAS, the Virginia Bar Association Special Committee also recommended the creation of a public defender system in those areas of the Commonwealth where it can be shown to be cost effective and where there is a preference or demonstrated need for such a system; and

WHEREAS, the Joint Subcommittee believes a detailed cost analysis is necessary to properly evaluate the indigent defense systems currently used in the Commonwealth and to develop the most cohesive, cost-effective and constitutionally sufficient system for the Commonwealth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Planning and Budget, in conjunction with the Public Defender Commission, the Executive Secretary of the Supreme Court, the Department of Criminal Justice Services and other affected agencies and organizations, initiate a study to develop and recommend a cohesive, cost-effective plan for the operation of a system of legal representation for indigent criminal defendants. The study should include: (i) analysis of the workload, staffing and salary levels in the existing public defender offices and recommendation of appropriate standards and criteria that can be applied in existing and future offices statewide; (ii) comparison of the cost effectiveness of private bar, court-appointed representation versus a public defender system within each judicial circuit; (iii) recommendations for implementation of changes in those circuits where a more cost-effective system is identified; and (iv) evaluation of the feasibility and cost effectiveness of establishing a state appellate defender office

1 The Department shall periodically report on the progress of the study to the Joint
2 Subcommittee Studying Criminal Defense Systems for the Indigent and shall complete its
3 work and make its recommendations by July 1, 1989.
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Clerk of the House of Delegates	Clerk of the Senate

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Study Objectives and Methods

STUDY ORIGIN: House Joint Resolution 280, 1989 Session of the General Assembly.

OBJECTIVES:

- To recommend appropriate workload standards, staffing levels, and salary levels for the existing and future public defender offices;
- To identify judicial circuits in which the establishment of a public defender office would be less costly than providing indigent defense through private bar court appointments; and,
- To evaluate the feasibility of establishing a state appellate defender office.

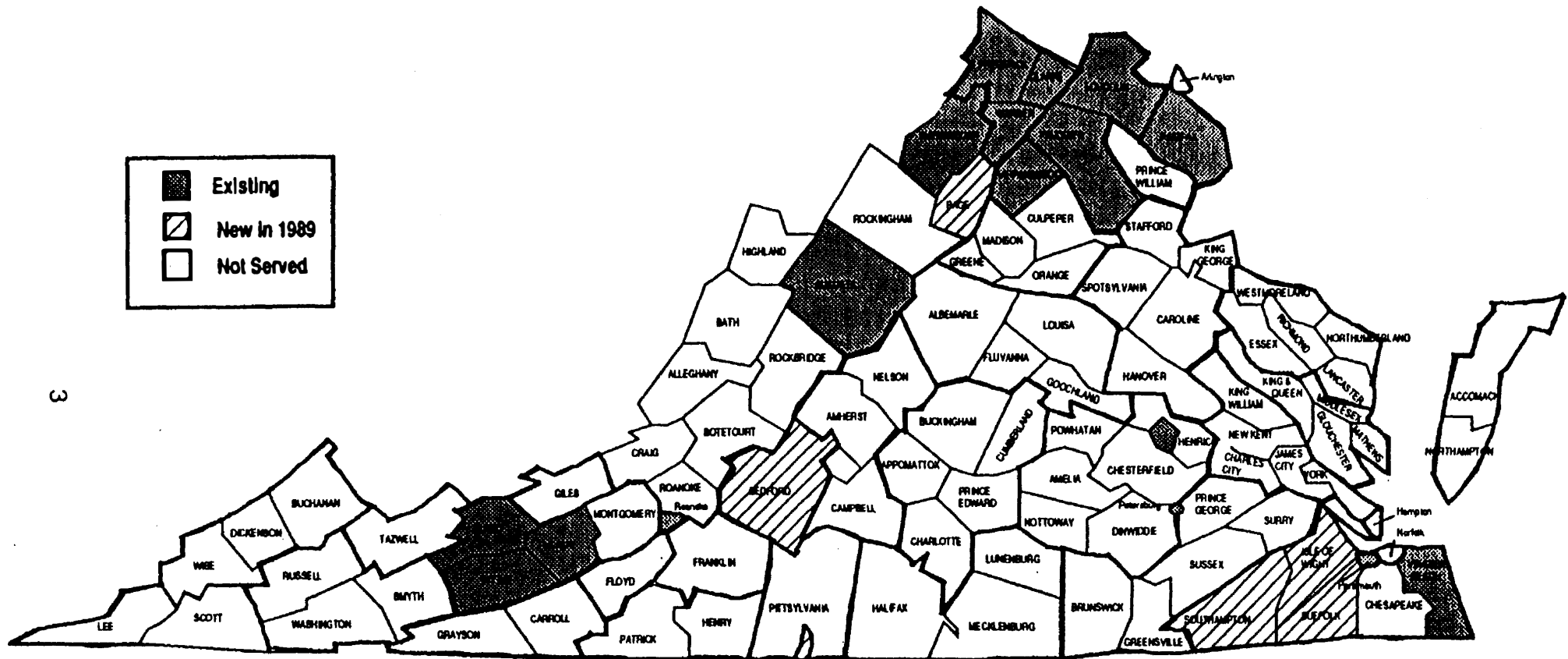
METHODS:

- Analysis of workload measures, staffing patterns, and salary levels in existing public defender offices in Virginia;
- Analysis of cost data in circuits currently using private bar court appointments as the primary method of providing defense counsel to indigents; and,
- Analysis of workload, staffing, and cost information relating to the provision of appellate defense services to indigents in Virginia and other states.

Overview of Public Defender System

- The Public Defender Commission oversees the operations of 11 offices serving 23 jurisdictions across the state. Four additional offices are to be established in FY 1989-90. Of the total state population projected for FY 1990, 38.3 percent will reside in jurisdictions served by public defender offices.
- The scope of services provided in the offices includes assisting the court in determining indigency, providing legal counsel and investigative services to those determined to be indigent, and providing appellate defense up to and including appeals to the Supreme Court of Virginia.
- In FY 1987-88, the Public Defender Commission served a total of 17,342 adult and juvenile defendants.
- A total of \$2,989,520 was appropriated to the Commission in FY 1987-88; at the end of that fiscal year, an unexpended balance of \$244,487 reverted to the General Fund. The cost of providing legal counsel to indigent defendants in that year averaged \$158 per defendant.
- Although the public defender offices are the primary means of providing defense counsel in the jurisdictions in which they are located, private bar attorneys are also appointed to represent indigents when there is a potential conflict of interest for the public defender, or when the public defender caseload reaches the point of overload.
- In jurisdictions where there is no public defender office, indigent defendants are represented by private bar court-appointed attorneys. These attorneys are paid from a portion of the Criminal Fund.
- In FY 1987-88, private bar court-appointed attorneys provided defense counsel to 71,177 indigents (all jurisdictions) at a total cost of \$10.8 million. The per-defendant cost of providing counsel through private bar court appointments was \$151 in that year. However, due to the method of providing reimbursement to those attorneys, some defendants are likely to be "double counted," and the cost per defendant is likely to be higher than noted above.

Areas Served by Public Defender Offices



Areas Served:

Bland
Pulaski
Wythe
Radford

Roanoke City
Augusta
Staunton
Waynesboro

Shenandoah
Warren
Frederick
Winchester

Clarke
Fairfax
Alexandria
Loudoun

Fauquier
Rappahannock
Richmond City
Portsmouth

**Petersburg
Virginia Beach**

New in FY 1989-90:

Danville
Southampton
Suffolk

**Bedford
Page**

Previous Studies Relating to Public Defender Offices

- Previous studies prepared for or conducted by the Joint Subcommittee Studying Alternative Indigent Defense Systems have shown that in some jurisdictions, public defender offices are one way to contain costs associated with indigent defense:
 - Appendix D of House Document 40 (1989) shows that as fees to private bar court appointed counsel increase, the savings shown by public defender offices increase.
 - A 1985 report by Robert Spangenburg, consultant to the American Bar Association and to the Joint Subcommittee, showed that public defender offices would be cheaper to operate than appointing private bar counsel *if* fees paid to private bar counsel were increased in Virginia to approximate the national average fees.
 - One finding of a 1988 report of the Virginia Bar Association cautioned that comparing the costs of private bar court appointments with public defender offices is difficult because of the low fees paid to private bar counsel. However, the report recommended that the General Assembly establish public defender offices in jurisdictions where it could be demonstrated to be cost-effective, and in jurisdictions where there were too few attorneys willing to take court appointments to represent indigents.
 - Respondents to the 1988 survey conducted by the Virginia Bar Association "indicated that counsel often are not fully reimbursed for many of the expenses they incur in a court appointed case."
- A 1986 national survey conducted by the Bureau of Justice Statistics concluded that Virginia ranked 48th out of the 50 states in the per-case cost of providing defense counsel to indigents.
- The 1989 *Report of the Commission of the Future of Virginia's Judicial System* recommended that "Public defender offices should be established in each judicial circuit as the primary means of providing legal representation to indigent defendants in criminal cases." The report also recommended increases in the fees paid to court appointed attorneys "so that experienced and capable criminal defense lawyers will be more likely to accept such assignments."

Workload in Public Defender Offices

- Robert Spangenburg, consultant to the American Bar Association and the Joint Subcommittee Studying Indigent Defense Systems in Virginia, has developed recommended caseload standards for public defenders. Using data provided by the Public Defender Commission, the workload of existing public defender offices was analyzed to determine the numbers of defendants served per attorney.
- The average attorney workload varies significantly among the existing public defender offices. Factors such as court docketing and scheduling vary among jurisdictions, as do the numbers of jury trials, plea bargains, and numbers of witnesses called. One limitation of the methodology used in this study is that work measurement instruments, such as time logs, and time-motion work sampling were not utilized. This study should not be considered a zero-based analysis of staffing needs. Instead, workload was measured using existing statewide data from the public defender system, and the adequacy of the current statewide staffing pattern was compared to standards developed by Spangenburg, judges' perceptions of the current staffing pattern, and Public Defenders' requests for additional staff.
- When compared to the Spangenburg workload standards, and those recommended by the National Legal Aid and Defender Association, Virginia's public defenders are providing counsel to significantly higher numbers of indigent defendants. The following table shows the workload standards recommended by Spangenburg, and the average annual number of defendants per attorney for Virginia public defenders.

Workload in Public Defender Offices

- The projected figures for FY 1991-92 reflect the assumption that the staff in existing public defender offices could serve a workload of that magnitude. It is likely, however, that the majority of cases beyond current workload will be referred to private bar court appointed counsel, and that continued increases in the Criminal Fund will be required.

NUMBER OF DEFENDANTS PER FTE ATTORNEY

<u>Type of Defendant</u>	<u>Spangenburg Standard</u>	<u>Avg Per Virginia Public Defender *</u>	<u>Projected FY 1991-92**</u>
Juvenile	250	443	737
Adult Misdemeanant	400	708	1,231
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* Average caseload based on FY 1987-88 data from jurisdictions with all types of cases. Figures are to be interpreted as "250 juvenile defendants = 1 FTE attorney, 400 adult misdemeanants = 1 FTE attorney", etc.

** Projected by DPB based on data from Virginia Supreme Court, FY 1985-86 through March, 1989.

Staffing in the Public Defender Offices

- The Maximum Employment Level for the Public Defender Commission in FY 1988-89 was 91. This includes the following positions:
 - Central Administration - 5.0
 - Public Defenders - 11.0
 - Assistant Public Defenders - 41.5
 - Investigators - 13.0
 - Clerical - 20.5
- The number of attorneys in the public defender offices varies according to the anticipated workload. The number ranges from two to 10 FTE attorneys, including the chief public defender. Objective caseload standards for staffing public defender offices are not currently used to consider staffing needs. For the FY 1988-90 biennium, seven additional attorney positions were requested for existing offices.
- Each public defender office has at least one full time investigator; this represents a "floor." The ratio of investigators to attorneys varies from one investigator per two attorneys to one investigator per five attorneys. Spangenburg suggests a ratio of one investigator per eight attorneys.
- The amount of clerical support available to the attorneys and investigators varies from one FTE to three FTEs. The ratio of clerical support staff to other staff is 1:3.0 FTEs, compared to Spangenburg's recommended ratio of 1:4 FTEs.

Interviews with Judges

- Major reasons for previous expansions of the public defender system in Virginia have included decreasing numbers of private attorneys willing to be appointed to indigent criminal cases, declining numbers of experienced criminal counsel, and the belief that the offices were more cost-effective in large urban jurisdictions.
- Interviews with judges in jurisdictions where private bar court appointments are the primary means of indigent defense revealed a divergent pattern of views towards the public defender offices. Judges in jurisdictions with declining numbers of qualified private attorneys indicated interest in the establishment of a public defender office, while judges in jurisdictions with stable or increasing numbers of available private attorneys did not view the establishment of a public defender office positively.
- In some jurisdictions, judges prefer the court appointment system because it affords them the opportunity to hear varying styles of legal representation. These judges voiced a concern that familiarity between judges and attorneys may lead to "legal shortcuts," i.e. that legal arguments which should be brought to the judge would not be brought because the attorney would know in advance whether the judge would approve of the argument or not.
- Judges who wished to continue the private bar court appointment system most frequently gave the following reasons:
 - A belief that it is the private bar's responsibility to be available for court appointment;
 - A belief that public defender offices were not more cost-effective than private bar court appointments, given the current reimbursement structure;
 - A belief that the current staffing levels in public defender offices would not be adequate to cover the jurisdiction's courts;
 - A belief that private bar attorneys provided better quality defense services; and
 - A belief that there would be little opportunity for newly licensed attorneys to gain trial experience without the court appointment system.

Interviews with Judges

- Judges in jurisdictions served by public defender offices indicated, however, that the public defender attorneys provided as good or better quality defense services than private bar attorneys. They indicated less concern with the cost of providing defense counsel than with the quality of defense services and availability of qualified criminal defense counsel to provide court coverage.
- Judges indicated in the interviews that they believe the offices have too few attorneys. Judges based this opinion on the numbers of cases heard, numbers of courts not covered by the public defenders' offices, and on experiences of having to wait for attorneys with cases being heard in other courts within the jurisdiction.
- Although the public defender offices theoretically should handle 75% of all indigent cases, in some jurisdictions only 50% to 60% of the indigents are served by the public defender office. In those jurisdictions, caseloads have grown to the point that judges are relying more heavily on private bar court appointments.
- Interviews in jurisdictions served by public defender offices revealed that judges believe that the investigators serve an important function in the public defender office. In some jurisdictions, however, investigators are used to determine indigency status, monitor court proceedings, and perform other tasks not directly related to investigations.

Salary Levels within Public Defender Offices

- Based on a salary survey conducted by the Department of Personnel and Training, current salaries paid to staff within public defender offices are comparable to the state's portion of salaries paid for comparable positions within the offices of Commonwealth's Attorneys.
- In some localities, however, Assistant Commonwealth's Attorneys are paid additional amounts from local funds. In those areas, salaries within public defender offices lag behind comparable positions in the Commonwealth's Attorneys offices.
- Compensation for public defender attorneys in Virginia is comparable to the compensation for public defender attorneys in other states, according to the salary survey conducted by the Department of Personnel and Training.
- There is no set salary scale within the public defender offices, and no identifiable career ladder for assistant public defenders, investigators, or clerical staff.
- The current range of salaries paid to staff in public defender offices is below the 50 percent spread recommended by the Department of Personnel and Training.
- Compensation for part-time public defenders who work out of their own offices does not include an allowance for office space and clerical support.
- Investigator salaries appear to be comparable to salaries paid to investigators in public defender offices in other states.
- Compensation for clerical positions within public defender offices appears to be significantly behind comparable positions within offices of the Commonwealth's Attorneys.

Methodology for Determining Potential Areas for Expansion of Public Defender Offices

- The cost of providing indigent defense through private bar court appointments was compared to the cost of establishing and operating a public defender office in jurisdictions where public defender offices do not already exist and are not scheduled to be opened:
 - Data from the Virginia Supreme Court were used to determine actual caseload levels, cost per type of defendant, and total cost of providing defense services through private bar court appointments.
 - Data from the Public Defender Commission were used to determine the costs of opening and operating a public defender office; also, the current caseload levels in existing public defender offices were used as one estimate of the number of staff required in each office.
 - Estimates of future caseloads were developed from monthly workload data supplied by the Virginia Supreme Court. Separate estimates of growth were developed for Circuit Courts, General District Courts, Juvenile and Domestic Relations and Combined Courts, and appeals (See Appendix A).
 - In all cost analyses, it was assumed that a public defender office could eventually serve 75 percent of the indigent clients in that jurisdiction. The remaining 25 percent would continue to be served by private bar court appointments. The estimate of 25 percent reflects cases in which the public defender would have a conflict (co-defendants) and in which the public defender would have a temporary overload of cases.
- During the 1989 Session, the General Assembly approved an increase of 15 percent in the maximum fee paid to private bar court appointed counsel effective July 1, 1989. In all cost analyses performed, this 15 percent increase was included.

Methodology for Determining Potential Areas for Expansion of Public Defender Offices

- Additionally, the Joint Subcommittee has discussed the need to increase fees paid to court appointed attorneys by 20 percent in FY 1990-91 and by another 20 percent in FY 1991-92 in order to fairly compensate those attorneys. These increases would place Virginia approximately at the median cost per case when compared to the other 49 states.* These two 20 percent increases were included in selected cost analyses performed. See Appendices B and C for additional detail.
- Additional public defender offices would increase the workload in the central office of the Public Defender Commission staff. Although no estimate of the costs of additional commission staff or administrative enhancements has been developed, those costs would marginally reduce any savings associated with changing from a private bar court appointment system to a public defender office.

*Based on a 1986 Bureau of Justice Statistics survey. The report on this survey cautions that sampling error may affect the precision of the exact rankings. Other factors, such as administrative structure and types of cases handled, vary from state to state and may make comparisons across states invalid. However, based on data collected as part of this report, one additional 20% increase in fees paid to court appointed counsel would place Virginia's rank at approximately 34th in the nation; two additional 20% increases in fees paid would put Virginia at approximately the national average cost per case.

Cost Comparisons -- Spangenburg's Workload Assumptions

- For the FY 1990-92 biennium, assuming no further increases in fees to court-appointed attorneys and using Spangenburg's workload assumptions, it would be less costly to continue private bar court appointments in those jurisdictions not served by public defender offices. The cost of adopting the Spangenburg standards in existing offices would be \$3.2 million in FY 1990-91 and \$4.1 million in FY 1991-92.

- If the 20 percent increase in fees is approved for FY 1990-91, eight offices could be added. These eight offices together could save approximately \$306,000 in relation to the estimated cost of private bar court appointments. The cost of increasing the staffing patterns in the existing offices would be approximately \$3.2 million. Therefore, the net cost to the state of adding these offices and increasing staffing in existing offices would be approximately \$2.9 million in FY 1990-91. Offices in the following areas would be added:

- | | |
|---------------------------------|---------------------------------------|
| ○ Chesterfield/Colonial Heights | ○ Montgomery |
| ○ Chesapeake | ○ Upper Piedmont (Circuit 16) |
| ○ Arlington/Falls Church | ○ Salem-Roanoke County |
| ○ Prince William/Manassas | ○ Tazewell-Buchanan-Russell-Dickenson |

- If both 20 percent increases in fees are approved for FY 1990-91 and FY 1991-92, nine offices in addition to the eight noted above could be added. These 17 offices together could save approximately \$774,000 in relation to the estimated cost of private bar court appointments. Adopting the Spangenburg standards in existing offices, however, would cost \$4.1 million; the net cost to the Commonwealth would be approximately \$3.3 million in FY 1991-92. These offices would be added:

- | | |
|-----------------------------|--------------------------------------|
| ○ Norfolk | ○ Williamsburg/York/James City |
| ○ Circuit 10 (Cumberland) | ○ Dinwiddie/Nottoway/Amelia/Powhatan |
| ○ Fredericksburg Area | ○ Northern Neck (Circuit 15) |
| ○ Charlottesville/Albemarle | ○ Carroll/Floyd/Giles/Grayson |
| ○ Lee/Scott/Wise | |

Cost Comparisons -- Current Public Defender Workload Assumptions

- If no further increases in court appointed fees are approved, and future public defender offices are staffed based on current workload, an additional 22 offices could be opened, with a potential savings of \$1.9 million.
 - Chesapeake
 - Newport News
 - Hampton
 - Henrico
 - Fredericksburg Area
 - Arlington/Falls Church
 - Pittsylvania/Franklin
 - Salem/Roanoke Co.
 - Lynchburg Area
 - Lee-Scott-Wise
 - Prince William/Manassas
 - Norfolk
 - Chesterfield/Colonial Heights
 - Williamsburg/York/James City
 - Dinwiddie/Nottoway/Amelia/Powhatan
 - Northern Neck (Circuit 15)
 - Charlottesville-Albemarle
 - Upper Piedmont (Circuit 16)
 - Montgomery
 - Carroll/Floyd/Giles/Grayson
 - Tazewell-Buchanan-Russell-Dickenson
 - Circuit 10 (Cumberland)
- Using current workload averages as a basis for staffing and assuming no further increases in fees to court appointed attorneys, a public defender office could be established in every judicial circuit -- with potential savings of \$1.7 million.
- If the additional fee increase of 20 percent was approved for FY 1990-91, a public defender office could be established in every jurisdiction except Accomack-Northampton, Harrisonburg-Rockingham, and Bristol-Smyth-Washington, at a potential savings of \$3.48 million. Using these same assumptions, a statewide system could be established with a potential savings of \$3.46 million.
- If increases of 20 percent were approved for FY 1990-91 and FY 1991-92, a public defender office could be established in every jurisdiction -- with a potential savings of \$5.9 million in FY 1991-92.

Cost Comparisons -- Adjusted Public Defender Caseload

- The current average public defender caseload deviates significantly from the recommended caseload standards developed by Spangenburg. An adjustment to the current workload standard, lowering the average caseload served by public defenders, could improve the quality of services provided to defendants by allowing public defender attorneys more time to spend on each case.
- While the Spangenburg standards are a worthy goal to attempt to achieve, they are based on a national view. Local judicial practices, docketing, and the degree of cooperation between the Commonwealth's Attorneys, local law enforcement officials, court clerks and administrators, and the public defender offices will impact the number of defendants which can be served by the public defender. In Virginia, a workload average higher than that recommended by Spangenburg, but lower than the current workload may improve the quality of representation and ensure court coverage, and at the same time prove to be cost-effective.
 - Based on the structured interviews with judges, the most pressing need in public defender offices is for additional attorneys.
 - The current workload in some public defender offices has created docketing problems; in at least one jurisdiction, the court is setting cases two months into the future because the public defender attorneys do not have open dates until that time.
 - In several jurisdictions currently served by public defenders, overlap between trials scheduled on the same day has caused delays in beginning the second trial of the day. In some jurisdictions, the delays are exacerbated by travel time between jurisdictions.
 - In some jurisdictions, the staffing levels in the public defender offices do not allow all courts to be covered. Most frequently, Juvenile and Domestic Relations Courts and General District Courts hearing traffic cases are left uncovered.
 - All of the public defenders interviewed as part of this study also indicated the need for additional attorneys. However, the public defenders indicated that fewer attorneys were needed than the level of staffing required by the Spangenburg standards.

Cost Comparisons -- Adjusted Public Defender Caseload

- Adjusting the current caseload to the levels displayed in the following table would result in the need for additional attorneys and other staff in existing and proposed offices. This increase would cost approximately \$1.6 million in FY 1990-91, and \$2.2 million in FY 1991-92.
- If fees to court appointed attorneys were increased by 20 percent in FY 1990-91 and staffing patterns were based on the adjusted workload standard, a statewide public defender system could be established, with a potential savings of \$5.9 million in relation to the cost of increasing fees and maintaining the present system. However, this scenario would cost \$1.4 million more than continuing the present system with no fee increases. This figure includes the cost of adjusting the staffing pattern in existing offices. An additional 233 positions would be added to the Public Defender Commission.
- A second increase of 20 percent in court appointed attorneys fees could save the Commonwealth approximately \$9.3 million in relation to the anticipated cost of private bar court appointments with two fee increases under the present system. In this scenario, all jurisdictions would be covered by a public defender office, and existing offices would have an adjusted staffing pattern to reflect the new workload standard. However, this scenario would cost \$2.5 million more than continuing the present system with no fee increases.

NUMBER OF DEFENDANTS PER FTE ATTORNEY

<u>Type of Defendant</u>	<u>Consultant's Recommendation</u>	<u>Avg Per Virginia Public Defender</u>	<u>Adjusted Workload</u>
Juvenile	250	443	325
Adult Misdemeanant	400	708	520
Class 1 Felon (Capital)	5	9	7
All other Felons	185	328	240
Appellant	20	35	26

Potential Models for Statewide Appellate Defender Office

- An objective of this study is to evaluate the feasibility of establishing a state appellate defender office. The nature of appellate legal services is different from trial services in that issues of guilt or innocence are not the basis of the work. Therefore, some states have chosen to develop specialized organizational models.
- In order to determine potential organizational models for developing a statewide appellate defender office, eight states which have appellate defender systems were surveyed. The states were Maryland, Ohio, Michigan, North Carolina, South Carolina, Indiana, Illinois, and Minnesota. In each state, the office of the appellate defender was contacted to determine staffing, caseload, types of cases, costs, and administrative structure.
- The average caseload per attorney in statewide appellate offices ranges from a low of 20 (Illinois and Minnesota) to a high of 100 per attorney (South Carolina).
- The percentage of all indigent appeals cases represented by the statewide appellate offices ranges from 20 percent (North Carolina) to 97 percent (Maryland).
- The staffing pattern in the offices varies as well:

<u>State</u>	<u>Number Attorneys</u>	<u>Number Invest.</u>	<u>Number Clerical</u>	<u>Cost Estimate</u>	<u>Caseload Per Atty</u>	<u>Cost Per Case</u>
MD	16	2	9	\$1.0 million	50	\$1,250
NC	10	0	4	\$0.7 million	35	\$2,000
SC	8	3	5	\$0.8 million	100	\$1,000
MI	25	0	11	\$2.5 million	40	\$2,500
OH	20	7	35	\$2.8 million	75	\$1,900
IN	35	5	32	\$2.9 million	85	\$1,000
IL	79	30	94	\$5.6 million	20	\$3,700
MN	21	0	8	\$1.2 million	20	\$2,850

Potential Models for Statewide Appellate Defender Office

- Private bar court-appointed attorneys represented 806 indigent appellant defendants in FY 1987-88 at a cost of approximately \$370 per defendant. This cost, however, does not include the cost of producing and copying briefs, which is currently done at the expense of the court. Public defenders served 280 indigent appellants (Court of Appeals and Supreme Court of Virginia) during FY 1987-88. No separate estimate of the cost per appellant is available.
- Based on estimates of future workload accomplished as part of this study, the total appellate workload for FY 1990-91 may reach 1,571 defendants, and the total appellate workload for FY 1991-92 may reach 1,794 defendants.
- Using the current average of 35 appellate defendants per FTE attorney, a total of 45 attorneys would be required to represent indigent appellants in FY 1990-91, and 51 FTE attorneys would be required in FY 1991-92.
- The cost of providing appellate defense services to indigent appellants in a centralized, statewide appellate unit would be approximately \$2.5 million in FY 1990-91, and \$3.1 million in FY 1991-92. The per defendant costs would be \$1,618 in FY 1990-91 and \$1,716 in FY 1991-92.
- Although the per-case cost for a centralized appellate unit would be below the midpoint cost (\$2,475) in comparison to other states which were surveyed, the estimated per-case cost in Virginia would be significantly higher than the present cost.
- In order for a statewide appellate office to approximate the current cost of providing counsel to indigent appellants, 13 attorneys would have to average 126 appellant defendants each. This workload would be significantly higher than that in any of the states surveyed, and significantly higher than the current average workload in public defender offices.
- The establishment of a statewide appellate defender office serving all jurisdictions does not appear to be a cost-effective solution to the appellate defense issue. Although the issue is clouded to some degree by the low fees paid to private bar counsel, even with additional increases in those fees it would be cheaper to continue the present system.

Conclusions

Objective 1: To recommend appropriate workload standards, staffing levels, and salary levels for the existing and future public defender offices.

- Existing public defender offices are handling significantly more defendants per attorney than recommended by a nationally recognized expert on indigent defense systems. Additionally, there is a perception among judges served by public defenders that the offices need more attorneys to provide coverage to courts, reduce waiting time in court, and increase the amount of time given to indigent defendants. Workloads in public defender offices will continue to increase through the 1990-92 Biennium.
- Given variances in local court practices, the caseload limits recommended by the indigent defense systems expert are lower than required to provide adequate representation to indigents in Virginia. However, the current caseload averages in existing offices are too high, and additional staff are needed in those offices. The cost of increasing the number of attorneys to the adjusted caseload standard is estimated to be \$1.6 million for FY 1990-91, based on the current salary structure. An additional 26 attorneys, four investigators, and seven clerical staff would be required in existing offices to meet the adjusted caseload standard.
- In lieu of adding attorneys in the public defender offices, the Commonwealth may choose to continue to appoint private bar attorneys to handle excess workload in those jurisdictions with public defender offices. However, the FY 1990-91 cost of appointing attorneys to represent defendants who could otherwise be represented by the public defender office would be approximately \$2.5 million. This figure includes the 15% increase in fees approved by the 1989 Session of the General Assembly, but does not include any other increases in fees for court appointed attorneys which may be under consideration. In jurisdictions which already have public defender offices, expanding those offices appears to be an efficient cost-avoidance mechanism.
- Compensation for full time public defender attorneys appears to be comparable to the state-paid portion of Commonwealth's Attorneys salaries, and to public defenders in other states. However, the ranges for some classifications within public defender offices should be expanded to approximate the recommended 50 percent spread. Compensation for clerical personnel in the public defender offices appears low in comparison to clerical personnel in Commonwealth's Attorneys' offices.

Conclusions

Objective 2: To identify judicial circuits in which the establishment of a public defender office would be less costly than providing indigent defense through private bar court appointments.

- The degree to which caseload standards can vary affects the cost-effectiveness of public defender offices. If the adjusted caseload limit were adopted by the Public Defender Commission, and a 20 percent increase in court appointed attorneys fees were approved by the General Assembly for FY 1990-91, a statewide public defender system could be established at a net cost savings of \$5.9 million in relation to the anticipated cost of continuing private bar court appointments.
- Public defenders and members of the judiciary agree that the efficiency of a public defender office depends in large part on gaining the support and cooperation of the judiciary, court clerks and administrators, the private bar, and local law enforcement officials. Court docketing and scheduling is a critical factor in determining the number of defendants which can be served by a public defender office, and those functions are largely out of the control of the office.
- Based on interviews with members of the judiciary in localities not served by public defenders, a major effort is needed to gain the support of those judges. Few judges interviewed indicated any interest in changing from the present system of court appointments to the establishment of a public defender office; those who did express interest also indicated that they had a shortage of qualified attorneys willing to serve as appointed counsel to indigent defendants.
- The Public Defender Commission can play a more active role in determining the rate of expansion and areas of the state in which expansion of the public defender offices is cost effective. Part of this role should include actively seeking the support of the judiciary and local bar associations in developing a more comprehensive system of indigent defense.
- Administrative enhancements to the operations of public defender offices are needed. They include computer networking, additional in-service and contracted training, and enhanced budget execution practices. Personnel policies, particularly in relation to formalized job descriptions for public defenders, salary ranges, and qualifications for intermediate and senior level assistants should be developed.

Conclusions

Objective 3: To evaluate the feasibility of establishing a state appellate defender office.

- The establishment of a statewide appellate defender office serving all jurisdictions does not appear to be a cost-effective solution to the appellate defense issue. Although the issue is clouded to some degree by the low fees paid to private bar counsel, even with additional increases in those fees it would be cheaper to continue the present system.

Recommendations

Recommendation 1: The Public Defender Commission should develop objective workload standards for public defender attorneys, and use those standards to determine an appropriate staffing level in existing and future offices. The standards should take into consideration types of defendants, numbers of preliminary hearings on felony charges, numbers of misdemeanor appeals, numbers of felony appeals, and numbers of jury trials.

Recommendation 2: The Public Defender Commission, in cooperation with the Office of the Executive Secretary of the Supreme Court of Virginia, should develop a method for tracking the fees paid to court appointed counsel in each jurisdiction, with the goal of recommending areas in which new public defender offices would be more cost effective than continuing the court appointment system.

Additionally, an annual report focused on the activities of the Public Defender Commission, and including potential areas for future expansion, should be developed and shared with the Governor, Senate Finance Committee, House Appropriations Committee, and the Senate and House Courts of Justice Committees.

Recommendation 3: Additional public defender offices should be considered in jurisdictions where they will be less costly than continuing the court appointment system. While issues other than cost efficiency are important, the following ten jurisdictions would have the most impact on reducing indigent defense costs:

Arlington-Falls Church	Norfolk
Prince William-Manassas	Chesterfield-Colonial Heights
Newport News	Henrico
Lynchburg Area	Lee-Scott-Wise
Fredericksburg Area	Tazewell-Buchanan-Russell-Dickenson

Recommendation 4: Should the General Assembly approve additional 20% increases in the fees paid to court appointed counsel in Fiscal Years 1990-91 and 1991-92, the establishment of a statewide public defender system should be strongly considered.

Recommendations

Recommendation 5: The current system of providing appellate counsel to indigent defendants appears to be cost effective in relation to establishing a statewide appellate defense office. However, the Public Defender Commission may wish to examine the feasibility of regionalizing appellate cases, and attaching regional appellate specialists to one or more existing public defender offices within a region.

Recommendation 6: Staff of the Public Defender Commission should collect monthly workload information using numbers of defendants rather than numbers of charges as the basis for determining workload.

Recommendation 7: The Public Defender Commission, with assistance from the Department of Personnel and Training, should develop uniform job descriptions and salary scales and ranges for all its employees.

Recommendation 8: The Public Defender Commission, with assistance from the Department of Criminal Justice Services, should develop a case tracking system for use in all public defender offices. Additionally, the expanded use of office automation systems should be encouraged in all offices.

Recommendation 9: The Public Defender Commission should increase the availability of continuing legal education for public defenders and assistant public defenders, and should examine ways to cooperate with local private bar associations in the development of seminars focused on current issues in the practice of criminal law.

Recommendation 10: The Public Defender Commission should examine the potential use of paralegal staff and clerical staff in lieu of investigative staff in those offices where investigative staff are performing functions other than investigations.

Recommendation 11: The Public Defender Commission and staff can play a more active role in the development of policies related to legal defense strategies, appeals, and in policies related to how court costs are determined for indigent clients. Additionally, central office staff of the Public Defender Commission should play a more visible and active role in training staff in the public defender offices in relation to state policies regarding travel and purchasing, budget development timeframes, and monthly reporting procedures. Finally, input from the public defender offices regarding budget development should be actively sought by central office staff.

APPENDIX A

INDIGENT DEFENSE WORKLOAD ANALYSIS: NUMBER OF DEFENDANTS BY TYPE OF COURT

Circuit Court

<u>Fiscal Year</u>	<u>Defendants</u>	<u>Percent Change</u>
1986	17,888	...
1987	15,109	-15.5%
1988	17,848	18.1%
1989	19,389	8.6%
1990	19,996	3.1%
1991	21,747	8.8%
1992	23,498	8.1%

General District Court

<u>Fiscal Year</u>	<u>Defendants</u>	<u>Percent Change</u>
1986	15,322	...
1987	14,153	-7.6%
1988	14,233	0.6%
1989	18,590	30.6%
1990	20,449	10.0%
1991	22,494	10.0%
1992	24,743	10.0%

Combined/JDR

<u>Fiscal Year</u>	<u>Defendants</u>	<u>Percent Change</u>
1986	16,171	...
1987	18,157	12.3%
1988	21,207	16.8%
1989	24,301	14.6%
1990	27,786	14.3%
1991	31,538	13.5%
1992	35,290	11.9%

Appeals

<u>Fiscal Year</u>	<u>Defendants</u>	<u>Percent Change</u>
1986	434	...
1987	436	0.5%
1988	806	84.9%
1989	772	-4.2%
1990	1,000	29.5%
1991	1,166	16.6%
1992	1,332	14.2%

APPENDIX B

FINANCIAL DATA ON INDIGENT DEFENSE ISSUES

	FY 1988-89 Appropriation	FY 1988-89 Expenditure	FY 1989-90 Appropriation	FY 1989-90 Expenditure (Original Estimate)	FY 1990-91 Target	FY 1991-92 Target	FY 1990-92 Total
Indigent Defense Component of Criminal Fund	\$11,861,949	\$12,113,978	\$14,246,137	\$14,304,316	\$14,246,137	\$14,246,137	\$28,492,274
Public Defender Commission	<u>\$3,671,407</u>	<u>\$3,508,249</u>	<u>\$4,753,260</u>	<u>\$4,753,260</u>	<u>\$4,753,260</u>	<u>\$4,753,260</u>	<u>\$4,753,260</u>
Total	\$15,533,356	\$15,622,227	\$18,999,397	\$19,057,576	\$18,999,397	\$18,999,397	\$37,998,794
				FY 1989-90 Expenditure (Revised Estimate)	FY 1990-91 Estimate	FY 1991-92 Estimate	FY 1990-92 Estimate Total
Continuing Current Practice ¹							
Indigent Defense Component of Criminal Fund				\$15,365,975	\$17,148,429	\$18,949,014	\$36,047,443
Public Defender Commission				<u>\$4,753,260</u>	<u>\$5,116,171</u>	<u>\$5,506,791</u>	<u>\$10,622,962</u>
Total				\$20,119,235	\$22,264,600	\$24,455,805	\$46,670,405
Cost of One 20% Fee Increase ¹							
Indigent Defense Component of Criminal Fund				\$15,365,975	\$20,578,114	\$22,738,816	\$43,316,930
Public Defender Commission				<u>\$4,753,260</u>	<u>\$5,116,171</u>	<u>\$5,506,791</u>	<u>\$10,622,962</u>
Total				\$20,119,235	\$25,694,285	\$28,245,607	\$53,939,892

¹The "Current Practice" scenario assumes caseload increases will be absorbed by Public Defender Offices, with no additional staff.

FY 1989-90 Expenditure (Revised Estimate)	FY 1990-91 Estimate	FY 1991-92 Estimate	FY 1992 Estimate Total
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Cost of Two 20% Fee Increases ¹

Indigent Defense Component of
Criminal Fund
Public Defender Commission

\$15,365,975	\$20,578,114	\$27,286,579	\$47,864,693
<u>\$4,753,260</u>	<u>\$5,116,171</u>	<u>\$5,506,791</u>	<u>\$10,622,962</u>

Total

\$20,119,235	\$25,694,285	\$32,793,370	\$58,487,655
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Continuing Current Practice -- Case Overload to Private Bar ²

Indigent Defense Component of
Criminal Fund
Public Defender Commission

\$15,365,975	\$19,711,253	\$22,315,105	\$42,026,358
<u>\$4,753,260</u>	<u>\$5,116,171</u>	<u>\$5,506,791</u>	<u>\$10,622,962</u>

Total

\$20,119,235	\$24,827,424	\$27,821,896	\$52,649,320
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Continuing Current Practice -- Increase Staff in Existing Public Defender Offices for Case Overload ³

Indigent Defense Component of
Criminal Fund
Public Defender Commission

\$15,365,975	\$17,148,429	\$18,949,014	\$36,097,443
<u>\$4,753,260</u>	<u>\$6,433,193</u>	<u>\$7,198,478</u>	<u>\$13,631,671</u>

Total

\$20,119,235	\$23,581,622	\$26,147,492	\$49,729,114
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Continuing Current Practice -- Increase Staff in Existing Public Defender Offices to Adjusted Standard for Case Overload ⁴

Indigent Defense Component of
Criminal Fund
Public Defender Commission

\$15,365,975	\$17,148,429	\$18,949,014	\$36,097,443
<u>\$4,753,260</u>	<u>\$6,743,445</u>	<u>\$7,727,011</u>	<u>\$14,470,456</u>

Total

\$20,119,235	\$23,891,874	\$26,676,025	\$50,567,899
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² Requires no additional FTE's in Public Defender Offices.

³ Requires 37 additional FTE's in Public Defender Offices.

⁴ Requires 48 additional FTE's in Public Defender Offices.

	FY 1989-90 Expenditure (Revised Estimate)	FY 1990-91 Estimate	FY 1991-92 Estimate	FY 1990-92 Estimate Total
Statewide Public Defender Adjusted Workload Scenario ⁵ No Fee Increase				
Public Defender Commission, Statewide Indigent Defense Component of Criminal Fund	\$4,753,260 <u>\$15,365,975</u>	\$14,874,053 <u>\$8,574,215</u>	\$17,158,279 <u>\$4,737,254</u>	\$32,032,332 <u>\$13,311,469</u>
Total	\$20,119,235	\$23,448,268	\$21,895,533	\$45,343,801
Statewide Public Defender Adjusted Workload Scenario ⁵ One 20% Fee Increase				
Public Defender Commission, Statewide Indigent Defense Component of Criminal Fund	\$4,753,260 <u>\$15,365,975</u>	\$14,874,053 <u>\$10,289,057</u>	\$17,158,279 <u>\$5,684,7804</u>	\$32,032,332 <u>\$15,973,761</u>
Total	\$20,119,235	\$25,163,110	\$22,842,983	\$48,006,093
Statewide Public Defender Adjusted Workload Scenario ⁵ Two 20% Fee Increases				
Public Defender Commission, Statewide Indigent Defense Component of Criminal Fund	\$4,753,260 <u>\$15,365,975</u>	\$14,874,053 <u>\$10,289,059</u>	\$17,158,279 <u>\$6,821,645</u>	\$32,032,332 <u>\$17,110,702</u>
Total	\$20,119,235	\$25,163,110	\$23,979,924	\$49,143,034

⁵ Adjusted Workload Scenarios assume public defenders will handle 50% of the workload in FY 90-91 and 75% in FY 91-92.

APPENDIX C

INCREASES IN MAXIMUM COURT APPOINTMENT FEES

<u>Type of Charge/ Court</u>	<u>FY 1988-89 (base)</u>	<u>FY 1989-90 (15%)</u>	<u>FY 1990-91 (20%)</u>	<u>FY 1991-92 (20%)</u>
General District (any charge)	\$ 86	\$100	\$120	\$144
Circuit Court (misdemeanors)	\$115	\$132	\$158	\$190
Circuit Court (under 20 years)	\$230	\$265	\$318	\$382
Circuit Court (over 20 years)	\$500	\$575	\$690	\$828
Circuit Court (capital)	no max	no max	no max	no max

