

**INTERIM REPORT OF THE
VIRGINIA STATE CRIME COMMISSION**

Indigent Defense Commission

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



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COMMONWEALTH of VIRGINIA

VIRGINIA STATE CRIME COMMISSION

Senator Kenneth W. Stolle
Chairman

Delegate David B. Albo
Chairman Elect

January 8, 2003

TO: The Honorable Mark Warner, Governor of Virginia

And

Members of the Virginia General Assembly

The 2002 General Assembly, through Senate Joint Resolution 43, requested the Virginia State Crime Commission study the potential use of an indigent defense commission in the Commonwealth to improve the quality and efficiency of the state's indigent defense services.

Enclosed for your review and consideration is the first year interim report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledges their input into this report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Stolle', written over a faint circular stamp.

Kenneth W. Stolle
Chairman

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I. Authority

The *Code of Virginia*, §30-156, authorizes the Virginia State Crime Commission to study, report and make recommendations on all areas of public safety and protection. Additionally, the Commission is to study matters “including apprehension, trial and punishment of criminal offenders.” Section 30-158(3) provides the Commission the power to “conduct studies and gather information and data in order to accomplish its purposes as set forth in §30-156. . .and formulate its recommendations to the Governor and the General Assembly.”

Using the statutory authority granted to the Crime Commission, the staff conducted a study on whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth’s indigent defense services.

II. Executive Summary

During the 2002 Session of the Virginia General Assembly, Senator Kenneth W. Stolle introduced Senate Joint Resolution 43 (SJ43)¹ and Delegate Terry G. Kilgore introduced House Joint Resolution 94 (HJ94),² directing the Virginia State Crime Commission to establish an indigent defense study committee to study and examine whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth’s indigent defense services. Specifically, the resolutions direct the committee to study various models of statewide indigent defense commissions as used by other states and recommend whether such a commission is appropriate for Virginia, and if so, recommend the organizational structure for such an agency. Additionally, the committee shall examine whether a statewide commission should be endowed with any or all of the following responsibilities: to determine the appropriate mechanism for delivering indigent defense services within a given jurisdiction; to set training and other quality control standards for indigent defense counsel; to fund and provide specialized training for indigent defense counsel; to set standards for attorneys to be appointed to represent indigent criminal defendants; to set caseload standards for indigent defense counsel; and, to oversee the Commonwealth’s expenditure of funds paid to private indigent defense counsel and to expert witnesses. The Crime Commission must report its written findings and recommendations to the Governor and the 2004 Session of the General Assembly. As this is the interim report, no recommendations have been made at this time.

III. Methodology

The Virginia State Crime Commission utilized four research methodologies to examine SJ43/HJ94. First, staff convened an indigent defense study committee consisting of representatives of the various agencies and organizations concerned with

¹ Senate Joint Resolution 43 (2002). See Attachment 1.

² House Joint Resolution 94 (2002). See Attachment 1.

indigent criminal defense in the Commonwealth. Specifically, the study committee consists of representatives from the: Virginia College of Criminal Defense Attorneys; the National Association of Criminal Defense Attorneys; the Executive Office of the Virginia Supreme Court; the Criminal Law Section of the Virginia Trial Lawyers Association; the Public Defender Commission; the judiciary; the Criminal Law Section of the Virginia Bar Association; private defense attorneys; Commonwealth's Attorneys; and, academia. The study committee has met on various occasions to analyze the objective-driven research conducted by Crime Commission staff. Second, staff conducted a national literary review on recent studies involving the use of caseload standards, minimum training and oversight of indigent defense attorneys, both in the private and public sector, as well as various means for the delivery of indigent defense services. As part of this background review, staff also compared and analyzed the certification and review process for Virginia's guardian ad litem (GAL's). Third, other states' policies were examined to determine what, if any, eligibility standards were in place for attorneys representing indigent clients. Fourth, staff conducted a 50-state analysis of statutory provisions detailing the organizational structure for the delivery of indigent defense services. Specifically, staff reviewed the training and oversight of indigent defense services nationwide, the funding mechanisms, and use of standards for indigent attorneys nationwide.

IV. Background

A study conducted by the Virginia State Crime Commission pursuant to House Joint Resolution 178 (HJ 178) revealed wide disparities between judicial circuits as to the minimum levels of experience needed before an attorney would be assigned to court appointed cases.³ While some judges indicated that they would only assign cases to an attorney whom they felt could handle the work, others indicated that they assigned cases to whomever asked, regardless of the level of difficulty of the case or the experience of the attorney. Additionally, a literature review and survey analysis indicated problems with attorneys failing to maintain minimal standards of quality in their representation of indigent clients. Furthermore, while the Supreme Court of Virginia and the Public Defender Commission maintain a list of attorneys who are deemed qualified to be appointed to capital cases, there is currently no requirement in the *Code of Virginia* that judges appoint attorneys from this list in capital cases. Other studies and reports have indicated that this may have impacted negatively on the quality of defense provided in these cases. Also, there are no limits set forth in the *Code of Virginia* as to the number of capital cases an attorney can be assigned to at one time. Similarly, there are no fixed policies in place at the Public Defender Commission as to the number of cases that an Assistant Public Defender can be expected to handle at any given time. Handling too many cases undoubtedly affects the quality of representation.

It is the role of the judiciary to ensure that Court Appointed Attorneys are competent to handle those cases which are assigned to them. While competency of counsel is not specifically addressed in the *Code of Virginia*, it is indicated indirectly and

³ Report of the Virginia State Crime Commission, Indigent Defense, House Document 32 (2002).

through case law. There are no other ready mechanisms, other than the oversight of judges, to provide any type of quality review for Court Appointed Attorneys. Although the Virginia State Bar regulates itself and has the authority to revoke an attorney's bar license for violations of the Virginia Rules of Professional Conduct, this is a different standard than one of quality representation. In some cases, an attorney might provide less than effective assistance of counsel to his client, and yet not violate any of the ethical rules promulgated by the Bar. However, in other cases, an attorney might breach his ethical duties, but still provide his client with an excellent defense.

Similarly, oversight of the Assistant Public Defenders' performance is the responsibility of the appointed Public Defenders and the Public Defender Commission. Currently there are no mandatory caseload limits for Assistant Public Defenders. A 1990 study conducted by the Virginia Department of Planning and Budget derived what were deemed to be acceptable caseload figures for Virginia's Assistant Public Defenders. However, interviews with both the staff of the Public Defender Commission and individual Assistant Public Defenders indicate that while this study has been used for the purpose of staffing projections, it has not led to the adoption of any formal work limits within offices.

Statutory provisions have been enacted in capital cases to help ensure a greater degree of reliability in the competence of appointed counsel. The *Code of Virginia* §19.2-163.7 provides that in capital cases, the judge "shall appoint one or more attorneys from the list of lists established by the Supreme Court and the Public Defender Commission." The *Code* requires that the list include attorneys who are deemed to be ... "qualified to represent defendants charged with murder or sentenced to death"... demonstrate, among other things:

- Experience in felony practice at trial and appeal;
- Experience in death penalty litigation;
- Current training in death penalty litigation; and,
- Demonstrated proficiency and commitment to quality representation.

However, there are no limits on the number of capital cases to which an attorney can be appointed at one time.

While *Virginia Code* §19.2-163.7 sets forth a statutory framework for ensuring competent capital defense counsel, its intended purpose may be impacted by a conflict with *Virginia Code* §19.2-163.8(C). Section 19.2-163.8(C) subsequently allows a judge of the Circuit Court to ... "appoint counsel who is not included on the list or lists." In addition, it should also be noted that the Supreme Court of Virginia and the Public Defender Commission rely upon self-reporting of eligibility; thus, no independent verification is made to ensure that applicants have honestly stated their qualifications.

Previous studies and court cases have found that the quality of representation for capital defendants in Virginia has at times failed to meet minimum standards of

competence. In Williams v. Taylor,⁴ the United States Supreme Court reversed, on the basis of constitutionally ineffective assistance of counsel, a Virginia conviction where the death penalty had been imposed. Writing for the majority, Justice Stevens noted:

The record establishes that counsel did not begin to prepare for that phase of the proceeding [sentencing] until a week before trial. They failed to conduct an investigation that would have uncovered extensive records...not because of any strategic calculation but because they incorrectly thought that state law barred access to such records...Counsel failed to introduce available evidence that Williams was "borderline mentally retarded" and did not advance beyond sixth grade in school. They failed to seek prison records recording Williams' commendations for helping to crack a prison drug ring and for returning a guard's missing wallet, or the testimony of prison officials who described Williams as among the inmates "least likely to act in a violent, dangerous or provocative way." Counsel failed to return the phone call of a certified public accountant who had offered to testify that he had visited Williams frequently when Williams "seemed to thrive in a more regimented and structured environment," and that Williams was proud of the carpentry degree he earned while in prison.

Also mentioned in the decision was the fact that one of the witnesses called was a neighbor who "had not been previously interviewed by defense counsel, but was noticed by counsel in the audience during the proceedings and asked to testify on the spot." Finally, "the weight of defense counsel's closing...was devoted to explaining that it was difficult to find a reason why the jury should spare Williams' life."

Other capital cases from Virginia have evoked similar comments from the Federal Judiciary:

- Chichester v. Pruett: United States District Court Judge, Robert E. Payne, described the direct appeal brief filed in a death penalty cases as "a shameful disgrace;" and,
- Stout v. Thompson: United States District Court Judge, James C. Turk, described counsel's "deficient performance" as amounting to "virtually a complete absence of representation."

In addition, habeas counsel for the defendants in six capital cases missed filing deadlines for the Virginia Supreme Court.

A recent report found that trial attorneys, who represented capital defendants receiving a death sentence, were six times more likely to be the subject of bar disciplinary proceedings than other attorneys.⁵ Additionally, in one of every ten trials resulting in a

⁴ Williams v. Taylor, 529 U.S. 362 (2000).

⁵ Bureau of Justice Assistance and the Office of Justice Programs, Report of the National Symposium on

death sentence, an attorney for the defendant would later lose his law license.⁶ Furthermore, interviews with criminal justice professionals, analysis of survey findings and reports in articles and the press addressed the topic of quality of counsel. In particular, this issue was the reason for Court Appointed Counsel being replaced in a recent court case in Virginia.⁷

The number of indigent clients served by Court Appointed Counsel has increased 40% in the past seven years from 134,591 in FY94 to 188,499 in FY00.⁸ Public Defender Offices also show an increase in workload associated with indigent clients in recent years. While the Public Defender Commission tracks criminal charges, as opposed to defendants, they too have had an increase in the number of charges handled statewide. From FY96 to FY00 the number of criminal charges increased 41% from 101,030 charges to 142,733 charges.

V. 2002 Study Activities

During 2002, the Indigent Defense Study Group met on various occasions to discuss whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth's indigent defense services. As a starting point, the study group reviewed the survey findings from a Crime Commission survey of Virginia attorneys and judiciary included in the HJ178 Virginia State Crime Commission Report on Indigent Defense (2002).⁹ The survey findings pinpoint what criteria Virginia attorneys and judiciary would like included in any statewide standardization for indigent defense attorneys. The following criteria were reported from the survey:

- CLE training prior to eligibility (78%);
- Orientation to local court procedures (70%);
- Prior courtroom experience (65%);
- Maintaining a formal district list of credentialed attorneys (54%);
- Formal review of credentials by Judge (49%);
- Formal written application by attorneys who wish to be considered for court appointments (43%);
- Maintenance of a supplemental list of attorneys available for court appointed work maintained by the Supreme Court (29%); and,
- Formal interview of applicant by Judge before becoming eligible (26%).

With these criteria as a guide and as a point of comparison for the standardization of indigent defense attorneys, the study committee first analyzed the criteria Virginia uses to certify GAL's. Specifically, appointment as a GAL requires an initial seven hour

Indigent Defense, Improving Criminal Justice Systems Through Expanded Strategies and Innovative Collaborations (February 1999).

⁶ Virginia State Crime Commission Report, Indigent Defense, House Document 32 (2002).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

Mandatory Continuing Legal Education (MCLE) training and six additional hours of Continued Legal Education (CLE) training every two years. The certificate of attendance for the initial CLE course acts as an application for becoming a GAL. Additionally, a GAL must be in good standing with the Virginia State Bar and have completed within a three year period either: participation as a third year law student in four juvenile and domestic relations cases in district court, or have assisted a certified GAL in two cases and have a reference from a judge or GAL. The Supreme Court of Virginia checks every GAL renewal with the Virginia State Bar to ensure the attorney is in good standing.

Overview of Statewide Indigent Defense Systems

Again, with the HJ 178 survey findings as a guide, the study committee analyzed how other states include these criteria in their indigent defense systems. This analysis revealed that the organizational structure, as well as the responsibilities delegated to indigent defense systems varies greatly across the states. According to a 2001 study conducted by the Spangenburg Group,¹⁰ 42 states and the District of Columbia have some type of statewide indigent defense system.¹¹ Fourteen of these states classify their indigent defense system as an executive agency, 12 as a judicial agency, and 16 as an independent body. Fifty-seven percent of states with statewide commissions provide oversight over all indigent defenses attorneys, including Public Defenders, Assigned Counsel, and Contract Counsel. Thirty-one percent of states, including Virginia, have a statewide commission which oversees only Public Defenders. Twelve percent of states have a statewide commission that handles only Appellate issues. Fifty-two percent of states with a statewide commission allow the commission to determine the type of counsel used at the local level.¹²

Examples of the Organizational Structure and Responsibilities Delegated to Statewide Indigent Defense Systems

No two states have organized their indigent defense system in the same manner. Each state has tailored its system to meet its specific needs. For example, Colorado has two agencies in the judicial branch dedicated to indigent defense. The Colorado Office of the State Public Defender Commission establishes regional offices, employs, and sets compensation. The Colorado Office of Alternate Defense Counsel, on the other hand, provides representation in conflict cases by contracting with licensed attorneys and investigators.

In contrast, the Massachusetts Committee for Public Counsel Services oversees all indigent defense attorneys in Massachusetts. The Committee establishes standards for both its public counsel and private counsel divisions. Additionally, the Committee is responsible for establishing uniform standards of indigency, as well as establishing

¹⁰ Spangenburg Report, available at http://www.nlada.org/Defender/States/state_structure.

¹¹ Alabama, Arizona, California, Florida, Idaho, Pennsylvania, South Dakota, and Utah have no statewide system.

¹² See the Virginia State Crime Commission Comparison Chart in attachment 2 for a detailed comparison of these statistics.

guidelines for the training and for the qualification and removal of counsel in the public and private divisions of the indigent defense system.

The Louisiana Indigent Defender Program goes even further and is quite comprehensive in its responsibilities. For example, it establishes uniform standards and guidelines for the statewide indigent defense program. In order to make the delivery of services more accessible to all areas of Louisiana, the Indigent Defender Program subdivides the state into regions and selects the most appropriate system for delivery in each region. It also selects each full-time public defender. Policy for the Expert Witness/Testing Fund and The District Assistance Fund is set statewide in this office, as well as the eligibility standards and guidelines for the district defender boards who receive the Expert Witness/Testing and District Assistance Funds.

Another example of the comprehensive responsibilities and organizational structure of statewide indigent defense systems is the Indiana Public Defender Commission. This commission allows localities to maintain control of indigent defense offices as long as the localities comply with the statewide standards. In death cases, the state provides 50% reimbursement to counties if the counties appoint two lawyers for every case and those lawyers complete a minimum number of CLE credits. There is no spending cap for the attorneys and the locality must pay the lawyer \$90 per hour.

In non-capital cases, the state of Indiana reimburses counties up to 40%. In order to receive the reimbursement funds, the CEO and the judges of each county must appoint an independent board to oversee representation. No cap is required, but payments to indigent defense attorneys must exhibit parity with district attorneys.

As for the other criteria, approximately 10 of the 42 states with statewide indigent defense systems provide a type of training for indigent defense counsel. For example, Arkansas provides training for public defenders. Illinois provides trial level training, and Michigan and North Carolina provide CLE training for attorneys on the appointment list.

The funding mechanisms differ throughout the statewide systems. The Georgia Indigent Defense Council administers state funds to local public defender programs that comply with their recommended standards and guidelines. The Nevada State Public Defender establishes a system for all counties who choose to be a part of the state system. The state public defender office oversees the county activities and prepares the annual budget.

Examples of Eligibility Standards for Indigent Defense Attorneys

After the Indigent Defense Study Group reviewed examples of the organizational structure of various indigent defense systems, it turned to examining examples of eligibility standards for indigent defense attorneys. Following the mandate of SJ43/HJ94, they analyzed various models to determine how various systems ensured only qualified attorneys represented indigents. Again, the analysis revealed wide discrepancy in how states employed eligibility standards.

The Massachusetts Committee for Public Counsel Services (CPCS) does not require any initial CLE training prior to an attorney becoming eligible to represent indigent clients; however, it requires eight hours per fiscal year for recertification.¹³ It also does not orient new attorneys to local court procedures, but requires different levels of courtroom experience dependant on the seriousness of the crime.¹⁴ The CPCS maintains a formal district list of credentialed attorneys available to represent clients and the Supreme Court does not maintain a supplemental list of attorneys available for court appointed work. Before an attorney's name is placed on the list, the CPCS Chief Counsel reviews the attorney's credentials. Additionally, attorneys who wish to be considered for court appointments must submit a written application to the CPCS, but no formal interview takes place.

The Indiana Public Defender Commission does not provide training, but conducts CLE's directed at public defenders. Indiana's system is voluntary in that counties are reimbursed for their indigent defense expenses only if they meet the required standards. In each claim for reimbursement, the counties have to send in certification that the attorneys meet the standards.¹⁵ The Indiana Public Defender Commission specifies different levels of experience that is dependant on the seriousness of the crime.¹⁶ The Commission maintains a formal district list of credentialed attorneys for conflict cases, as well as a separate list of attorneys qualified to handle death penalty cases, and the Supreme Court does not maintain a separate list of attorneys available to represent indigents.¹⁷ Attorneys have to submit a form to be appointed in death penalty cases, otherwise it is the attorney's word that he/she meets the standards. Some judges may require affidavits in those cases and the Commission recommends establishing a paper trail. In some counties, the Judge conducts a formal interview of the attorney before adding him/her to the list.

Specifically, before an attorney can represent an indigent on a murder charge, the attorney must be an experienced and active trial practitioner with at least three years experience in criminal litigation and have prior experience as lead or co-counsel in no fewer than three felony jury trails that were Class C felonies or higher that were tried to completion. Before an attorney can represent an indigent in a Class A or B felony case, the attorney must have two years criminal litigation experience and have been lead or co-counsel in two felony jury trials that were tried to completion. To be appointed to a Class C felony case, the indigent defense attorney must have one year criminal litigation experience or have been lead or co-counsel in three criminal jury trials that were tried to completion. At a minimum, to represent an indigent defendant, an attorney must have been lead or co-counsel in one case of the same class or higher that was tried to completion. Appellate cases requiring additional training must be approved by the Indiana Public Defender Commission.

¹³Committee for Public Counsel Services available at <http://www.state.ma.us/cpcs>. See also Mass. Gen. Laws Ann. ch. 211D, § 6 (2002).

¹⁴ *Id.*

¹⁵ See generally Ind. Code Ann. § 33-9-13-1 (2002).

¹⁶ *Id.*

¹⁷ *Id.*

In contrast to these specific eligibility standards, the New Mexico Public Defender Department establishes guidelines, not standards, for attorney qualification and performance in the representation of indigent clients. Attorneys who violate these guidelines are not subject to any disciplinary action.¹⁸

The indigent defense system in Georgia does not require training or specific experience prior to eligibility. However, Georgia requires all trial level attorneys to have a minimum amount of training and experience before representing any client at trial. Specifically, no attorney may appear as a sole or lead counsel in a criminal trial until he/she has obtained nine litigation experiences, filed an affidavit with the State Bar and paid an accompanying fee. Georgia defines a litigation experience as participation in a trial under the direct supervision of a Bar member, observation of an entire trial, or observation of a State Bar approved video tape of an entire trial under the direct supervision of a Bar member. Every trial attorney must complete 12 CLE hours that include three hours in a specific area of trial practice, one hour in professionalism, and one hour in ethics. For capital cases, an attorney must complete ten hours of death certified training every year regardless of the attorney's level of experience and send a certification of the attorney's experience.

Overview of Programs Providing Indigent Defense Representation in Federal Cases

Pursuant to the Criminal Justice Act of 1964 (18 USC § 3006 A), the Defender Services Division of the Administrative Office of the United States Courts oversees spending for Federal defendants through two types of programs: Panel Attorneys and either Federal Defender Organizations or Community Defender Organizations. Panel Attorneys are appointed by the Court from a list of private attorneys on a case-by-case basis. At the end of 1998, all 94 US District courts used such panels, including 20 districts in which only Panel Attorneys were used. Community Defender Organizations, on the other hand, are incorporated, nonprofit legal service organizations receiving grants from the Administrative Office of the US Courts. At the end of 1998, 63 Federal or Community Defender Organizations served 74 of the 94 US district courts. Finally, Federal Defender Organizations are staffed with Federal Government employees and headed by a public defender appointed by the court of appeals. The Panel Attorney and FDO programs can represent defendants at any time from arraignment through appeal and during supervised release. The Criminal Justice Act requires each US district court, with the approval of the judicial council of the circuit, to implement a plan for indigent representation that meets the guidelines set forth in the Criminal Justice Act. Each District then manages the approved plan.

Overview of Statewide Commission Questionnaire Results

Additionally, Crime Commission staff conducted structured telephone surveys with other state commissions who have oversight of Public Defenders, Assigned Counsel,

¹⁸ See generally N. M. Stat. Ann. § 31-15-4 (2002).

and Contract Attorneys.¹⁹ The structured phone surveys addressed the issues of administrative oversight, operational application, financial impact, programmatic components, and programmatic evaluation. Following the mandates of SJ43/HJ94, the Indigent Defense Study Committee analyzed various models to determine how various systems ensured only qualified attorneys represented indigents. Again, the analysis revealed wide discrepancy in how states managed their indigent defense attorneys.

The Kentucky Department of Public Advocacy has no mechanism in place for monitoring attorney compliance with the criteria established by the department.²⁰ Kentucky does have a self-contained training branch that sponsors aggressive training programs. Specifically, indigent defense attorneys must attend a series of training seminars for three years, including orientation and a specialty. Kentucky is divided into five regions with regional managers in each who oversee the programs and all the attorneys (contract and full-time). The managers oversee court performance, complaints, provide oversight, and ensure the standards are followed. The standards are the same for all indigent defense attorneys, whether public defenders, contract, and court-appointed. The Kentucky Department of Public Advocacy staff feels that the standards they enforce have had no impact on the availability of attorneys willing to represent indigent clients.

Public Defenders handle most cases. If a conflict exists, they turn to a contract attorney. Appellate and habeas litigation is handled through a statewide office. If an attorney is not performing, the attorneys are afforded the same rights as any other state employee on the merit system. However, contract attorneys have a 30-day termination clause. The Kentucky Department of Public Advocacy does not report attorney violations to the Kentucky State Bar. This Department is not a reporting agency.

The budget shortfall in Kentucky has affected the department in that salaries are less than average. As a result, they have a less qualified pool of applicants. Additionally, they are forced to operate under a strict "no paid overtime" policy and "no out of state travel" policy. The Kentucky Department of Public Advocacy oversees payment and compensation of the indigent defense attorneys. There are investigators for each field office and experts are paid out of the agency budget based on need. A court order is required for any expert. The Department handles over 100,000 cases per year, employing 250 attorneys and 70 staff.

The North Carolina Office of Indigent Defense Services oversees all indigent defense attorneys and has broad power by law.²¹ The only thing they are not authorized to do is to appoint the public defender. The Office established criteria for indigent defense attorneys based on the type of crime. They have a capital case roster that includes a lead roster and an associate roster that each requires certain criteria for the attorneys. They also have an appeal roster with separate criteria. Additionally, for each roster, an appeal system has been implemented. For example, if an attorney feels he/she isn't getting chosen, or is removed from the roster unfairly, he/she can appeal the

¹⁹ Virginia State Crime Commission Telephone Questionnaire. See Attachment 3.

²⁰ See generally KY. Rev. Stat. Ann. § 31.010 (2002).

²¹ N.C. Gen. Stat. § 7A-498 (2002).

decision. Although the Office has the authority to implement criteria for trial level attorneys, they left the system that was in place prior to the creation of the Office in 2001. Practically speaking, the local bar enforces criteria for all trial attorneys. There are no specific training requirements for trial level other than what is required to maintain a license. The Office, however, does assist with training. They have not noticed an identifiable impact the standards and criteria have had on the availability of attorneys willing to represent indigent clients. They did a survey when they were debating between a flat fee schedule and an hourly rate, and the attorneys overwhelmingly wanted an hourly rate set at \$65.

The North Carolina Office of Indigent Defense Services can remove attorneys from the roster. However, they have established a Capital Defender Office and are in the process of hiring regional capital defenders. These offices monitor the attorneys and guide them through the process to ensure quality representation. They also have a review and appeal process. The Office does not notify the North Carolina State Bar if an attorney has been removed from the list, nor has a disciplinary problem. Instead, they work closely with the local bars. Conflict cases are dealt with at the local level. Trial attorneys follow the original system where the clerk maintains the list. They now have an appeals mechanism in place that was not there before the establishment of the Office of Indigent Defense Services. Where a public defender office exists, the public defender office oversees appointments and has a plan for dealing with conflicts. The corresponding Indigent Services Commission does not worry about conflicts because they are just the appointing agency and are not involved in the actual cases.

The North Carolina Office of Indigent Defense Services has been negatively affected by their current budget concerns. They have had to delay payments to attorneys due to monthly caps, and have been subject to budgetary revisions. However, they have been recently making the case that they need to be exempted from state budget cuts because the attorneys are state contract employees. This argument seems to be working because they are the only agency that avoided cuts this last session.

The Office oversees payment and compensation, as well as funds experts and investigators for capital and appeal attorneys. The attorneys apply directly to the Commission and can appeal if they are denied. The Office also instituted a standard hourly rate and it has the authority to direct payment for capital and appeals cases, but has kept the original process for the trial attorneys.

The Office has a five person staff and a 13 member commission. The creation of the Office stemmed from hard work and vision. Specifically, the Office followed the vision established by the Commission study. However, practically speaking, the Director worked with a university professor to develop the Office bylaws, rules, and procedure, and the CFO worked with the State in developing the budget. The North Carolina Office of Indigent Defense Services is a very new office, so its staff does not know if it is successful. However, they believe the state legislature likes the Office because the Office survived the latest rounds of budget cuts. On the other hand, critics of the Office are a segment of vocal attorneys who basically do not like change or oversight. Public

Defenders were initially cautious but they improved. The Commission holds meetings often to encourage communication and compromise. As a result, the majority of critics now approve of the Office of Indigent Defense Services because they realize they now have an advocacy voice.

The Ohio State Public Defender Commission hires the State Public Defender, and establishes rules for the county indigent defense systems.²² The Commission doles out money that is appropriated by the State. They reimburse counties up to 50%, but with the current budget crisis reimbursement has been reduced to 30%. Experts and investigators are included in reimbursement funding. The current budget shortfall in Ohio has not affected the quality of indigent defense representation, but has affected the quantity. For example, when an attorney leaves, the Commission cannot replace him because they are in a hiring freeze. Therefore, the office is shrinking and the attorneys cannot handle the cases. The County has to pay the entire cost by hiring local attorneys, who meet the minimum standards to be an attorney in Ohio. However, the budget crisis never affects capital cases because they are given priority.

The Ohio State Public Defender Commission has juvenile, prison, direct appeal, and capital divisions. The Commission has eligibility guidelines regarding contracts with municipalities, timelines for cases and what kind of attorney can take what kind of case. They also have a certification process for death cases which is always followed. The Commission does not monitor attorneys, but they will not reimburse the counties if the attorneys are not in compliance.

Ohio counties can set up whatever indigent defense system they choose and the counties appoint the attorneys. Counties with a local Public Defender Office also have a local Public Defender Commission. The Commission requires separate training for capital cases. Some larger counties and some courts, such as juvenile, also require special training to get on the court appointed list.

The Ohio Public Defender Commission has nine members. Critics of the Commission are the Ohio Attorney General. However, the system has been in place since the 1970's and there has been no real opposition.

The Oregon Public Defense Services Commission has separate standards and training for the different categories of attorneys.²³ The Commission sets minimum requirements, but the public defender offices have their own criteria for hiring. The Commission is structured in such a way that it has a direct legal services division which handles appellate litigation and habeas. Separate training and eligibility is required for attorneys in this division. The Commission plans to formulate a policy for sanctioning attorneys who fail to meet the criteria, but as a new agency, they have not implemented such a system at this time. The Commission oversees payment and compensation for indigent defense attorneys. Contract attorneys are paid on a salary basis. Assigned counsel is paid an hourly rate, whereby they send in vouchers to the Commission in

²² Ohio Rev. Code Ann. § 120.01 (Anderson 2002).

²³ OR. Rev. Stat. § 151.213 (2001).

return for payment. The Commission also funds the delivery of experts and investigators.

Neither the Commission nor the local jurisdictions in Oregon choose the indigent defense system. Jurisdictions have just evolved into what they are today. The Commission has not enacted an exact policy on what jurisdiction has a public defender office what jurisdiction has a contract system. However, the majority of indigent clients are represented by contract attorneys. The Oregon Public Defense Services Commission assigns counsel in conflict cases. The Oregon Criminal Defense Association is still wary of the Commission, but it is participating.

The Vermont Defender General monitors indigent defense attorneys in the sense that the attorneys (public defenders, contract, and ad hoc) have to go through the hiring process.²⁴ The contract attorneys actually enter into annual contracts with the Defender General. They are hired for specific work and paid a set amount of money. For example, the minimum paid for a full-time contract attorney is \$45,000, but most work part-time. The Defender General requires the public defenders and assigned counsel to attend training. They offer a two-day training annually and training throughout the year. The contracts specify that the attorney is to attend all training as the Defender General directs.

If there is a conflict with the public defender and a contract attorney, the court will assign attorneys from a list. These attorneys are ad hoc. The judges and lawyers report to the Defender General if an attorney is not performing. The Defender General recommends ad hoc attorneys attend training, but it is not required. If an attorney is not performing, contracts will not be renewed. Public defenders, however, have performance evaluations and periodic reviews, and the overseeing public defender will recommend areas of training. If assigned counsel is not performing, the Defender General will offer a local mentor for assistance. The Defender General tries to work with attorneys before they take strong action, such as removal or non-renewal of a contract.

The budget shortfall in Vermont has affected the Defender General. The office has had to hold positions open for 60 days. As a result, the remaining attorneys have higher caseloads which have resulted in backlogs in the court system. The Defender General oversees payment and compensation of all attorneys, even ad hoc. They employ 60 full-time staff. The public defender contract attorneys have 14 lawyers plus support staff. The Office also has an assigned counsel coordinator who oversees the 55 contract attorneys. The Vermont Defender General has eight local public defender offices and six public defender contract offices. These offices are spread throughout the state. The public defenders have investigators on staff. For assigned counsel, they ask the coordinator for additional funds as needed. Funds are available for ad hoc attorneys on a case by case basis. Additionally, the Vermont Defender General has an Appellate Defender Office and two assigned contract counsel for conflicts with the appellate defender. They also have a Prisoner's Rights Office that handles habeas matters. If there is a conflict, the public defender notifies the court, and the court staff assigns a replacement.

²⁴ Available at <http://www.defgen.state.va.us/>.

2003 Study Activities

During 2003, the study committee will administer and analyze statewide surveys to the indigent defense system stakeholders to determine the operational and programmatic barriers to the implementation of a statewide indigent defense commission in Virginia. After the work of the study committee is complete the Virginia State Crime Commission will submit its final report and recommendation on whether a statewide indigent commission is appropriate for Virginia, and if so, the organizational structure for such an agency to the Governor and the 2004 Session of the Virginia General Assembly.

VI. Acknowledgements

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The Virginia College of Criminal Defense Attorneys
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Steven D. Benjamin, Board of Directors

The Virginia Public Defender Commission
Richard C. Goemman, Deputy Director

The Virginia Trial Lawyers Association, Criminal Section
Matthew Geary, Criminal Sections Chair

Attachment 1:

SJR 43 Indigent Defense Commission

HJR 94 Indigent Defense Commission

2002 SESSION

ENROLLED

SENATE JOINT RESOLUTION NO. 43

Directing the Virginia State Crime Commission to establish an indigent defense study committee to study and examine whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth's indigent defense services.

Agreed to by the Senate, February 11, 2002
Agreed to by the House of Delegates, March 5, 2002

WHEREAS, House Joint Resolution No. 178 (2002) directed the Virginia State Crime Commission to study existing methods for providing indigent criminal defense services in the Commonwealth; and

WHEREAS, the Virginia State Crime Commission completed its study of indigent defense and submitted its report to the 2002 General Assembly; and

WHEREAS, one recommendation of the Commission's study was to further examine whether the establishment of a statewide indigent defense commission would provide independence, quality control, and a cost effective manner for delivery of indigent defense services; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia State Crime Commission be directed to convene an indigent defense study committee to study and examine whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth's indigent defense services. The Committee shall consist of representatives of the various agencies and organizations concerned with indigent criminal defense. The committee shall study various models of statewide indigent defense commissions as used by other states, shall recommend whether such a commission is appropriate for Virginia, and if so, shall recommend the organizational structure for such an agency. The committee shall examine whether a statewide commission should be endowed with any or all of the following responsibilities: to determine the appropriate mechanism for delivering indigent defense services within a given jurisdiction, to set training and other quality control standards for indigent defense counsel, to fund and provide specialized training for indigent defense counsel, to set standards for attorneys to be appointed to represent indigent criminal defendants, to set caseload standards for indigent defense counsel, and to oversee the Commonwealth's expenditure of funds paid to private indigent defense counsel and to expert witnesses.

All agencies of the Commonwealth shall provide assistance to the indigent defense study committee and the Virginia State Crime Commission for this study, upon request.

The Commission shall complete its work by November 30, 2003, and shall submit its findings and recommendations to the Governor and the 2004 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

2002 SESSION

ENROLLED

HOUSE JOINT RESOLUTION NO. 94

Directing the Virginia State Crime Commission to establish an indigent defense study committee to study and examine whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth's indigent defense services.

Agreed to by the House of Delegates, March 6, 2002

Agreed to by the Senate, March 5, 2002

WHEREAS, House Joint Resolution 178 (2000) directed the Virginia State Crime Commission to study existing methods for providing indigent criminal defense services in the Commonwealth; and

WHEREAS, the Virginia State Crime Commission completed its study of indigent defense and submitted its report to the 2002 General Assembly; and

WHEREAS, one recommendation of the Commission's study was to further examine whether the establishment of a statewide indigent defense commission would provide independence, quality control, and a cost-effective manner for delivery of indigent defense services; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to convene an indigent defense study committee to study and examine whether the establishment of a statewide indigent defense commission would improve the quality and efficiency of the Commonwealth's indigent defense services. The committee shall consist of representatives of the various agencies and organizations concerned with indigent criminal defense. The committee shall study various models of statewide indigent defense commissions as used by other states, shall recommend whether such a commission is appropriate for Virginia, and if so, shall recommend the organizational structure for such an agency. The committee shall examine whether a statewide commission should be endowed with any or all of the following responsibilities: (i) to determine the appropriate mechanism for delivering indigent defense services within a given jurisdiction, (ii) to set training and other quality control standards for indigent defense counsel, (iii) to fund and provide specialized training for indigent defense counsel, (iv) to set standards for attorneys to be appointed to represent indigent criminal defendants, (v) to set caseload standards for indigent defense counsel, and (vi) to oversee the Commonwealth's expenditure of funds paid to private indigent defense counsel and to expert witnesses.

All agencies of the Commonwealth shall provide assistance to the indigent defense study committee and the Virginia State Crime Commission for this study, upon request.

The Commission shall complete its work by November 30, 2003, and shall submit its written findings and recommendations to the Governor and the 2004 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Attachment 2:

Virginia State Crime Commission Comparison Chart: Statewide Indigent Defense Systems

State	Statewide System	Statewide Public Defender System	Contract System	Oversight Body	Funding	Costs	Notes
Alabama	No	No; In some circuits;	In some Circuits; may administer system of appointing private counsel w/in his jurisdiction	Indigent Defense Commission: w/in each Judicial District. Each commission decides, along w/ judges, what system to implement in that circuit		IDC approves expenditures; sets salary that is then approved by Administrative Director of Courts. Salary won't exceed that of DA	
Alaska	Yes	Yes: Gov. appt PD from applicants nominated by judicial council; PD may assign asst. pd's	PD may contract w/ private attys for assistance	Public Defender Agency Office of Public Advocacy: Provides GAL's for abused and neglected children and status offenders; Takes conflict cases from PD agency.		If municipality appts an ally, then must pay for services of ally.	
Arizona	No	No; In some counties	In some counties	No	Indigent Defense Fund: Administered by Criminal Justice Commission. Available to counties.		County Board of Supervisors decides whether to est. pd office in that county. Oversight by each County Board of Supervisors
Arkansas	Yes	Yes; Statewide	Comm. Maintains list of private attys. For Conflicts only	Arkansas Public Defender Commission: Members serve w/o compensation; Est. policies & standards; organization, operation, funding, compensation, staffing, standards of experience; performance evaluation; Managing reassignment of cases from 1 PD to another in conflict cases. Authorizes PD to enter into k's w/ private attys. Maintain for each judicial district current list of private attys willing to accept ct. appls. And meet qualifications; Maintain list of private attys willing & qualified to accept capital appls. Operate trial PD system so that not deemed part of same office for conflicts and in manner that Capital, Conflicts, and Appellate Office not part of same office as any trial PD for conflict cases.	Public Defender Fund: Appropriated by General Assembly	PD Comm. Responsible for payment of salaries and certain other expenses. County or counties w/in judicial district responsible for payment of cost of facilities, equipment, supplies, and other office expenses and compensation of additional personnel.	Capital, Conflicts, and Appellate Office; Trial Public Defender Office
California	No	No; By County	N/A	No		Board of Supervisors of any county may est. a PD office. Counties may join w/ each other to maintain an office. In conflict cases, counties use PD from another county & reimburse that county.	
Colorado	Yes	Yes; Statewide	Alternate Defense Counsel: Agency of judicial dept. Used when conflict w/ PD. Compensation fixed by General Assembly. Est. list of approved k attys & list of approved investigators. General Assembly authorizes them to take cases when pd cannot.	Public Defender Commission: Serve w/o compensation. Applied by CO Supreme Court Alternate Defense Counsel Commission: Serves as advisory board to alternate defense counsel. Serve w/o compensation.		Compensation of PD fixed by General Assembly. State PD sets compensation.	State PD establishes regional offices

Connecticut	Yes	Yes: Comm. Appts pd for each judicial circuit.	Comm. Maintains list of k attys.	Public Defender Services Commission: Est. compensation plan. Appt. Chief PD, Deputy Chief PD. Appt. PD for each judicial district & PD for appellate matters. Maintain list of K attys.	Commission budget pays atty compensation.	Judicial Dept. provides facilities.	Chief PD establishes divisions and offices and selects personnel w/ approval of Comm.; Supervises training & establishes training courses. Maintains 1 or more lists of trial attys who can represent persons in habeas or represent juveniles. Est. compensation for attys w/ approval of Comm.
Delaware	Yes	Yes	Court may still appt atty	Office of the Public Defender			
Florida	No	No; By judicial district; elected. Statutorily mandated.	Yes, for special assignments only. In conflict cases, court appts an atty.	No	Indigent Criminal Defense Trust Fund. Administered by Justice Administrative Comm. Counties or municipalities must provide office space, etc.	Salaries of pd's paid by state as provided in the General Appropriations Act	Salary of asst. PD set by PD
Georgia	No: Local System w/ Statewide Oversight.	No; by county/court apptd by superior court of county	by county/court	Georgia Indigent Defense Council: Administer funds provided by state and fed to support local indigent defense programs. Provide training, research and technical assistance to local programs. May employ staff but may not employ atty to represent indigents unless local tripartite Comm. requests and it is necessary to justice. Create the Mental Health Advocacy Division to represent indigents found NGRI; Appt. mental health advocate and est. salary. Mental health advocate can employ attys and staff. Create Office of MultiCounty PD to defend indigents charged w/ capital felony in which death sought; appt multicounty PD and est. salary and that of office staff	Superior Court w/ arrangement prescribes compensation; county governing authority sets fee limits & pay assigned attys or legal aid agencies.	County governing authority provides facilities for any pd office and pay pd compensation, expenses to est. and maintain office	System determined by superior court of counties. Statewide council administers funding. Statewide propose plan for est. of state funded local indigent defense program and submit plan to Council for funding. After approval, committee shall implement and manage local program w/in guidelines approved & promulgated by S. Ct.
Hawaii	Yes	Yes		Office of the State Public Defender created w/in office of budget and finance for administrative purposes. Judicial Council governs the office. Members of Judicial Council serve at will of gov. Council appts State PD. W/ approval of Council, PD can employ assis.			
Idaho	No	No, by county	By County plan, determined by board of county commissioners.	N/a		Board of county commissioners of each county determines system; ests. Office	
Illinois	No	No; By county size. Counties appt. PD	N/A	Office of State Appellate Defender	Capital Litigation Trust Fund	PD paid out of county treasury and/or state treasury; County Board shall provide office space etc.	

Indiana	No; Varies by County; Statewide oversight comm.	No; By county plan. Appt. by county board; Maintain offices as approved by Board; hire & supervise office	By county plan. County PD can contract w/ private attys. Board must est. provisions of K. County provides \$ for K.	Indiana Public Defender Commission: Make recommendations to S.Ct concerning standards for indigent defense services where death sought. Division of court administration of S.Ct. shall provide general staff support. Public Defender Board may be established in a county. Board must prepare indigent defense plan that either ests. PD office, k system, or assigned counsel. Plan must be submitted to Comm. If elect assigned counsel system, board gathers & maintains list	Public Defense Fund: Receive court costs for county reimbursement & administrative expenses. Administered by division of state court administration of S.Ct	County auditor gets reimbursed from Comm. For county expenditures in death cases 50%; 40% for noncapital cases except misdemeanors. Reimbursed if county in compliance w/ Comm.'s guidelines and standards.	
Iowa	Yes	Yes: Appt. by Gov., confirmed by Sen. Gov. est. salary. Also have local pd. In some areas who come under State PD office.	Conflict cases or if local pd has overload. Ct. appts. K atty on rotational & experience level basis. If the K atty. has conflict, ct. appts private non-contract atty on rotational & experience basis. These attys apply to State PD for compensation.	Indigent Defense Advisory Commission: Make legislative recommendations on court apptd compensation. State Public Defender: May appt. asst state pd's and fix their salary. May est. or abolish local pd offices based on caseload, population, etc. May appt and remove local pd, asst local pd's and staff. State PD fixes compensation of local pd offices and provides office space, etc to local pd's.	State Public Defender Operating Account: State pd may bill county for services rendered to county by office of state PD	State pd shall est. fee limitations for particular categories of cases; Review claims for payment of indigent defense costs	State PD can appt asst. pd's; est. or abolish local pd offices; may appt. local pd & staff; fix compensation; provide office space etc. Appt. State Appellate Defender
Kansas	No; Statewide oversight body	No; By district ct of each county	Ct appt. by district ct of each county from panel of attys.	State Board of Indigent Defense Services: Provide by rule and regulation for the assignment of attorneys to panel, distribution of panel list, and for appt. Provide by rule and regulation for the assignment of attorneys for death cases and their standards of qualification and competency; reasonable compensation; Adopt rules prescribing standards for processing and payment of claims for reimbursement Est. in each county or combination of counties, system of appt. counsel, K attys, or PD offices; approve annual operating budget. Adopt rules relating to atty qualification standards	State Board of Indigents' Defense Services Budget	Judges review attys claims for compensation & reimbursement	State Board of Indigent Defense Services est. indigent defense system in each county. Provide, supervise, and coordinate district and county indigent defense programs.
Kentucky	Yes			Dept. of Public Advocacy: Administer statewide public advocacy system; Assist local counsel on appeals; Develop and promulgate standards for administration of system; Reviewing local plans for providing counsel for indigents. Public Advocacy Comm: recommend to gov 3 attys for apptment to public advocate; Assist Public Advocate in selection of staff; Review performance of public advocacy system and provide supervision of public advocate; Review and adopt annual budget.	Public Advocate reviews and approves all plans for indigent defense. If plan approved, the public advocate may allot money to county or counties in the judicial circuit. Any moneys not expended shall revert ot state Department of Public Advocacy. Each county has a Public advocate Fund		Each county w/ 10 or more circuit judges shall est. and maintain an office for district public advocacy and submit plan. If a county has less than 10 circuit judges or if plan denied, public advocate can est. local public advocacy system by contract w/ attys. or providing office for district public advocacy.
Louisiana	No	No; Varies by county	Varies by county	Louisiana Indigent Defender Program Judicial District Indigent Defender Board: Est. in each judicial District and decides on system of indigent defense for each district.			Any district indigent defender board may contract w/ another board for the establishment of a regional defense service center: Regional Appellate Resource Center
Maine				Maine Criminal Justice Commission: Evaluate criminal justice policy and make recommendations on criminal justice policy.			

Maryland	Yes	Yes	Each district pd office maintains list of attys. classified by qualification; District pd appts from list	Office of the Public Defender: Appt. District PD for each district who will be in charge of his district pd office under the supervision of State PD; Prepare schedules of fees and expenses for panel attys;			Board of Trustees observes operation of PD office; 4 Regional Advisory boards advise district pd offices. State PD w/ approval of board of trustees, appts district pd for each district.
Massachusetts	Yes	Yes, statewide division of Committee	Decided by Committee	Committee for Public Counsel Services: Plan, oversee, and coordinate delivery of legal services by salaried public counsel; shall est., supervise, maintain system for apptment of counsel and for private counsel. Make use of Public Defender Division and Private Counsel Division and est. standards for both divisions; Monitor and evaluate counsel; Est. compensation rates			
Michigan	Yes, limited to appellate work	No		Appellate Defender Commission: Develop system indigent appellate services provided by office and locally apptd private counsel; Develop minimum standards for performance; Compile & maintain current statewide roster of attys eligible & willing to accept apptment. Apptment made by trial ct.; Provide CLE for staff & private attys on roster; Appt. appellate defender who appts & supervises deputy appellate defenders & asst appellate defenders; Est. salaries of appellate pd's.	State Appropriation		Appellate Defender must maintain repository of briefs to be made available to private attys providing appellate service
Minnesota	Yes	Yes; Statewide pd's and Board of Public Defense appts chief district pd for each judicial district.	Yes	Board of Public Defense: Est. procedures for distribution of state funding to state and district pds; state pd ests standards for offices of state and district pd re: qualifications, training, caseloads, appointed counsel and contracts; State Public Defender: supervise slate pd system; employ staff; design and conduct training programs for state and district pds, apptd counsel and attys for public defense corps.	State Board of Public Defense Budget.		
Mississippi	No	No; Est. by County Board of Supervisors based on county need	In conflict cases - apptd by Ct.	Mississippi Public Defender Task Force: Study needs of circuit court districts for state-supported indigent defense counsel & examine existing pd programs	Board of Supervisors for County	Compensation for pd's fixed by board of supervisors	Circuit judge appts pd for county/asst pd after Board of Supervisors est. office.
Missouri	Yes; Statewide PD system	Yes, Statewide	Conflict cases	Public Defender Commission: Select director, deputy directors, and pd's Receive client complaints, review office performance Approve fee schedule of assigned counsel Set salary of director Employ pd's, establish local or regional offices, contract w/ private attys. Office of State Public Defender		City or county shall provide office space, etc. Budget for statewide pd system approved by State	
Montana	Yes, limited to appellate work	No; Est. by county		Appellate Defender Commission: Develop system of indigent appellate defense services; Propose to S.Ct. minimum standards to which all trial and pd's, including locally apptd private counsel shall conform; Compile and maintain statewide roster of attys eligible for apptment by ct as trial and appellate defense counsel for indigents and supplied to all justices; Est. qualifications, duties, and priorities for appellate defender	State appropriation		

Nebraska	No; statewide commission assists counties	No; By county based on population of Judicial District; PD based on need	In conflict cases or good cause apptd by ct.	<p>Commission on Public Advocacy: Provide legal services and resources to assist counties in providing indigent services; Adopt guidelines and standards for county indigent defense systems relating to funding, atty eligibility and qualifications, compensation rates, contracting attys, and ct-apptd attys, maximum caseloads, systems administrations, conflicts CLE and training, expert witnesses; Select Chief Counsel who oversees divisions.</p> <p>Indigent Defense Standards Advisory Council: Responsible for developing and recommending commission guidelines and standards for county indigent defense systems regarding expenditures and reimbursement, atty eligibility; compensation rates, funding, maximum caseloads, conflicts</p>	County Revenue Assistance Fund	Capital Litigation Division; Appellate Division, DNA Testing Division, Major Case Resource Center all housed in Office of Public Advocacy
Nevada	Yes	State Public Defender; Apptd by Gov. May est. branch offices. Also have local pd's.	State PD may contract w/ priv. attys and county pd's. in conflict cases, etc.	State Public Defender: May employ deputy state pd's and staff. May est. branch offices.		Counties can est. county pd based on population. in counties w/ pd, the state pd is only req. to prepare and present appeals in post-conviction proceedings
New Hampshire	Yes	State Public Defender Program under supervision of judicial council	State contracts w/ organization or group of attys to operate pd program. Alternate Public Defender Program: State contracts for this program to represent indigents b/c of conflict of interest	Judicial Council: Supervises pd program; oversees allocation of cases b/t pd program and assigned counsel, performance, competence, fiscal and budgetary matters; Assigned counsel used when maximum caseloads reached for PD's. After ct. approves claim for payment, judicial council makes payment; Keeps records of notification of eligibility & assignment of counsel, etc.	Executive Director of judicial council authorizes payments to K attys. State appropriations fund PD program	
New Jersey	Yes	Yes, statewide.	PD authorized to enter into contracts w/ priv. or public organizations	Office of the Public Defender: Shall appt. deputies and assistants, etc.; Est.. Offices & regional quarters. Maintain 1 or more trial pools of lawyers available to serve as counsel & compensate them; Accept services of volunteer workers; Provide S.Ct. w/ materials and data req. to measure performance of attys.		State PD maintains lists and determines indigent defense system.
New Mexico	Yes	Yes, Statewide	Administrative office of courts can enter into K's w/ attys. K's must be approved by chief justice of S. Ct. & all payments made by S. Ct. or appropriate district court.	Public Defender Department: Chief public defender apptd by Gov. ; Chief pd provides training, sets compensation, organizes units, delegates authority, formulates a fee schedule, provides for collection of reimbursement, certifies k's & expenditures for witness fees, establish district pd office & appt district pds. Appellate Division: assists private counsel as well.	Public Defender Automation Fund	PD Dept. determines system.
New York	No	No; By county		None		Board of supervisors of any county may create an office of pd, or may authorize a contract b/t county and other counties to create office.

North Carolina	Yes	Yes; Comm. Decides what districts will have pd's and oversees the pds.		<p>Office of Indigent Defense Services: Develop policies for determining indigency; adopt rules re: apptment of counsel, determination of compensation, apptment of experts, use of funds for experts; allocate & disburse funds; Director hires support, conducts training.</p> <p>Commission on Indigent Defense Services: Win Office of IDS Develop & improve programs; appt director of Office of IDS, develop standards that will include: standards for operating regional & district pd offices & appellate defender offices, training, qualification, minimum experiences, caseloads, performance, conflicts, compensating experts, capital case performance; Determine methods for delivering legal services in districts. Decides what districts will have pd office & oversees pds.</p> <p>Office of Appellate Defender: Appellate defender appted by commission; maintain clearinghouse of briefs for private counsel, provide CLE, consulting services, recruit private bar to represent in post-conviction</p>	Judicial Dept. Budget		
9 North Dakota	Yes	No; indigent defense plan submitted by each judicial district		<p>North Dakota Legal Counsel for Indigents Commission: Review data re: cost and caseload of counsel services for indigents from all courts; prepare budget; provide planning, guidelines, technical assistance to judicial districts requesting assistance in facilitating programs; adopt guidelines re: compensation; reimbursable expenses; recommend plans for state funded services to presiding judge for each district; review fee decisions</p>	Indigent Defense Administration Fund of the state treasury; All moneys are appropriated on continuing basis to judicial branch to be used in administration of indigent defense system and collection of indigent defense costs and expenses req. to be reimbursed.		ND Legal Counsel for Indigents Comm. Reviews plans submitted by judicial districts.
Ohio	Yes, pds determined by county, but statewide oversight body.	Yes. State PD apptd by Ohio PD Comm.; Counties can also est. pd commission who appts. County pds.	State PD may contract w/ county pd commissions	<p>Ohio Public Defender Commission: Provide, supervise, coordinate legal representation at state expense. Appt. state PD; establish rules for conduct of offices of county and joint county pd's and county apptd counsel systems; standards for hiring outside counsel, standards for k's, standards for qualifications, training; minimum caseloads.</p> <p>State Public Defender: State PD maintains central office. appts asst state pds and staff; supervises compliance of county pd offices, joint county pd offices, and county apptd counsel systems; collect moneys due state for reimbursement; Est. standards and guidelines for reimbursement; Est. office for handling appeal and post conviction matters; Provide technical aid and assistance to county pd offices and joint county pd offices, and other local counsel</p>			State PD Comm. oversees state and county pds. County commissioners in any county may est. county pd commission. County pd comm. Appls county pd and can contract w/ state pd or nonprofit organization. Comm. shall determine qualifications and size of support staff. If county est. pd, then state pd not required to represent indigents there. Counties can also est. joint pd commissions.

Oklahoma	Yes	n/a	Executive Director of Indigent Defense System Board maintains list of attys and authorizes k's.	Oklahoma Indigent Defense System Board: Oversee State Indigent Defense System; Adopt salary schedules; Est. policies; Approve budget; Review claims for expenditures; Authorize k's; Allocate and distribute funds;. Executive Director is atty who enters into k's to provide counsel; promote education and training; employ personnel; solicit and maintain current list of attys willing to accept assignments & separate list of attys for capital cases; est. compensation rates; est. maximum caseloads; reduce caseloads; conduct regional or statewide training; gather and disseminate info; recommend legislation			Indigent Defense System Board determines system.
Oregon	Yes; Statewide system and oversight but operated by judicial district and county.	No; By county	County may contract w/ atty, group of attys or pd as long as attys meet standards. Ct. or magistrate may appt.	Public Defense Services Commission: Plan for establishment of public defense system and est. system for appeals; est. office and appt director; review public defense k's; adopt compensation plan; Rules adopted by Commission supersede rules of State Court Administrator, Public Defender Committee etc.	Public Defense Services Account; State Court Indigent Defense Account for State Court Administrator		Public Defense Services Comm. determines system. State Court Administrator develops plan appropriate for each judicial district re: apptd counsel; establishes qualification standards; schedule of compensation for apptd counsel other than counsel employed by Commission; develop system for performance audits; contract w/ attys on behalf of State if atty meets standards in conflict cases
Pennsylvania	No	No; By county		No			
Rhode Island	Yes			Office of the Public Defender			Public Defender must represent indigents in cases referred by S.Ct, superior cts, district cts. May have assts.
South Carolina	No; By county but state office disburses funds, etc.; Appellate defense is statewide system	No; By County	Ct. apptd in conflicts	Commission on Indigent Defense: Promulgate rules; supervise operations of Office of Indigent Defense. Office of Indigent Defense: Distributes funds appropriated by State re: pd offices, capital case defense, attys fees and expenses. Commission on Appellate Defense: Appt. Chief Atty who establishes policies of office and est. criteria for indigency; hires staff; est. training programs; represents indigents on appeals.	Budget for Office of Indigent Defense pays for indigents represented by ct. apptd counsel and pd's	Attys submit payment to clerk who presents voucher to judge for approval who transmits it to judicial dept. for payment	Indigent plan is submitted by county and the Comm. Oversees the plan. S.Ct. est. rules and regulations re: indigent defense
South Dakota	No	No; By County					Each Board of county commissioners may est. office of pd. A PD advisory committee shall be est. whenever an office is est.
Tennessee	Yes; Statewide body coordinates efforts of district systems and deals w/ funds	No; For each district		District Public Defenders Conference: consists of all district pd's; creates Office of Executive Director who coordinates defense efforts of districts; administers accounts		Clerk of ct collects money paid by accused & forwards money to director of district pd's conference	By statute, each judicial district has a pd office. The Comm. Coordinates the offices.

Texas	Yes	No; By county	By county	Task for on Indigent Defense: Develop policies and standards including, performance, qualification, qualifications to represent mentally ill, caseloads, operation of ad hoc assigned counsel program; operation of pd, contract defender; compensation; operation of legal clinic representing children; Submit standards to Judicial Council for ratification; Develop plan that establishes statewide requirements for counties relating to reporting indigent defense info			Task Force sets policies and monitors the indigent defense system developed by counties.
Utah	No	No; By county, city, town	By county, city, town and in conflicts	None	Indigent Defense Funds Board; Est. rules and procedures for application by counties for disbursements; Indigent Capital Defense Trust Fund		
Vermont	Yes	Yes; supervised by Office of Defender General	Through Office of Defender General	Office of Defender General: Primary responsibility of providing legal services - may provide services personally, through pds, or private attys; may contract w/ attys; supervise training of pds; may appt deputy defender general; may est. pd offices and select pd to head office			
Virginia	No	No	If no pd or if conflict or interest of justice	Virginia Public Defender Commission: Recommend to General Assembly areas in which pd office should be est.; appt pd's; authorize pd's to staff offices & secure office space; est. regional capital defense units	General Assembly Budget		
Washington	Yes, limited to appellate	No; By County	By county	Office of Public Defense: Director shall administer criminal appellate indigent defense services; Est. standards and guidelines for program			Each county or city adopts standards for public defense services
West Virginia	Yes	No; In each judicial circuit a pd corporation est.	In each circuit, maintain regional & local panel of private attys to serve as counsel	Public Defender Services: administer, coordinate and evaluate programs; Est. Criminal Law Research Center that provides CLE; Disburses funds to circuits			
Wisconsin	Yes	Yes; Statewide	N/A	State Public Defender: Est. case management system; est. offices			Board of State PD determines system.
Wyoming	Yes	Yes; Statewide	ct can still appl.	Office of State Public Defender	Counties provide office space; 85% from state, county supplements rest		

Attachment 3:
Virginia State Crime Commission Telephone Questionnaire

SJ43/HJ94: Indigent Defense Study Committee Telephone Questionnaire

1. What is the commission's mechanism for monitoring compliance with the criteria established for the eligibility of attorneys representing indigent defendants?
2. How does the commission ensure attorneys complete their training requirements?
3. a) How do the states with a Public Defender Office and an Appointed Counsel/Contract system monitor court appointed and contract counsel? b). Do they have one system or separate tracks? c). What is the source of funds for contract and court appointed attorneys?
4. Does the commission have separate standards and training for the different categories of attorneys?
5. What sanctioning does the commission have? For example, is the only available sanction removal from the list?
6. How does the commission interrelate with the disciplinary arm of the State bar?
7. How does the commission interrelate with the validity of a conviction?
8. How does the commission handle state budgetary constraints? Is there a conflict between quality and budget constraints?
9. Does the commission oversee payment and compensation?
10. What is the volume of work of the commission?
11. How many people does the commission staff? How many FTE's and how many resources are available to the commission?
12. How is the decision of delivery of services made in the varying jurisdictions?
13. What impact have standards had on the availability of attorneys?
14. What other kinds of bureaucratic resources are necessary for the establishment of a commission? Specifically, what goes into the establishment of an administrative office?
15. How does the commission deal with conflicts of interest when they have a single structure overseeing indigent defense?

16. Who are the critics of the statewide indigent defense commission and what do they say?
17. Is the system working?
18. Is there any opposition?
19. How does the commission deal with the delivery of experts and investigators?
How are they funded?
20. How does the system handle appellate litigation and habeas litigation, through appointed counsel, a statewide office, or by locality?

