

**FINAL 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
RICHMOND
2004**



COMMONWEALTH of VIRGINIA

Virginia State Crime Commission

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April 20, 2004

TO: The Honorable Mark Warner, Governor of Virginia

And

Members of the Virginia General Assembly

The 2002 General Assembly, through Senate Joint Resolution 43 and House Joint Resolution 94, 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 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 "D. Albo", written over a horizontal line.

David B. Albo
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 (SJ 43)¹ and Delegate Terry G. Kilgore introduced House Joint Resolution 94 (HJ 94),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 directed 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 resolutions directed the committee to 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 reported its written findings and recommendations to the Governor and the 2004 Session of the General Assembly. As a result of the study effort, the advisory committee made recommendations concerning the Commonwealth’s indigent defense system. These recommendations, as follows, were approved by the Virginia State Crime Commission:

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

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

Recommendations:

Recommendation 1: Virginia should establish an Indigent Defense Commission.

Recommendation 2: The Public Defender Commission should be reconfigured as the Virginia Indigent Defense Commission and have oversight of training and standards for both public defenders and court appointed counsel.

Recommendation 3: The Virginia Indigent Defense Commission shall publicize and enforce the qualification standards for court appointed attorneys.

Recommendation 4: Membership of the 12 member commission should be guided by national standards and include: Chairmen of the House Courts and Senate Courts Committees; Chairman of the Virginia State Crime Commission; Executive Secretary of the Supreme Court of Virginia; two appointees from the Virginia State Bar; and, two appointments each by the Governor, Speaker of the House and the Senate Privileges and Elections Committee.

Recommendation 5: One of the legislative and gubernatorial appointments shall be a citizen member of the Virginia State Bar, in private practice, with a demonstrated interest or background in criminal defense issues.

Recommendation 6: The following training and practicum requirements should be mandated for *experienced* court appointed counsel representing *felony* defendants: six hour introductory Continuing Legal Education (CLE) credits in criminal defense, including one hour of legal ethics; and the introductory course should be waived if the attorney certifies, on a form developed by the Indigent Defense Commission, that he has handled four felony cases, from preliminary hearing through completion within the past year.

Recommendation 7: The following training and practicum requirements should be mandated for *experienced* court appointed counsel representing *misdemeanor* defendants: six hour introductory CLE credits in criminal defense, including one hour of legal ethics; introductory course should be waived if the attorney certifies he has handled four misdemeanor cases through completion within the past year.

Recommendation 8: The following training and practicum requirements should be mandated for *new* court appointed counsel representing *felony* defendants: six hour introductory CLE credits in criminal defense, including one hour of legal ethics; and, the attorney certifies he has been first or second chair in four felony cases from preliminary hearing through completion within the past year.

Recommendation 9: The following training and practicum requirements should be mandated for *new* court appointed counsel representing *misdemeanor* defendants: six hour introductory CLE course in criminal defense (one hour of ethics).

Recommendation 10: The following training and practicum requirements should be mandated for *experienced* court appointed counsel representing *juvenile defendants in delinquency cases*: four hour introductory CLE course in criminal defense (one hour of ethics); and, introductory course should be waived if the attorney certifies he has handled four juvenile delinquency cases through completion within the past year.

Recommendation 11: The following training and practicum requirements should be mandated for *new* court appointed counsel representing *juvenile defendants in delinquency cases*: six hour introductory CLE course in criminal defense (one hour of ethics); four hour introductory CLE course concentrating on topics specific to the Juvenile and Domestic Relations District Court; and, the attorney certifies he has been first or second chair in four juvenile delinquency cases through completion within the past year.

Recommendation 12: The Indigent Defense Commission shall determine CLE requirements for all court appointed counsel once certified. Training requirement should include: six hours of CLE's (one hour in legal ethics) every two years beginning November 1, 2004.

Recommendation 13: The Indigent Defense Commission shall develop and sponsor the six hour introductory CLE class in criminal law and the four hour introductory CLE class in juvenile law.

Recommendation 14: The Indigent Defense Commission shall determine CLE course eligibility for renewal requirements.

Recommendation 15: The Indigent Defense Commission shall develop the forms necessary to certify case representation requirements and all other forms necessary for application and renewal of court appointed attorneys.

Recommendation 16: The Indigent Defense Commission shall maintain and distribute to the courts a list of certified court appointed attorneys.

Recommendation 17: The Indigent Defense Commission shall report annually to the General Assembly on the status of indigent defense in the Commonwealth.

Recommendation 18: The Indigent Defense Commission shall, in consultation with the Virginia State Crime Commission, develop Standards of Practice, by November 2004, which would be the basis for removal or suspension

from public defense eligibility.

These recommendations were incorporated into Senate Bill 330 (Stolle)³ and House Bill 1056 (Moran).⁴ Specifically, the legislation established the Indigent Defense Commission which will set criteria for court appointed lawyers, as well as assume the duties of the existing Public Defender Commission. These bills retained all existing public defender offices and added no additional offices. This legislation passed the 2004 Virginia General Assembly.⁵

III. Methodology

The Virginia State Crime Commission utilized multiple research methodologies to examine SJ 43/HJ 94. First, staff convened an indigent defense study committee consisting of representatives of the various agencies and organizations concerned with indigent criminal defense in the Commonwealth. 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 Supreme Court of Virginia;
- 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.⁶

The study committee 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. Finally, staff conducted structured telephone interviews in order to review the training and oversight of indigent defense services nationwide, the funding mechanisms, and the use of standards for indigent attorneys nationwide.

³ Senate Bill 330 (2004). See Attachment 2.

⁴ House Bill 1056 (2004). See Attachment 2.

⁵ 2004 Va. Acts ch.884.

⁶ Indigent Defense Study Committee. See Attachment 3.

IV. Background

The United States Constitution, under the Sixth Amendment, guarantees the right of a criminal defendant to representation by an attorney.⁷ In the case of Gideon v. Wainwright, the United States Supreme Court expressly mandated that states appoint an attorney to represent all defendants charged with a felony, even if the defendants are indigent.⁸ This fundamental right was later extended by the United States Supreme Court to include the right to representation in misdemeanor cases,⁹ and for juvenile defendants being tried in juvenile courts.¹⁰ Furthermore, as recently as 2002, the United States Supreme Court stated that counsel must be provided for any criminal offense that carries the possibility of incarceration.¹¹ Specifically, the Court held that a suspended sentence that may result in actual imprisonment, regardless of whether imprisonment is actually imposed, may not be imposed unless the defendant was accorded counsel.¹²

Because case law clearly mandates an indigent defendant's right to counsel, indigent defense attorneys are beginning to use the court system to delineate a state's constitutional obligation to provide quality representation to all indigent defendants. In New York County Lawyers' Association v. State of New York and City of New York, the New York Supreme Court issued an order finding that the State of New York's failure to increase the rates of compensation for court appointed lawyers in New York City violated constitutional and statutory rights to meaningful and effective representation and obstructed the judiciary's ability to function.¹³ The court found the rate-setting portions of the statutes unconstitutional as applied in New York City. Those statutes allowed for payment of \$25 per hour for out-of-court representation and \$40 per hour for in-court representation. The Court then directed the State and City to compensate attorneys \$90 per hour for both in-court and out-of court work, and without ceilings on total per case compensation, until the Legislature acts to address the issue. The Court stated that too many assigned counsel do not: conduct a prompt and thorough interview of the defendant; consult with the defendant on a regular basis; examine the legal sufficiency of the complaint or indictment; seek the defendant's prompt pretrial release; retain investigators, social workers or other experts where appropriate; file pretrial motions where appropriate; fully advise the defendant of the law and facts; prepare for trial and court appearances; and engage in appropriate pre-sentence advocacy, including seeking to obtain the defendant's entry into any appropriate diversionary programs. This lawsuit was scheduled for appeal on November 13, 2003. However, the New York County Lawyers' Association reached a settlement with the City of New York

⁷ The Sixth Amendment specifically provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

⁸ Gideon v. Wainwright, 372 U.S. 335 (1962). The United States Supreme Court had earlier held that the right to counsel existed whenever an indigent defendant was charged with a capital crime. Powell v. Alabama, 287 U.S. 45 (1932).

⁹ Argersinger v. Hamlin, 407 U.S. 25 (1972).

¹⁰ In re Gault, 387 U.S. 1 (1967).

¹¹ Alabama v. Shelton, 535 U.S. 654, 122 S. Ct. 1764 (2002).

¹² *Id.*

¹³ New York County Lawyers' Association (NYCLA) v. State of New York and City of New York, 763 N.Y.S.2d 397, N.Y. Sup., (2003)

ending the injunction, and agreed to a new rate schedule set by the legislature.

A similar case came before the Massachusetts courts, but the case was dismissed on procedural grounds before the substantive issues could be heard.¹⁴ Specifically, the Superior Court of Massachusetts held that attorneys who represent indigent persons lacked standing to sue the Committee for Public Counsel Services (CPCS), the entity that assigns counsel to represent indigent defendants, for inadequate rates of pay or for payment delays due to short funding by the legislature.¹⁵ The Court found that the plaintiffs did not allege a cognizable controversy because they failed to argue that the low compensation rates caused their representation of indigents to be ineffective. Instead the plaintiffs alleged ineffectiveness of assigned counsel at unspecified times and unspecified places within the Commonwealth of Massachusetts.¹⁶

While there is no specific mention of the right to counsel in the Constitution of Virginia, the Supreme Court of Virginia acknowledged the practice of judges appointing lawyers to represent indigent defendants,¹⁷ and, in 1940, explicitly held the right of a criminal defendant to be represented by an attorney fundamental under the Virginia Constitution.¹⁸ In an effort to meet this constitutional requirement, Virginia has in place two mechanisms for the provision of indigent defense services: the public defender system and court appointed counsel. In Fiscal Year 2003 (FY03), Virginia spent a total of \$75,757,992 on indigent defense services, a 75% growth increase since FY97. During this same time period, Virginia's population grew 8.3%.

A. Virginia Public Defender System

Under the public defender system, in areas where a public defender office is established, a public defender, rather than court appointed counsel, handles the representation of most indigent defendants, unless a conflict of interest or special circumstances exist.¹⁹ Each public defender office is under the control and supervision of a full time Public Defender, who is selected by the Public Defender Commission.²⁰ The Virginia Public Defender Commission was created, by statute, in 1972,²¹ with an original mandate to open public defender offices in three locations.²² Since that time, additional offices have been sporadically opened in various localities, pursuant to expansions in the authorizing statute of the *Virginia Code* § 19.2-163.2, that specifies which localities shall receive the services of a public defender. In FY03, there were 21 public defender offices

¹⁴ Machado v. Leahy, 2004 WL 233335 (Mass.Supp.).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Barnes v. Commonwealth, 92 Va. 794, 803 (1895). Even earlier, by 1849 the Virginia General Assembly was authorizing the appointment of and payment for counsel in indigent felony cases. *Code of Virginia*, Chap 212 § 4 (1849) (establishing a fee cap of \$25.00 for these cases).

¹⁸ Watkins v. Commonwealth, 174 Va. 518 (1940).

¹⁹ Va. Code § 19.5-163.3(b).

²⁰ Va. Code § 19.2-163.2(2).

²¹ 1972 Va. Acts ch. 800; see Va. Code § 19.2-163.1.

²² Virginia Public Defender Commission, "A Short History of the Public Defender Commission: Thirty Years of Serving Virginia's Indigent Accused", available at <http://www.publicdefender.com/historicalinformation.htm>.

serving 48 localities and 51% of the population:

- a. the City of Virginia Beach;
- b. the City of Petersburg;
- c. the Cities of Buena Vista, Lexington, Staunton and Waynesboro and the Counties of Augusta and Rockbridge;
- d. the City of Roanoke;
- e. the City of Portsmouth;
- f. the City of Richmond;
- g. the Counties of Clarke, Frederick, Page, Shenandoah and Warren, and the City of Winchester;
- h. the City and County of Fairfax;
- i. the City of Alexandria;
- j. the City of Radford and the Counties of Bland, Pulaski and Wythe;
- k. the Counties of Fauquier, Loudoun and Rappahannock;
- l. the City of Suffolk;
- m. the City of Franklin and the Counties of Isle of Wight and Southampton;
- n. the City of Bedford and the County of Bedford;
- o. the City of Danville;
- p. the Counties of Halifax, Lunenburg and Mecklenburg;
- q. the City of Fredericksburg and the Counties of King George, Stafford and Spotsylvania;
- r. the City of Lynchburg;
- s. the City of Martinsville and the Counties of Henry and Patrick;
- t. the City of Charlottesville and the County of Albemarle; and,
- u. the City of Norfolk.

In November 1996, the Public Defender Commission established an appellate defender unit. The Appellate Defender and two appellate staff attorneys assist the public defender offices with petitions, briefs and arguments in appeals, both in the Virginia Court of Appeals and the Supreme Court of Virginia. Additionally, in 2002, the Public Defender Commission created four regional capital defender offices for the representation of criminal defendants charged with a capital offense or facing the death penalty.

In Virginia's public defender system, compensation and oversight of the assistant public defenders is handled by the appointed Public Defenders, as well as the Public Defender Commission. The Public Defender Commission, pursuant to *Virginia Code* § 19.2-163.8, is responsible for establishing standards for the qualification of counsel appointed in capital cases. These standards focus on eligibility and do not include limits on the number of capital cases to which an attorney can be appointed at one time. The Commission sets out specific requirements for Lead Counsel, Co-Counsel, Appellate Counsel, and Habeas Corpus Counsel.²³ Additionally, for use by the circuit courts, the Public Defender establishes and maintains lists of counsel qualified to represent defendants charged with a capital offense or facing a sentence of death.²⁴ This

²³ Virginia Capital Defense Requirements. See Attachment 4.

²⁴ Va. Code Ann. § 19.2-163.8 (2003).

responsibility is carried out in conjunction with the Supreme Court of Virginia and the Virginia State Bar. However, the judge of the circuit court still has authority to appoint counsel who is not included on the list or lists, but who otherwise qualifies under the standards established and maintained by the Court and the Commission.²⁵

There are no mandatory caseload limits or eligibility requirements for public defenders representing clients in non-capital cases. These attorneys must meet the minimum legal education requirements applicable to all attorneys in the Commonwealth. To maintain a license, Virginia requires attorneys to complete twelve hours of continuing legal education each year, two hours of which must be legal ethics. To assist public defenders in meeting these legal education requirements, the Public Defender Commission convenes a Public Defender Conference once a year that provides six hours of training that is focused on the specific issues faced by public defenders. The Commission also sponsors training for its investigators and sentencing advocates. Additionally, the Commission also provides funding each year for attorneys and a limited number of investigators and sentencing advocates to attend training sponsored by agencies or organizations outside of the Public Defender Commission.

B. Court Appointed Counsel System

In jurisdictions without a public defender office, or when a conflict of interest or unusual circumstance arises, the court appoints counsel to represent the indigent defendant.²⁶ The court appointed counsel is selected through “a fair system of rotation among members of the bar practicing before the court, whose practice regularly includes representation of persons accused of crimes, and who have indicated their willingness to accept such appointments.”²⁷ The number of indigent clients served by court appointed counsel increased 53% from 134,591 in FY94 to 205,367 in FY03, and the number of clients dropped 11% from FY02.

Virginia Code § 19.2-163 sets forth the fee scale awarded to an attorney for court appointed work. The maximum fee that the court can award is dependant on the nature of the charges defended and the court involved, and no mechanism exists for these fee caps to be expanded in special cases. Furthermore, the fee limits outlined in statute are not completely funded in Virginia’s budget.²⁸ Currently, total reimbursement per charge is actually less. The chart below outlines the statutory amounts and the actual amounts that court appointed counsel can receive.

Court	Type of Charge	Statutory Amount	Actual Amount
District Court	All charges	\$120	\$112
Circuit Court	Misdemeanor Appeals	\$158	\$132
Circuit Court	Carries up to 20	\$445	\$395

²⁵ *Id.*

²⁶ Va. Code Ann. § 19.2-159 (2003); See also Va. Code Ann. § 16.1-266(B).

²⁷ *Id.*

²⁸ For a concise explanation, see Va. Code Ann. § 19.2 -163 (Michie 2000), p.121, Editor’s note.

	years		
Circuit Court	Carries more than 20 years	\$1,235	\$1,096
Circuit Court	Capital case	Reasonable fees – no caps	Reasonable fees – no caps

Additionally, court appointed attorneys are not required to meet any additional eligibility or training requirements. Court appointed attorneys rely on self-reporting of eligibility. No independent verification is made to ensure that applicants have honestly stated their qualifications. Therefore, there is no ready mechanism, 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.²⁹ 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.

Over the past 30 years, numerous studies have been produced analyzing Virginia's indigent defense system. As recently as 2001, the Virginia State Crime Commission conducted a study pursuant to House Joint Resolution 178 (Drake) that revealed wide disparities between judicial circuits as to the minimum levels of experience needed before an attorney would be assigned to court appointed cases.³⁰ While some judges indicated they would only assign cases to an attorney whom they felt could handle the work, others indicated they assigned cases to whoever asked, regardless of the level of difficulty of the case or the experience of the attorney. Additionally, a literature review and survey analysis indicated possible problems with attorneys failing to maintain minimal standards of quality in their representation of indigent clients. Furthermore, in 2003, the Spangenberg Group found that inadequate resources and absence of an oversight structure form the basis of an indigent defense system that fails to provide lawyers with the tools, time and incentive to provide adequate representation to indigent defendants in Virginia.³¹ Specifically, the lack of oversight and administration permits a small number of attorneys to receive a disproportionate number of appointed cases, raising serious concerns over the quality of representation provided to indigent defendants.³²

V. Study Activities

Over the course of the two-year study, the Indigent Defense Study Committee met on various occasions to discuss whether the establishment of a statewide indigent defense

²⁹ Conversely, an attorney might breach his ethical duties, but still provide his/her client with an excellent defense.

³⁰ Report of the Virginia State Crime Commission, Indigent Defense, House Document 32 (2002).

³¹ The Spangenberg Group on behalf of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. "A Comprehensive Review of Indigent Defense in Virginia", January 2004.

³² The Spangenberg Group on behalf of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. "A Comprehensive Review of Indigent Defense in Virginia", January 2004.

commission would improve the quality and efficiency of the Commonwealth's indigent defense services. This discussion hinged on staff's research and evaluation of the current status of indigent defense in Virginia as well as in-depth analysis of the provision of indigent defense services in other states. In an effort to identify the responsibilities of an indigent defense commission, staff researched the organizational structure, funding mechanisms and budget structures of other states' indigent defense commissions. Additionally, staff worked with the Advisory Committee to draft and present recommendations to the General Assembly establishing standards, criteria, and procedures for the appointment of counsel for indigent defendants at each court level.

A. Virginia State Crime Commission Report on Indigent Defense (2002) Survey Findings

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).³³ 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 guardian ad litem (GAL's).³⁴ Specifically, appointment as a GAL requires an initial seven hour 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.

³³ Report of the Virginia State Crime Commission, Indigent Defense, House Document 32 (2002).

³⁴

B. Overview of Statewide Indigent Defense Systems

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,³⁵ 42 states and the District of Columbia have some type of statewide indigent defense system.³⁶ 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 of all indigent defense attorneys, including Public Defenders, Assigned Counsel, and Contract Counsel.³⁷ Thirty-one percent of these states, including Virginia, have a statewide commission which oversees only Public Defenders.³⁸ Twelve percent of states have a statewide commission that handles only Appellate issues.³⁹ Fifty-two percent of states with a statewide commission allow the commission to determine the type of counsel used at the local level.⁴⁰

C. 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 public defenders, 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 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

³⁵ Spangenburg Report, available at http://www.nlada.org/Defender/States/state_structure.

³⁶ Alabama, Arizona, California, Florida, Idaho, Pennsylvania, South Dakota, and Utah have no statewide system.

³⁷ Virginia State Crime Commission Comparison Chart. See Attachment 5 for a detailed comparison of these statistics.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Virginia State Crime Commission Comparison Chart. See Attachment 5 for a detailed comparison of these statistics.

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.

D. Examples of Indigent Defense Funding Mechanisms

The funding mechanisms also differ throughout the organizational structures of the statewide systems. For example, some state systems authorize the state agency to prepare a budget for the provision of indigent services. Yet, in other states, the statewide entity is responsible for appropriating monies to localities based on a formula, or a requirement that localities meet certain standards for indigent defense in order to receive state money. The current system in Georgia exemplifies this mechanism. The Georgia Indigent Defense Council administers state funds to local public defender programs that comply with their recommended standards and guidelines.⁴¹ Yet, in 2002, counties spent over \$64.3 million dollars on operating indigent defense programs and the State only contributed \$8.29 million dollars towards this amount. With the new system slated to begin in 2005, it is anticipated that the state will contribute 50% of the indigent defense expenditures.⁴²

According to the Georgia Indigent Defense Act of 2003 and the allocation of State funds, the statutory breakdown of budgetary responsibilities is as follows:⁴³

⁴¹ Effective December 31, 2003, the Georgia Indigent Defense Council was dissolved into the Georgia Public Defender Standards Council. The Council will work to create public defender offices in each of the 49 judicial circuits unless the circuit is approved to opt-out of the system. Under this system, the state is anticipated to increase its contribution from 13% to 50% of the existing indigent defense expenditures.

⁴² Georgia Public Defender Standards Council, "The Georgia Indigent Defense Act of 2003: Implementation Manual for County, Municipal, & Consolidated Governments." (2003).

⁴³ *Id.*

The State provides for the following expenses:

- Personnel (base salary)
 - Circuit public defender
 - Assistant public defender
 - 1 per each superior court judge, excluding the chief judge and senior judges
 - 1 per each full-time juvenile court judge
 - Investigator (1 per circuit)
 - Administrative staff (2 per circuit)
- Conflict Cases
 - Superior Courts
 - Juvenile Courts
- Training Expenses
- Travel for State-funded Employees
- Interpreter and Expert Fees
 - Superior courts
 - Juvenile courts
- Capital Cases

The local governing authorities shall provide in pro rata share based on population per county for the following expenses:

- Overhead Expenses
 - Office Space
 - Utilities
 - Telephone expenses
 - Materials
 - Supplies
- Additional personnel in superior and juvenile courts (in order to comply with standards established by the council)

The local governing authorities may provide the following items:

- Supplements to salaries and/or fringe benefits of any state paid position
- Additional personnel in state courts (in order to comply with standards established by the council).

In New York, in response to the NYCLA, the Legislature passed a budget that increased assigned counsel fees to \$60 per hour for misdemeanors (with a per case cap of \$2,400) and \$75 per hour for felonies and all other eligible cases (with a per case cap of \$4,400) effective January 2004. The budget also raises the caps on expert and investigative services to \$1,000 per expert/service provider and allows caps to be exceeded in extraordinary circumstances. Additionally, the budget creates a revenue stream for some state funding of public defense services; establishes an Indigent Legal Services Fund (under the joint custody of the Commissioner of Taxation and Finance and the Comptroller) to distribute funds to localities based on their percentage of the total amount spent by localities on public defense statewide; and, creates a task force to review the sufficiency of assigned counsel rates (sunsets June 30, 2006).

The distribution of state funding to localities for public defense begins Fiscal Year 2005, and will be based on a formula. Money from the Indigent Legal Services Fund first goes to reimburse the state for payment of law guardians. The remainder is to be distributed to localities based on the percentage spent by a locality of the overall statewide total for public defense services. Statutory compliance is required as a precondition for receipt of state assistance.

In addition to analyzing the lawsuit, staff identified how the New York State Legislature specifically handled this mandate in its budget in an effort to determine the fiscal impact. The legislature increased the assigned counsel rate by \$35 per hour for in/out of court felonies (except capital); appeals; SORA hearings/appeals; parole representation; parole administrative appeals; family court representation; law guardian representation; post-judgment motions, writs of habeas corpus and writs of error Coram Nobis. It also increased the cap for these cases by \$3,200. Furthermore, the legislature increased the assigned counsel rate by \$35 per hour for in and out of court for representation of person initially charged with misdemeanor and increased the cap by \$1,600. To pay for these increases in assigned counsel rates, the New York legislature created the Indigent Legal Services Fund. It is anticipated that the revenue from this fund will fund the difference in the cost to the localities for the increased rates.

The Indigent Legal Services Fund collects funds from the following sources: \$35 DMV fee for lifting of license suspension; \$27 of \$52 fee to be charged by the Office of Court Administration for county based criminal history checks; \$50 increase in attorney registration fee; and, \$10 increase in mandatory surcharges for parking violations. It is anticipated that the estimated funding streams will generate \$65 million per year. Of this, \$25 million is designated for law guardians and the remainder is distributed to counties. Localities use these funds at their discretion as long as the funds are used to improve the quality of the local public defense system. State funds are to supplement and not supplant any local funds which such county or city would otherwise have had to expend for indigent defense. Distribution of funds to localities begins in 2005 and will be made under a formula based on the amount spent by a jurisdiction in the preceding year. A locality's local expenditure will be calculated by the Comptroller as a percentage of the total indigent expenditures by counties and New York City. That same percentage of the fund will be returned to localities, which must certify that they spend the same amount in the preceding fiscal year as the year before or that a measurable increase in quality can be demonstrated. The examination of the use of experts and investigators, caseload limits, training, resource and similar issues is part of the funding calculus.

Finally, the North Carolina Indigent Defense System includes public defenders, contract attorneys, appellate defenders, capital defenders and special counsel. Under the Indigent Defense Services Act of 2000, the Office on Indigent Defense Services ("IDS Office"), housed in the judicial branch, determines the most cost-effective method for the delivery of indigent defense services in each judicial district. Then, in conjunction with the Administrative Office of the Courts, the IDS Office submits a budget for North Carolina's entire Indigent Defense Program. Specifically, the budget includes funding

for twelve public defender offices covering fourteen of the eighty-six counties and handling thirty percent of the cases. It also includes funding for the office of the Appellate Defender, which includes ten assistant appellate defenders and one legal consultant. The Office of the Capital Defender also falls under the state indigent defense budget and includes one capital defender, three assistant capital defenders and one capital case coordinator in three regional offices. Each of these offices has at least one assistant capital defender and an investigator. Furthermore, the state provides funding the employment of contract attorneys and for a Special Counsel Unit that handles involuntary commitments. This unit employs five attorneys, one investigator and one legal assistant. Any expenditure within these offices must be approved by the Commission on Indigent Defense Services and then included in the budget submitted by the IDS Office to the North Carolina General Assembly for approval.

E. Examples of Eligibility Standards for Indigent Defense Attorneys

After the Indigent Defense Study Committee 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 SJ 43/HJ 94, they analyzed several models to determine how various systems ensured only qualified attorneys represented indigents. Again, the analysis revealed wide discrepancy in how states employed eligibility standards. Approximately ten 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 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.⁴⁴ 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.⁴⁵ 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

⁴⁴Committee for Public Counsel Services available at <http://www.state.ma.us/cpcs>. See also Mass. Gen. Laws Ann. ch. 211D, § 6 (2002).

⁴⁵ *Id.*

attorneys meet the standards.⁴⁶ The Indiana Public Defender Commission specifies different levels of experience that is dependant on the seriousness of the crime.⁴⁷ 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.⁴⁸ 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 client 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 client 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.

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.⁴⁹

In Georgia, the current indigent defense system 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

⁴⁶ See generally Ind. Code Ann. § 33-9-13-1 (2002).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See generally N. M. Stat. Ann. § 31-15-4 (2002).

certification of the attorney's experience.

However, the 2003 Session of the Georgia General Assembly passed the Georgia Indigent Defense Act of 2003.⁵⁰ This Act created the Georgia Public Defender Standards Council as an independent agency within the judicial branch of state government. Passage of the Act transitioned Georgia from a largely locally-run and administered system to a state-administered system of indigent defense by January 1, 2005. Under this new system, the Council must adopt standards for qualifications of the circuit public defenders, standards for caseload limits, the definition of an indigent case, and the standards for determination of indigency.

F. 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.

G. 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, and Contract Attorneys.⁵¹ The structured phone surveys addressed the issues of administrative oversight, operational application, financial impact, programmatic components, and programmatic evaluation. Following the mandates of SJ 43/HJ 94, 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.

⁵⁰ O.C.G.A. § 17-12.

⁵¹ Virginia State Crime Commission Telephone Questionnaire. See Attachment 6.

The Kentucky Department of Public Advocacy has no mechanism in place for monitoring attorney compliance with the criteria established by the department.⁵² 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.

In Kentucky, 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 well, 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 is not a reporting agency and does not report attorney violations to the Kentucky State Bar.

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 (IDS Office) oversees all indigent defense attorneys and has broad power by law.⁵³ However, this authority does not extend to the appointment of the public defender. The IDS Office establishes 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 decision. Although the IDS 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 IDS 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 IDS 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

⁵² See generally KY. Rev. Stat. Ann. § 31.010 (2002).

⁵³ N.C. Gen. Stat. § 7A-498 (2002).

hourly rate set at \$65.

Generally, the IDS Office 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 IDS 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 IDS Office. 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 IDS Office 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 IDS 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 IDS 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 IDS Office has a five person staff and a 13 member commission. The creation of the IDS Office stemmed from hard work and vision. Specifically, the IDS Office followed the vision established by the Commission study. However, practically speaking, the Director worked with a university professor to develop the IDS Office bylaws, rules, and procedure, and the CFO worked with the State in developing the budget. The IDS Office is a very new office, so its staff does not know if it is successful. However, they believe the state legislature likes the IDS Office because the IDS Office survived the latest rounds of budget cuts. On the other hand, critics of the IDS Office are a segment of vocal attorneys who basically do not like change or oversight. Public Defenders were initially cautious but their outlook improved. The Commission holds meetings often to encourage communication and compromise. As a result, the majority of critics now approve of the IDS Office because they realize they now have an advocacy voice.

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 Ohio State Public Defender

Commission hires the State Public Defender, and establishes rules for the county indigent defense systems.⁵⁴ 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 Oregon Public Defense Services Commission has separate standards and training for the different categories of attorneys.⁵⁵ 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 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.

⁵⁴ Ohio Rev. Code Ann. § 120.01 (Anderson 2002).

⁵⁵ OR. Rev. Stat. § 151.213 (2001).

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.⁵⁶ 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 ad hoc attorneys from a list. 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 well, 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.

H. Development of Statewide Proposal

During the second year of the study, Crime Commission staff organized a workgroup to examine the research and to draft a proposal for consideration by the Indigent Defense Study Committee. The workgroup consisted of representatives from the Public Defender Commission, as well as staff from the Crime Commission and House Courts of Justice Committee. The workgroup met three times prior to the Advisory Committee meeting on September 10, 2003 to review the national data and to develop a working proposal to address the study mandate. The workgroup meetings were held on

⁵⁶ Available at <http://www.defgen.state.va.us/>.

July 28th, August 11th, and August 25th, 2003.

The workgroup identified four areas to address in the working proposal presented to the Indigent Defense Study Committee on September 10, 2003. These issues included:

- 1) legal education and mentoring requirements for experienced criminal attorneys;
- 2) legal education and mentoring requirements for new attorneys;
- 3) responsibilities for a statewide indigent defense commission; and,
- 4) composition of a statewide indigent defense commission.

Research Criminal Defense Training Opportunities

Before developing specific recommendations based on the workgroup's proposal, staff also reviewed current CLE criminal defense training opportunities in an effort to determine a means for court appointed attorneys to meet the Study Committee's training and education recommendations at no cost to themselves. Specifically, the Virginia State Bar offers two criminal defense training seminars, in Charlottesville and Williamsburg, at a cost of \$130 for Virginia Bar members. This cost is discounted to \$110 for members of the Virginia State Bar, Criminal Section. Virginia Bar dues are \$175 annually, and it costs an additional \$20 in annual dues to maintain a membership in the Criminal Section. These seminars provide six CLE credits, including one in ethics.

The Virginia Trial Lawyers Association also offers four seminars, annually, in each region of Virginia, at a cost of \$160 for Criminal Section members and \$195 for all other licensed attorneys. These seminars provide six CLE credits, including one in ethics. Additionally, the Virginia Association of Criminal Defense Lawyers holds two seminars annually, in various locations at a cost of \$90 for Criminal Section members and \$110 for all other Virginia attorneys. These seminars provide six CLE credits, including one in ethics. Finally, the Virginia Bar Association holds one criminal law seminar in Richmond. This seminar provides ten CLE credits, including one in ethics.

All attorneys are required to complete 12 hours of CLE training, including two hours in ethics, annually, to maintain a Virginia law license. The Advisory Committee's training and education recommendations do not require that indigent defense attorneys meet additional training requirements to those required to maintain a license, only that indigent defense attorneys take a certain number of hours in criminal defense. It is the indigent defense attorney's discretion on how he/she meets these requirements. However, the Advisory Committee's training and education recommendations allow indigent defense attorneys the opportunity to fulfill the requirements to defend indigents while simultaneously fulfilling their requirements to maintain a Virginia law license.

Development of Indigent Defense Commission Budget

While developing recommendations for the Virginia State Crime Commission, staff met on a regular basis with members of the study committee to develop a budget for the proposed Indigent Defense Commission. The development of a budget required an analysis of Virginia's 2003 indigent defense costs, including the budget for the current Public Defender Commission.

Fiscal Year 2003 Indigent Defense Costs for the Commonwealth of Virginia

Circuit/District	Court Appointed Counsel Fees & Expenses	Public Defender Expenditures	Total Indigent Defense Costs
1	\$1,981,267		\$1,981,267
2	\$969,340	\$1,747,948	\$2,717,288
2A	\$354,494		\$354,494
3	\$889,127	\$1,207,326	\$2,096,453
4	\$3,848,212	\$1,287,008	\$5,135,220
5	\$490,916	\$976,860	\$1,467,776
Circuit/District	Court Appointed Counsel Fees & Expenses	Public Defender Expenditures	Total Indigent Defense Costs
6	\$1,542,454		\$1,542,454
7	\$2,635,886		\$2,635,886
8	\$1,915,634		\$1,915,634
9	\$1,954,187		\$1,954,187
10	\$1,507,312	\$554,261	\$2,061,573
11	\$1,405,497	\$526,042	\$1,931,539
12	\$2,992,013		\$2,992,013
13	\$2,337,790	\$2,081,964	\$4,419,754
14	\$2,752,761		\$2,752,761
15	\$2,561,564	\$1,069,475	\$3,631,039
16	\$2,508,516	\$683,976	\$3,192,492
17	\$2,073,707		\$2,073,707
18	\$677,589	\$1,069,194	\$1,746,783
19	\$1,985,824	\$1,891,358	\$3,877,182
20	\$426,600	\$992,586	\$1,419,186
21	\$309,152	\$466,468	\$775,620
22	\$1,246,282	\$398,380	\$1,644,662
23	\$1,478,184	\$949,987	\$2,428,171
24	\$1,900,135	\$1,032,635	\$2,932,770
25	\$1,048,662	\$665,867	\$1,714,529
26	\$1,608,052	\$577,266	\$2,185,318
27	\$2,278,318	\$447,484	\$2,725,802
28	\$1,179,296		\$1,179,296
29	\$1,718,239		\$1,718,239
30	\$1,725,178		\$1,725,178
31	\$2,863,116		\$2,863,116
Other		\$1,836,569	\$1,836,469
Total	\$55,165,304	\$20,462,554	\$75,627,858

Source: Supreme Court of Virginia (1/28/04).

Public Defender expenditures are from the Public Defender Commission.

Indigent Defense Commission Budget Proposal

The proposed budget to support the creation of the Indigent Defense Commission totals \$216,172. This amount is in addition to the current expenditures for the Public Defender Commission. The proposed budget includes funding to support four new positions. An Assigned Counsel Supervising Attorney position is needed to carry out the Indigent Defense Commission's supervisory functions regarding the quality of court appointed counsel and their compliance with the educational, experiential, and performance standards to be promulgated by the Indigent Defense Commission. Furthermore, with its additional responsibilities, the Indigent Defense Commission must be able to track and analyze data generated by the individual offices' case management system as well as court statistics and data relevant to the provision of quality services both public defender offices and court-appointed private counsel. Therefore, a position for a data analyst is required. Additionally, a Training Administrator is necessary to assist in the administration of the training responsibilities of the Commission. Finally, entry level secretaries are necessary to handle the additional administrative burden imposed by the added Indigent Defense Commission responsibilities. Personnel costs for the FY05 Indigent Defense Commission total \$134,652.

The proposed budget includes funds for the creation of brochures and materials explaining and publicizing the Indigent Defense Commission and the new requirements for indigent defense counsel, as well as applications and forms, and costs associated with printing training materials. Additionally, the budget includes travel expenses for staff members to publicize the Indigent Defense Commission and its requirements as well as administering training programs. Finally, the budget includes monies for the acquisition of office space and machines, as well as the creation of a database and sufficient network resources. Specifically, the proposed budget also includes \$59,750 for contractual services; \$2,250 for supplies and materials; \$28,450 for continuous charges; and, \$33,440 for equipment. This amount totals \$258,542, minus the start-up costs (\$42,370), leaving a total operating budget of \$216,172.

Based on the workgroup proposal, current training opportunities for indigent defense attorneys, and a budget, the Indigent Defense Study Committee voted to recommend a number of legislative changes to address the issues in SJ 43. The Indigent Defense Study Committee presented their recommendations to the Virginia State Crime Commission, which approved the recommendations in whole. The recommendations include:

Recommendation 1: The establishment of an Indigent Defense Commission.

Recommendation 2: The Public Defender Commission should be reconfigured as the Virginia Indigent Defense Commission and have oversight of training and standards for both public defenders and court appointed counsel.

Recommendation 3: The Virginia Indigent Defense Commission shall publicize and enforce the qualification standards for court appointed attorneys.

Recommendation 4: Membership of the 12 member commission should be guided by national standards and include: Chairman of the House Courts and Senate Courts Committees; Chairman of the Virginia State Crime Commission; Executive Secretary of the Supreme Court of Virginia; Two appointees from the Virginia State Bar; and, two appointments each by the Governor, Speaker of the House and the Senate Privileges and Elections Committee.

Recommendation 5: The legislative and gubernatorial appointments shall be a citizen member of the Virginia State Bar, in private practice, with a demonstrated interest or background in criminal defense issues.

Recommendation 6: The following training and practicum requirements should be mandated for experienced court appointed counsel representing felony defendants: six hour introductory Continuing Legal Education (CLE) credits in criminal defense, including one hour of legal ethics; and the introductory course should be waived if the attorney certifies, on a form developed by the Indigent Defense Commission, that he has handled four felony cases, from preliminary hearing through completion within the past year.

Recommendation 7: The following training and practicum requirements should be mandated for experienced court appointed counsel representing misdemeanor defendants: six hour introductory CLE credits in criminal defense, including one hour of legal ethics; introductory course should be waived if the attorney certifies he has handled four misdemeanor cases through completion within the past year.

Recommendation 8: The following training and practicum requirements should be mandated for new court appointed counsel representing felony defendants: six hour introductory CLE credits in criminal defense, including one hour of legal ethics; and, the attorney certifies he has been first or second chair in four felony cases from preliminary hearing through completion within the past year.

Recommendation 9: The following training and practicum requirements should be mandated for new court appointed counsel representing misdemeanor defendants: six hour introductory CLE course in criminal defense (one hour of ethics).

Recommendation 10: The following training and practicum requirements should be mandated for experienced court appointed counsel representing juvenile defendants in delinquency cases: four hour introductory CLE course in criminal defense (one hour of ethics); and, introductory course should be waived if the attorney certifies he has handled four juvenile delinquency cases through completion within the past year.

Recommendation 11: The following training and practicum requirements should be mandated for new court appointed counsel representing juvenile defendants in

delinquency cases: six hour introductory CLE course in criminal defense (one hour of ethics); four hour introductory CLE course concentrating on topics specific to the Juvenile and Domestic Relations District Court; and, the attorney certifies he has been first or second chair in four juvenile delinquency cases through completion within the past year.

Recommendation 12: The Indigent Defense Commission shall determine CLE requirements for all court appointed counsel once certified. Training requirement should include: six hours of CLE's (one hour in legal ethics) every two years beginning November 1, 2004.

Recommendation 13: The Indigent Defense Commission shall develop and sponsor the six hour introductory CLE class in criminal law and the four hour introductory CLE class in juvenile law.

Recommendation 14: The Indigent Defense Commission shall determine CLE course eligibility for renewal requirements.

Recommendation 15: The Indigent Defense Commission shall develop the forms necessary to certify case representation requirements and all other forms necessary for application and renewal of court appointed attorneys.

Recommendation 16: The Indigent Defense Commission shall maintain and distribute to the courts a list of certified court appointed attorneys.

Recommendation 17: The Indigent Defense Commission shall report annually to the General Assembly on the status of indigent defense in the Commonwealth.

Recommendation 18: By November 2004, the Indigent Defense Commission shall, in consultation with the Virginia State Crime Commission, develop Standards of Practice for Public Defense Course which would be the basis for removal or suspension from public defense eligibility.

VI. Acknowledgements

The Virginia State Crime Commission extends its appreciation to the following agencies and individuals for their assistance and cooperation on this study.

Buckingham County Commonwealth's Attorney
The Honorable E. M. Wright, Jr.

Executive Office of the Supreme Court of Virginia
Steven Dalle Mura, Director of Legal Research

The Honorable Edward W. Hanson

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The Honorable Tony Sylvester

Marvin Miller, Esquire

The National Association of Criminal Defense Lawyers
Steven D. Benjamin, Board of Directors

Robert E. Shepherd, Jr., Esquire

Suffolk Public Defender's Office
Timothy E. Miller, Esquire

The Virginia Bar Association, Criminal Law Section
Andrew Protogyrou, Criminal Law Section Chair

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

The Virginia Division of Legislative Services
Jescey D. French, Courts of Justice, Senior Attorney

The Virginia Public Defender Commission
O.P. Pollard, Former Executive Director
Richard C. Goemman, Executive Director

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

*Attachment 1:
Senate Joint Resolution 43/House Joint
Resolution 94*

2002 SESSION

024399536

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SENATE JOINT RESOLUTION NO. 43

Offered January 9, 2002

Prefiled January 8, 2002

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.

Patron—Stolle

8
9
10

Referred to Committee on Rules

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

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

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

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

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

35 The Commission shall complete its work in time to submit its findings and recommendations to
36 the Governor and the 2004 Session of the General Assembly as provided in the procedures of the
37 Division of Legislative Automated Systems for the processing of legislative documents.

024399536

SJ43

7/22/02 11:10

Official Use By Clerks			
Agreed to By The Senate		Agreed to By The House of Delegates	
with amendment	<input type="checkbox"/>	with amendment	<input type="checkbox"/>
substitute	<input type="checkbox"/>	substitute	<input type="checkbox"/>
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Date: _____		Date: _____	
_____	Clerk of the Senate	_____	Clerk of the House of Delegates

2002 SESSION

026193228

HOUSE JOINT RESOLUTION NO. 94

Offered January 9, 2002

Prefiled January 8, 2002

Requesting the Executive Secretary of the Supreme Court of Virginia to establish a task force to establish standards, criteria and procedures for appointment of counsel for indigent defendants.

Patrons—Kilgore, Albo and Moran; Senators: Howell, Norment and Stolle

Referred to Committee on Rules

WHEREAS, there needs to be a proper means to institute a review mechanism for attorneys in the public defenders offices and court appointed attorneys who fail to maintain reasonable standards of practice; and

WHEREAS, the adequacy of the existing standards for capital defense and the feasibility of improving those standards need to be considered including limites on the number of capital cases an attorney can handle at one time; and

WHEREAS, is there an appropriate caseload ceiling for public defenders and for private attorneys appointed to capital cases and is it feasible to incorporate those caseload ceilings into law are now timely questions for discussion; and

WHEREAS, the Judicial Council of Virginia, the Virginia State Bar, and the Public Defender Commission along with this task force should adopt meaningful standards for attorneys appointed to represent indigent defendants at each court level; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Executive Secretary of the Supreme Court of Virginia establish a task force to establish the standards, criteria and procedures for appointment of counsel for indigent defendants and to specifically consider, among other things, limits on the number of capital cases and quality review mechanisms. Technical assistance shall be provided to the task force by the Commission by the Public Defender Commission, the Virginia State Bar, and by the Virginia State Crime Commission.

All agencies of the Commonwealth shall provide assistance to the task force and the Commission for this study, upon request.

The Office of the Executive Secretary shall complete its work by November 30, 2002, and shall submit its written findings and recommendations to the Governor and the 2003 Session of the General Assembly.

026193228

HJ94

1/11/02 12:31

Official Use By Clerks			
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The House of Delegates		Agreed to By The Senate	
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Date: _____		Date: _____	
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Clerk of the House of Delegates		Clerk of the Senate	

*Attachment 2:
Senate Bill 330/House Bill 1056*

040903134

SENATE BILL NO. 330
Offered January 14, 2004
Prefiled January 14, 2004

A BILL to amend and reenact §§ 16.1-266, 19.2-159, 19.2-163.7, 19.2-163.8 and 53.1-124 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 10 of Title 19.2 an article numbered 3.1, consisting of sections numbered 19.2-163.01, 19.2-163.02, 19.2-163.03, 19.2-163.04 and 19.20163.4:1, and to repeal §§ 19.2-163.1, 19.2-163.2 and 19.2-163.6 of the Code of Virginia, relating to public defenders.

Patrons—Stolle, Howell and Norment; Delegates: Albo, Kilgore, McDonnell and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-266, 19.2-159, 19.2-163.7, 19.2-163.8 and 53.1-124 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 10 of Title 19.2 an article numbered 3.1, consisting of sections numbered 19.2-163.01, 19.2-163.02, 19.2-163.03, 19.2-163.04 and 19.20163.4:1, as follows:

§ 16.1-266. Appointment of counsel and guardian ad litem.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. If the court determines that the child is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159 and his parent, guardian, legal custodian or other person standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the court shall appoint an attorney-at-law from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent him; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

C. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.

Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing

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59 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or
60 guardian.

61 D. In those cases described in subsections A, B and C which in the discretion of the court require
62 counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult
63 party in addition to the representation provided in those subsections, a discreet and competent
64 attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

65 E. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or
66 both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law
67 may be appointed by the court. However, in cases where the custody of a child or children is the subject
68 of controversy or requires determination and each of the parents or other persons claiming a right to
69 custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent
70 the interests of the child or children unless the court finds, at any stage in the proceedings in a specific
71 case, that the interests of the child or children are not otherwise adequately represented.

72 F. Any state or local agency, department, authority or institution and any school, hospital, physician
73 or other health or mental health care provider shall permit a guardian ad litem appointed pursuant to this
74 section to inspect and copy, without the consent of the child or his parents, any records relating to the
75 child whom the guardian represents upon presentation by him of a copy of the court order appointing
76 him or a court order specifically allowing him such access. Upon request therefor by the guardian ad
77 litem made at least 72 hours in advance, a mental health care provider shall make himself available to
78 conduct a review and interpretation of the child's treatment records which are specifically related to the
79 investigation. Such a request may be made in lieu of or in addition to inspection and copying of the
80 records.

81 § 19.2-159. Determination of indigency; guidelines; statement of indigence; appointment of counsel.

82 If the accused shall claim that he is indigent, and the charge against him is a criminal offense which
83 may be punishable by death or confinement in the state correctional facility or jail, subject to the
84 provisions of § 19.2-160, the court shall determine from oral examination of the accused or other
85 competent evidence whether or not the accused is indigent within the contemplation of law pursuant to
86 the guidelines set forth in this section.

87 In making its finding, the court shall determine whether or not the accused is a current recipient of a
88 state or federally funded public assistance program for the indigent. If the accused is a current recipient
89 of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall
90 be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the
91 court finds that a more thorough examination of the financial resources of the defendant is necessary. If
92 the accused shall claim to be indigent and is not presumptively eligible under the provisions of this
93 section, then a thorough examination of the financial resources of the accused shall be made with
94 consideration given to the following:

95 1. The net income of the accused, which shall include his total salary and wages minus deductions
96 required by law. The court also shall take into account income and amenities from other sources
97 including but not limited to social security funds, union funds, veteran's benefits, other regular support
98 from an absent family member, public or private employee pensions, dividends, interests, rents, estates,
99 trusts, or gifts.

100 2. All assets of the accused which are convertible into cash within a reasonable period of time
101 without causing substantial hardship or jeopardizing the ability of the accused to maintain home and
102 employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks,
103 bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is
104 readily convertible into cash shall be considered, except property exempt from attachment. Any real
105 estate owned by the accused shall be considered in terms of the amounts which could be raised by a
106 loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the
107 spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was
108 the victim of the offense or offenses allegedly committed by the accused.

109 3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit
110 him from being able to secure private counsel. Such items shall include but not be limited to costs for
111 medical care, family support obligations, and child care payments.

112 The available funds of the accused shall be calculated as the sum of his total income and assets less
113 the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to
114 counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available
115 funds are equal to or below 125% of the federal poverty income guidelines prescribed for the size of the
116 household of the accused by the federal Department of Health and Human Services. The Supreme Court
117 of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty
118 income guidelines made by the Department.

119 If the available funds of the accused exceed 125% of the federal poverty income guidelines and the
120 accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional

121 circumstances, and where the ends of justice so require, appoint an attorney to represent the accused.
122 However, in making such appointments, the court shall state in writing its reasons for so doing. The
123 written statement by the court shall be included in the permanent record of the case.

124 If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines
125 set forth in this section, the court shall provide the accused with a statement which shall contain the
126 following:

127 "I have been advised this day of, 20. . ., by the
128 (name of court) court of my right to representation by counsel in the trial of
129 the charge pending against me; I certify that I am without means to employ
130 counsel and I hereby request the court to appoint counsel for me."
131 (signature of accused)

132 The court shall also require the accused to complete a written financial statement to support the
133 claim of indigency and to permit the court to determine whether or not the accused is indigent within
134 the contemplation of law. The accused shall execute the said statements under oath, and the said court
135 shall appoint competent counsel to represent the accused in the proceeding against him, including an
136 appeal, if any, until relieved or replaced by other counsel.

137 The executed statements by the accused and the order of appointment of counsel shall be filed with
138 and become a part of the record of such proceeding.

139 All other instances in which the appointment of counsel is required for an indigent shall be made in
140 accordance with the guidelines prescribed in this section.

141 Except in jurisdictions having a public defender pursuant to Article 4 (§19.2-163.1 et seq.) of
142 Chapter 10 of Title 19-2, counsel appointed by the court for representation of the accused shall be
143 selected by a fair system of rotation among members of the bar practicing before the court whose
144 practice regularly includes representation of persons accused of crimes and who have indicated their
145 willingness to accept such appointments whose names are on the list maintained by the Indigent Defense
146 Commission pursuant to § 19.2-163.01.

147 Article 3.1.

148 § 19.2-163.01. Virginia Indigent Defense Commission established; powers and duties.

149 A. The Virginia Indigent Defense Commission (hereinafter "Indigent Defense Commission" or
150 "Commission") is established. The Commission shall have the following powers and duties:

151 1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as
152 court-appointed counsel for indigent defendants pursuant to § 19.2-159.

153 2. To develop initial training courses for attorneys who wish to begin serving as court-appointed
154 counsel, and to review and certify legal education courses that satisfy the continuing requirements for
155 attorneys to maintain their eligibility for receiving court appointments.

156 3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as
157 court-appointed counsel for indigent defendants based upon the official standards and to disseminate the
158 list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of
159 the Supreme Court for distribution to the courts. In establishing and updating the list, the Commission
160 shall consider all relevant factors, including but not limited to, the attorney's background, experience,
161 and training and the Commission's assessment of whether the attorney is competent to provide quality
162 legal representation.

163 4. To establish official standards of practice for court-appointed counsel to follow in representing
164 their clients, and guidelines for the removal of an attorney from the official list of those qualified to
165 receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of
166 any attorney whose name has been removed from the list.

167 5. To develop initial training courses for public defenders and to review and certify legal education
168 courses that satisfy the continuing requirements for public defenders to maintain their eligibility; and to
169 establish standards of practice for public defenders.

170 6. To establish and thereafter maintain, in conjunction with the Virginia State Bar, the Supreme
171 Court and the Virginia State Crime Commission, standards of conduct for indigent defense counsel in
172 Virginia.

173 7. To establish appropriate caseload limits for public defender offices.

174 8. To maintain all public defender and regional capital defender offices established by the General
175 Assembly.

176 9. To hire and employ and, at its pleasure, remove an executive director, counsel, and such other
177 persons as it deems necessary, and to authorize the executive director to appoint for each of the above
178 offices a public defender or capital defender, as the case may be, who shall devote his full time to his
179 duties and not engage in the private practice of law.

180 10. To authorize the public defender or capital defender to employ such assistants as authorized by
181 the Commission.

182 11. To authorize the public defender or capital defender to employ such staff, including secretarial
183 and investigative personnel, as may be necessary to carry out the duties imposed upon the public
184 defender office.

185 12. To authorize the public defender or capital defender to secure such office space as needed, to
186 purchase or rent office equipment, to purchase supplies and to incur such expenses as are necessary to
187 carry out the duties imposed upon him.

188 13. To receive and expend moneys appropriated by the General Assembly of Virginia and to receive
189 other moneys as they become available to it and expend the same in order to carry out the duties
190 imposed upon it.

191 14. To require and ensure that each public defender office collects and maintains caseload data and
192 fields in a case management database on an annual basis.

193 15. To report annually on or before October 1 to the Virginia State Crime Commission, the House
194 and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate
195 Committee on Finance on the state of indigent criminal defense in the Commonwealth, including
196 Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed
197 pursuant to § 19.2-159 or subdivision B 2 of § 16.1-266.

198 B. The executive director shall, with the approval of the Commission, fix the compensation of each
199 public defender and all other personnel in each public defender office.

200 § 19.2-163.02. Membership of Indigent Defense Commission; expenses.

201 A. The Virginia Indigent Defense Commission shall consist of 12 members, including the chairmen of
202 the House and Senate Committees on Courts of Justice; the chairman of the Virginia State Crime
203 Commission; the Executive Secretary of the Supreme Court or his designee; two attorneys officially
204 designated by the Virginia State Bar; two persons appointed by the Governor; two persons appointed by
205 the Speaker of the House of Delegates; and two persons appointed by the Senate Committee on
206 Privileges and Elections. At least one of the appointments made by the Governor, one of the
207 appointments made by the Speaker, and one of the appointments made by the Senate Committee on
208 Privileges and Elections, shall be an attorney in private practice with a demonstrated interest in
209 indigent defense issues. Persons who are appointed by virtue of their office shall hold terms coincident
210 with their terms of office. All other appointments shall be for terms of three years.

211 The Commission shall elect a chairman and a vice chairman from among its membership. A majority
212 of the members shall constitute a quorum. The Commission shall meet at least four times each year. The
213 meetings of the Commission shall be held at the call of the chairman or whenever the majority of the
214 members so request.

215 Members shall be paid reasonable and necessary expenses incurred in the performance of their
216 duties. Legislative members shall receive compensation as provided in § 30-19.12 and nonlegislative
217 citizen members shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.

218 § 19.2-163.03. Qualifications for court-appointed counsel.

219 A. In accordance with § 19.2-163.01, to initially qualify to serve as counsel appointed pursuant to
220 § 19.2-159 for an indigent defendant charged with a misdemeanor, the attorney shall be a member in
221 good standing of the Virginia State Bar, and (i) if an active member of the Virginia State Bar for less
222 than one year, have completed six hours of MCLE-approved continuing legal education developed by
223 the Indigent Defense Commission, or (ii) if an active member of the Virginia State Bar for one year or
224 more, either complete the six hours of approved continuing legal education developed by the
225 Commission, or certify to the Commission that he has represented, in a district court within the past
226 year, four or more defendants charged with misdemeanors.

227 B. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant
228 charged with a felony, the attorney shall (i) be a member in good standing of the Virginia State Bar,
229 (ii) have completed the six hours of MCLE-approved continuing legal education developed by the
230 Commission, and (iii) certify that he has participated as either lead counsel or co-counsel in four felony
231 cases, originating in district court, from their beginning through to their final resolution, including
232 appeals, if any. If the attorney has been an active member of the Virginia State Bar for more than one
233 year and certifies that he has participated, within the past year, as lead counsel in four felony cases,
234 originating in district court, through to their final resolution, including appeals, if any, the requirement
235 to complete six hours of continuing legal education and the requirement to participate as co-counsel
236 shall be waived. If the attorney has been an active member of the Virginia State Bar for more than one
237 year and certifies that he has participated, within the past five years, as lead counsel in five felony
238 cases, originating in district court, through to their final resolution, including appeals, if any, the
239 requirement to participate as either lead counsel or co-counsel in four felony cases within the past year
240 shall be waived.

241 C. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district
242 court pursuant to subdivision B 2 of § 16.1-266, the attorney shall (i) be a member in good standing of
243 the Virginia State Bar, (ii) have completed the six hours of MCLE-approved continuing legal education

244 developed by the Commission, (iii) have completed four additional hours of MCLE-approved continuing
 245 legal education on representing juveniles developed by the Commission, and (iv) certify that he has
 246 participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and
 247 domestic relations district court. If the attorney has been an active member of the Virginia State Bar for
 248 more than one year and certifies that he has, within the past year, been lead counsel in four cases
 249 involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10
 250 hours of continuing legal education shall be waived. If the attorney has been an active member of the
 251 Virginia State Bar for more than one year and certifies that he has participated, within the past five
 252 years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement
 253 to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

254 D. After initially qualifying, an attorney shall maintain his eligibility for certification by completing
 255 biennially thereafter six hours of MCLE-approved continuing legal education, certified by the
 256 Commission. In addition, to maintain eligibility to accept court appointments under subdivision B 2 of
 257 § 16.1-266, an attorney shall complete biennially thereafter four additional hours of MCLE-approved
 258 continuing legal education on representing juveniles, certified by the Commission.

259 E. The Commission may, in its discretion, waive the requirements set out in this section for
 260 individuals who otherwise demonstrate their level of training and experience.

261 § 19.2-163.04. Public Defender offices.

262 Public defender offices are established in:

263 a. The City of Virginia Beach;

264 b. The City of Petersburg;

265 c. The Cities of Buena Vista, Lexington, Staunton and Waynesboro and the Counties of Augusta and
 266 Rockbridge;

267 d. The City of Roanoke;

268 e. The City of Portsmouth;

269 f. The City of Richmond;

270 g. The Counties of Clarke, Frederick, Page, Shenandoah and Warren, and the City of Winchester;

271 h. The City and County of Fairfax;

272 i. The City of Alexandria;

273 j. The City of Radford and the Counties of Bland, Pulaski and Wythe;

274 k. The Counties of Fauquier, Loudoun and Rappahannock;

275 l. The City of Suffolk;

276 m. The City of Franklin and the Counties of Isle of Wight and Southampton;

277 n. The City of Bedford and the County of Bedford;

278 o. The City of Danville;

279 p. The Counties of Halifax, Lunenburg and Mecklenburg;

280 q. The City of Fredericksburg and the Counties of King George, Stafford and Spotsylvania;

281 r. The City of Lynchburg;

282 s. The City of Martinsville and the Counties of Henry and Patrick;

283 t. The City of Charlottesville and the County of Albemarle; and

284 u. The City of Norfolk.

285 § 19.2-163.4:1. Repayment of representation costs by convicted persons.

286 In any case in which an attorney from a public defender or capital defender office represents an
 287 indigent person charged with an offense and such person is convicted, the sum that would have been
 288 allowed a court-appointed attorney as compensation and as reasonable expenses shall be taxed against
 289 the person defended as a part of the costs of the prosecution, and, if collected, shall be paid to the
 290 Commonwealth or, if payment was made to the Commonwealth by a locality for defense of a local
 291 ordinance violation, to the appropriate county, city or town. An abstract of such costs shall be docketed
 292 in the judgment lien docket and execution book of the court.

293 § 19.2-163.7. Counsel in capital cases.

294 In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit
 295 court, upon request for the appointment of counsel, shall appoint one or more attorneys from the list or
 296 lists established by the Supreme Court and the ~~Public Defender Commission~~ pursuant to § 19.2-163.8
 297 ~~Indigent Defense Commission~~ to represent the defendant at trial and, if the defendant is sentenced to
 298 death, on appeal. In all cases after July 1, 2004, where counsel is to be appointed under this section, one
 299 of the attorneys appointed shall be from a capital defense unit maintained by the ~~Public Defender~~
 300 ~~Commission~~ ~~Indigent Defense Commission~~; this section shall be construed in conformity with the
 301 provisions of § 19.2-163.4. If the sentence of death is affirmed on appeal, the court shall, within thirty
 302 days after the decision of the Supreme Court of Virginia, appoint counsel from the same list, or such
 303 other list as the Supreme Court and the Commission may establish, to represent an indigent prisoner
 304 under sentence of death in a state habeas corpus proceeding. The Attorney General shall have no

305 standing to object to the appointment of counsel for the petitioner.

306 § 19.2-163.8. List of qualified attorneys.

307 A. The Supreme Court and the ~~Public Defender Commission~~ *Indigent Defense Commission*, in
 308 conjunction with the Virginia State Bar, shall adopt standards for attorneys admitted to practice law in
 309 Virginia who are qualified to represent defendants charged with capital murder or sentenced to death,
 310 which take into consideration, to the extent practicable, the following criteria: (i) license or permission
 311 to practice law in Virginia; (ii) general background in criminal litigation; (iii) demonstrated experience
 312 in felony practice at trial and appeal; (iv) experience in death penalty litigation; (v) familiarity with the
 313 requisite court system; (vi) current training in death penalty litigation; (vii) current training in the
 314 analysis and introduction of forensic evidence, including deoxyribonucleic acid (DNA) testing and the
 315 evidence of a DNA profile comparison to prove or disprove the identity of any person; and (viii)
 316 demonstrated proficiency and commitment to quality representation.

317 B. The Supreme Court and the ~~Public Defender Commission~~ *Indigent Defense Commission* shall
 318 maintain a list ~~or lists~~ of attorneys admitted to practice law in Virginia who are qualified to represent
 319 defendants charged with capital murder or sentenced to death. In establishing such a list ~~or lists~~, the
 320 Court and the Commission shall consider all relevant factors, including but not limited to, the attorney's
 321 background, experience, and training and the Court's and the Commission's assessment of whether the
 322 attorney is competent to provide quality legal representation.

323 C. Notwithstanding the requirements of § 19.2-163.7, the judge of the circuit court may appoint
 324 counsel who is not included on the list ~~or lists~~, but who otherwise qualifies under the standards
 325 established and maintained by the Court and the Commission.

326 D. Noncompliance with the requirements of this article shall not form the basis for a claim of error
 327 at trial, on appeal, or in any habeas corpus proceeding. The performance of habeas corpus counsel
 328 appointed pursuant to this article shall not form a basis for relief in any subsequent habeas corpus
 329 proceeding.

330 E. ~~By January 1, 2002, the~~ *The* Supreme Court and the ~~Public Defender Commission~~ *Indigent*
 331 *Defense Commission* shall, in conjunction with the Virginia State Bar, promulgate and thereafter
 332 maintain standards for the qualifications of counsel who shall be considered eligible to be placed on the
 333 list of qualified attorneys.

334 F. ~~The provisions of this article, with the exception of subsection E, shall not become effective until~~
 335 ~~July 1, 1992.~~

336 § 53.1-124. Sheriffs and jail superintendents to report to the courts.

337 A. If requested by the judge, the sheriffs of all local jails and the jail superintendents of all regional
 338 jails of this Commonwealth shall, on the first day of each term of the circuit court, make written reports
 339 to the judge thereof, to the attorney for the Commonwealth, and to city attorneys whose duties include
 340 prosecuting certain cases, showing the number of prisoners in jail on that day. The report shall show the
 341 name, date of commitment, offense and sentence of each prisoner. The judge of such court, after
 342 examining the report, shall enter an order directing the clerk to file the same in the clerk's office of such
 343 court.

344 B. If requested by the chief judge of the circuit court, general district court or juvenile and domestic
 345 relations district court, the sheriffs of all local jails and the jail superintendents of all regional jails of
 346 the Commonwealth shall report semimonthly to the circuit court, general district court, and juvenile and
 347 domestic relations district court, to the attorney for the Commonwealth, and to the public defender, if
 348 any, as established in ~~Article 4 (§ 19.2-163.1 et seq.)~~ *Article 3.1 (§ 19.2-163.01 et seq.)* of Chapter 10
 349 of Title 19.2, showing the number of prisoners in jail on that day awaiting trial. The report shall include
 350 the name, offense, date of commitment to jail, and amount of bail established.

351 C. If requested by the judge, the sheriffs of all local jails and the jail superintendents of all regional
 352 jails shall report weekly to the juvenile and domestic relations district court located within that county,
 353 city or region concerning the identity and number of juveniles kept in their jails and the length of time
 354 such juveniles have been incarcerated therein.

355 2. That the persons responsible for appointing members to the Virginia Indigent Defense
 356 Commission may, by agreement, make the initial appointments for such lengths of time as to allow
 357 the appointment terms to be staggered.

358 3. That §§ 19.2-163.1, 19.2-163.2 and 19.2-163.6 of the Code of Virginia are repealed.

041126134

HOUSE BILL NO. 1056

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 16.1-266, 19.2-159, 19.2-163.7, 19.2-163.8 and 53.1-124 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 10 of Title 19.2 an article numbered 3.1, consisting of sections numbered 19.2-163.01, 19.2-163.02, 19.2-163.03, 19.2-163.04 and 19.20163.4:1, and to repeal §§ 19.2-163.1, 19.2-163.2 and 19.2-163.6 of the Code of Virginia, relating to public defenders.

Patrons—Moran, Albo, Kilgore and McDonnell; Senators: Howell, Norment and Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-266, 19.2-159, 19.2-163.7, 19.2-163.8 and 53.1-124 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 10 of Title 19.2 an article numbered 3.1, consisting of sections numbered 19.2-163.01, 19.2-163.02, 19.2-163.03, 19.2-163.04 and 19.20163.4:1, as follows:

§ 16.1-266. Appointment of counsel and guardian ad litem.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. If the court determines that the child is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159 and his parent, guardian, legal custodian or other person standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the court shall appoint an attorney-at-law from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent him; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

C. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.

Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing

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59 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or
60 guardian.

61 D. In those cases described in subsections A, B and C which in the discretion of the court require
62 counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult
63 party in addition to the representation provided in those subsections, a discreet and competent
64 attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

65 E. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or
66 both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law
67 may be appointed by the court. However, in cases where the custody of a child or children is the subject
68 of controversy or requires determination and each of the parents or other persons claiming a right to
69 custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent
70 the interests of the child or children unless the court finds, at any stage in the proceedings in a specific
71 case, that the interests of the child or children are not otherwise adequately represented.

72 F. Any state or local agency, department, authority or institution and any school, hospital, physician
73 or other health or mental health care provider shall permit a guardian ad litem appointed pursuant to this
74 section to inspect and copy, without the consent of the child or his parents, any records relating to the
75 child whom the guardian represents upon presentation by him of a copy of the court order appointing
76 him or a court order specifically allowing him such access. Upon request therefor by the guardian ad
77 litem made at least 72 hours in advance, a mental health care provider shall make himself available to
78 conduct a review and interpretation of the child's treatment records which are specifically related to the
79 investigation. Such a request may be made in lieu of or in addition to inspection and copying of the
80 records.

81 § 19.2-159. Determination of indigency; guidelines; statement of indigence; appointment of counsel.

82 If the accused shall claim that he is indigent, and the charge against him is a criminal offense which
83 may be punishable by death or confinement in the state correctional facility or jail, subject to the
84 provisions of § 19.2-160, the court shall determine from oral examination of the accused or other
85 competent evidence whether or not the accused is indigent within the contemplation of law pursuant to
86 the guidelines set forth in this section.

87 In making its finding, the court shall determine whether or not the accused is a current recipient of a
88 state or federally funded public assistance program for the indigent. If the accused is a current recipient
89 of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall
90 be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the
91 court finds that a more thorough examination of the financial resources of the defendant is necessary. If
92 the accused shall claim to be indigent and is not presumptively eligible under the provisions of this
93 section, then a thorough examination of the financial resources of the accused shall be made with
94 consideration given to the following:

95 1. The net income of the accused, which shall include his total salary and wages minus deductions
96 required by law. The court also shall take into account income and amenities from other sources
97 including but not limited to social security funds, union funds, veteran's benefits, other regular support
98 from an absent family member, public or private employee pensions, dividends, interests, rents, estates,
99 trusts, or gifts.

100 2. All assets of the accused which are convertible into cash within a reasonable period of time
101 without causing substantial hardship or jeopardizing the ability of the accused to maintain home and
102 employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks,
103 bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is
104 readily convertible into cash shall be considered, except property exempt from attachment. Any real
105 estate owned by the accused shall be considered in terms of the amounts which could be raised by a
106 loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the
107 spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was
108 the victim of the offense or offenses allegedly committed by the accused.

109 3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit
110 him from being able to secure private counsel. Such items shall include but not be limited to costs for
111 medical care, family support obligations, and child care payments.

112 The available funds of the accused shall be calculated as the sum of his total income and assets less
113 the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to
114 counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available
115 funds are equal to or below 125% of the federal poverty income guidelines prescribed for the size of the
116 household of the accused by the federal Department of Health and Human Services. The Supreme Court
117 of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty
118 income guidelines made by the Department.

119 If the available funds of the accused exceed 125% of the federal poverty income guidelines and the
120 accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional

121 circumstances, and where the ends of justice so require, appoint an attorney to represent the accused.
122 However, in making such appointments, the court shall state in writing its reasons for so doing. The
123 written statement by the court shall be included in the permanent record of the case.

124 If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines
125 set forth in this section, the court shall provide the accused with a statement which shall contain the
126 following:

127 "I have been advised this day of, 20. . ., by the
128 (name of court) court of my right to representation by counsel in the trial of
129 the charge pending against me; I certify that I am without means to employ
130 counsel and I hereby request the court to appoint counsel for me."

131 (signature of accused)

132 The court shall also require the accused to complete a written financial statement to support the
133 claim of indigency and to permit the court to determine whether or not the accused is indigent within
134 the contemplation of law. The accused shall execute the said statements under oath, and the said court
135 shall appoint competent counsel to represent the accused in the proceeding against him, including an
136 appeal, if any, until relieved or replaced by other counsel.

137 The executed statements by the accused and the order of appointment of counsel shall be filed with
138 and become a part of the record of such proceeding.

139 All other instances in which the appointment of counsel is required for an indigent shall be made in
140 accordance with the guidelines prescribed in this section.

141 Except in jurisdictions having a public defender pursuant to Article 4 (§ 19.2-163.1 et seq.) of
142 Chapter 10 of Title 19.2, counsel appointed by the court for representation of the accused shall be
143 selected by a fair system of rotation among members of the bar practicing before the court whose
144 practice regularly includes representation of persons accused of crimes and who have indicated their
145 willingness to accept such appointments whose names are on the list maintained by the Indigent Defense
146 Commission pursuant to § 19.2-163.01.

147 Article 3.1.

148 § 19.2-163.01. Virginia Indigent Defense Commission established; powers and duties.

149 A. The Virginia Indigent Defense Commission (hereinafter "Indigent Defense Commission" or
150 "Commission") is established. The Commission shall have the following powers and duties:

151 1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as
152 court-appointed counsel for indigent defendants pursuant to § 19.2-159.

153 2. To develop initial training courses for attorneys who wish to begin serving as court-appointed
154 counsel, and to review and certify legal education courses that satisfy the continuing requirements for
155 attorneys to maintain their eligibility for receiving court appointments.

156 3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as
157 court-appointed counsel for indigent defendants based upon the official standards and to disseminate the
158 list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of
159 the Supreme Court for distribution to the courts. In establishing and updating the list, the Commission
160 shall consider all relevant factors, including but not limited to, the attorney's background, experience,
161 and training and the Commission's assessment of whether the attorney is competent to provide quality
162 legal representation.

163 4. To establish official standards of practice for court-appointed counsel to follow in representing
164 their clients, and guidelines for the removal of an attorney from the official list of those qualified to
165 receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of
166 any attorney whose name has been removed from the list.

167 5. To develop initial training courses for public defenders and to review and certify legal education
168 courses that satisfy the continuing requirements for public defenders to maintain their eligibility; and to
169 establish standards of practice for public defenders.

170 6. To establish and thereafter maintain, in conjunction with the Virginia State Bar, the Supreme
171 Court and the Virginia State Crime Commission, standards of conduct for indigent defense counsel in
172 Virginia.

173 7. To establish appropriate caseload limits for public defender offices.

174 8. To maintain all public defender and regional capital defender offices established by the General
175 Assembly.

176 9. To hire and employ and, at its pleasure, remove an executive director, counsel, and such other
177 persons as it deems necessary, and to authorize the executive director to appoint for each of the above
178 offices a public defender or capital defender, as the case may be, who shall devote his full time to his
179 duties and not engage in the private practice of law.

180 10. To authorize the public defender or capital defender to employ such assistants as authorized by
181 the Commission.

182 11. To authorize the public defender or capital defender to employ such staff, including secretarial
183 and investigative personnel, as may be necessary to carry out the duties imposed upon the public
184 defender office.

185 12. To authorize the public defender or capital defender to secure such office space as needed, to
186 purchase or rent office equipment, to purchase supplies and to incur such expenses as are necessary to
187 carry out the duties imposed upon him.

188 13. To receive and expend moneys appropriated by the General Assembly of Virginia and to receive
189 other moneys as they become available to it and expend the same in order to carry out the duties
190 imposed upon it.

191 14. To require and ensure that each public defender office collects and maintains caseload data and
192 fields in a case management database on an annual basis.

193 15. To report annually on or before October 1 to the Virginia State Crime Commission, the House
194 and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate
195 Committee on Finance on the state of indigent criminal defense in the Commonwealth, including
196 Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed
197 pursuant to § 19.2-159 or subdivision B 2 of § 16.1-266.

198 B. The executive director shall, with the approval of the Commission, fix the compensation of each
199 public defender and all other personnel in each public defender office.

200 § 19.2-163.02. Membership of Indigent Defense Commission; expenses.

201 A. The Virginia Indigent Defense Commission shall consist of 12 members, including the chairmen of
202 the House and Senate Committees on Courts of Justice; the chairman of the Virginia State Crime
203 Commission; the Executive Secretary of the Supreme Court or his designee; two attorneys officially
204 designated by the Virginia State Bar; two persons appointed by the Governor; two persons appointed by
205 the Speaker of the House of Delegates; and two persons appointed by the Senate Committee on
206 Privileges and Elections. At least one of the appointments made by the Governor, one of the
207 appointments made by the Speaker, and one of the appointments made by the Senate Committee on
208 Privileges and Elections, shall be an attorney in private practice with a demonstrated interest in
209 indigent defense issues. Persons who are appointed by virtue of their office shall hold terms coincident
210 with their terms of office. All other appointments shall be for terms of three years.

211 The Commission shall elect a chairman and a vice chairman from among its membership. A majority
212 of the members shall constitute a quorum. The Commission shall meet at least four times each year. The
213 meetings of the Commission shall be held at the call of the chairman or whenever the majority of the
214 members so request.

215 Members shall be paid reasonable and necessary expenses incurred in the performance of their
216 duties. Legislative members shall receive compensation as provided in § 30-19.12 and nonlegislative
217 citizen members shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.

218 § 19.2-163.03. Qualifications for court-appointed counsel.

219 A. In accordance with § 19.2-163.01, to initially qualify to serve as counsel appointed pursuant to
220 § 19.2-159 for an indigent defendant charged with a misdemeanor, the attorney shall be a member in
221 good standing of the Virginia State Bar, and (i) if an active member of the Virginia State Bar for less
222 than one year, have completed six hours of MCLE-approved continuing legal education developed by
223 the Indigent Defense Commission, or (ii) if an active member of the Virginia State Bar for one year or
224 more, either complete the six hours of approved continuing legal education developed by the
225 Commission, or certify to the Commission that he has represented, in a district court within the past
226 year, four or more defendants charged with misdemeanors.

227 B. To initially qualify to serve as counsel appointed pursuant to § 19.2-159 for an indigent defendant
228 charged with a felony, the attorney shall (i) be a member in good standing of the Virginia State Bar,
229 (ii) have completed the six hours of MCLE-approved continuing legal education developed by the
230 Commission, and (iii) certify that he has participated as either lead counsel or co-counsel in four felony
231 cases, originating in district court, from their beginning through to their final resolution, including
232 appeals, if any. If the attorney has been an active member of the Virginia State Bar for more than one
233 year and certifies that he has participated, within the past year, as lead counsel in four felony cases,
234 originating in district court, through to their final resolution, including appeals, if any, the requirement
235 to complete six hours of continuing legal education and the requirement to participate as co-counsel
236 shall be waived. If the attorney has been an active member of the Virginia State Bar for more than one
237 year and certifies that he has participated, within the past five years, as lead counsel in five felony
238 cases, originating in district court, through to their final resolution, including appeals, if any, the
239 requirement to participate as either lead counsel or co-counsel in four felony cases within the past year
240 shall be waived.

241 C. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district
242 court pursuant to subdivision B 2 of § 16.1-266, the attorney shall (i) be a member in good standing of
243 the Virginia State Bar, (ii) have completed the six hours of MCLE-approved continuing legal education

244 developed by the Commission, (iii) have completed four additional hours of MCLE-approved continuing
 245 legal education on representing juveniles developed by the Commission, and (iv) certify that he has
 246 participated as either lead counsel or co-counsel in four cases involving juveniles in a juvenile and
 247 domestic relations district court. If the attorney has been an active member of the Virginia State Bar for
 248 more than one year and certifies that he has, within the past year, been lead counsel in four cases
 249 involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10
 250 hours of continuing legal education shall be waived. If the attorney has been an active member of the
 251 Virginia State Bar for more than one year and certifies that he has participated, within the past five
 252 years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement
 253 to participate as either lead counsel or co-counsel in four juvenile cases shall be waived.

254 D. After initially qualifying, an attorney shall maintain his eligibility for certification by completing
 255 biennially thereafter six hours of MCLE-approved continuing legal education, certified by the
 256 Commission. In addition, to maintain eligibility to accept court appointments under subdivision B 2 of
 257 § 16.1-266, an attorney shall complete biennially thereafter four additional hours of MCLE-approved
 258 continuing legal education on representing juveniles, certified by the Commission.

259 E. The Commission may, in its discretion, waive the requirements set out in this section for
 260 individuals who otherwise demonstrate their level of training and experience.

261 § 19.2-163.04. Public Defender offices.

262 Public defender offices are established in:

263 a. The City of Virginia Beach;

264 b. The City of Petersburg;

265 c. The Cities of Buena Vista, Lexington, Staunton and Waynesboro and the Counties of Augusta and
 266 Rockbridge;

267 d. The City of Roanoke;

268 e. The City of Portsmouth;

269 f. The City of Richmond;

270 g. The Counties of Clarke, Frederick, Page, Shenandoah and Warren, and the City of Winchester;

271 h. The City and County of Fairfax;

272 i. The City of Alexandria;

273 j. The City of Radford and the Counties of Bland, Pulaski and Wythe;

274 k. The Counties of Fauquier, Loudoun and Rappahannock;

275 l. The City of Suffolk;

276 m. The City of Franklin and the Counties of Isle of Wight and Southampton;

277 n. The City of Bedford and the County of Bedford;

278 o. The City of Danville;

279 p. The Counties of Halifax, Lunenburg and Mecklenburg;

280 q. The City of Fredericksburg and the Counties of King George, Stafford and Spotsylvania;

281 r. The City of Lynchburg;

282 s. The City of Martinsville and the Counties of Henry and Patrick;

283 t. The City of Charlottesville and the County of Albemarle; and

284 u. The City of Norfolk.

285 § 19.2-163.4:1. Repayment of representation costs by convicted persons.

286 In any case in which an attorney from a public defender or capital defender office represents an
 287 indigent person charged with an offense and such person is convicted, the sum that would have been
 288 allowed a court-appointed attorney as compensation and as reasonable expenses shall be taxed against
 289 the person defended as a part of the costs of the prosecution, and, if collected, shall be paid to the
 290 Commonwealth or, if payment was made to the Commonwealth by a locality for defense of a local
 291 ordinance violation, to the appropriate county, city or town. An abstract of such costs shall be docketed
 292 in the judgment lien docket and execution book of the court.

293 § 19.2-163.7. Counsel in capital cases.

294 In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit
 295 court, upon request for the appointment of counsel, shall appoint one or more attorneys from the list or
 296 lists established by the Supreme Court and the ~~Public Defender Commission~~ pursuant to ~~§ 19.2-163.8~~
 297 ~~Indigent Defense Commission~~ to represent the defendant at trial and, if the defendant is sentenced to
 298 death, on appeal. In all cases after July 1, 2004, where counsel is to be appointed under this section, one
 299 of the attorneys appointed shall be from a capital defense unit maintained by the ~~Public Defender~~
 300 ~~Commission Indigent Defense Commission~~; this section shall be construed in conformity with the
 301 provisions of § 19.2-163.4. If the sentence of death is affirmed on appeal, the court shall, within thirty
 302 days after the decision of the Supreme Court of Virginia, appoint counsel from the same list, or such
 303 other list as the Supreme Court and the Commission may establish, to represent an indigent prisoner
 304 under sentence of death in a state habeas corpus proceeding. The Attorney General shall have no

305 standing to object to the appointment of counsel for the petitioner.

306 § 19.2-163.8. List of qualified attorneys.

307 A. The Supreme Court and the ~~Public Defender Commission~~ *Indigent Defense Commission*, in
 308 conjunction with the Virginia State Bar, shall adopt standards for attorneys admitted to practice law in
 309 Virginia who are qualified to represent defendants charged with capital murder or sentenced to death,
 310 which take into consideration, to the extent practicable, the following criteria: (i) license or permission
 311 to practice law in Virginia; (ii) general background in criminal litigation; (iii) demonstrated experience
 312 in felony practice at trial and appeal; (iv) experience in death penalty litigation; (v) familiarity with the
 313 requisite court system; (vi) current training in death penalty litigation; (vii) current training in the
 314 analysis and introduction of forensic evidence, including deoxyribonucleic acid (DNA) testing and the
 315 evidence of a DNA profile comparison to prove or disprove the identity of any person; and (viii)
 316 demonstrated proficiency and commitment to quality representation.

317 B. The Supreme Court and the ~~Public Defender Commission~~ *Indigent Defense Commission* shall
 318 maintain a list ~~or lists~~ of attorneys admitted to practice law in Virginia who are qualified to represent
 319 defendants charged with capital murder or sentenced to death. In establishing such a list ~~or lists~~, the
 320 Court and the Commission shall consider all relevant factors, including but not limited to, the attorney's
 321 background, experience, and training and the Court's and the Commission's assessment of whether the
 322 attorney is competent to provide quality legal representation.

323 C. Notwithstanding the requirements of § 19.2-163.7, the judge of the circuit court may appoint
 324 counsel who is not included on the list ~~or lists~~, but who otherwise qualifies under the standards
 325 established and maintained by the Court and the Commission.

326 D. Noncompliance with the requirements of this article shall not form the basis for a claim of error
 327 at trial, on appeal, or in any habeas corpus proceeding. The performance of habeas corpus counsel
 328 appointed pursuant to this article shall not form a basis for relief in any subsequent habeas corpus
 329 proceeding.

330 E. ~~By January 1, 2002, the~~ *The* Supreme Court and the ~~Public Defender Commission~~ *Indigent*
 331 *Defense Commission* shall, in conjunction with the Virginia State Bar, promulgate and thereafter
 332 maintain standards for the qualifications of counsel who shall be considered eligible to be placed on the
 333 list of qualified attorneys.

334 ~~F. The provisions of this article, with the exception of subsection E, shall not become effective until~~
 335 ~~July 1, 1992.~~

336 § 53.1-124. Sheriffs and jail superintendents to report to the courts.

337 A. If requested by the judge, the sheriffs of all local jails and the jail superintendents of all regional
 338 jails of this Commonwealth shall, on the first day of each term of the circuit court, make written reports
 339 to the judge thereof, to the attorney for the Commonwealth, and to city attorneys whose duties include
 340 prosecuting certain cases, showing the number of prisoners in jail on that day. The report shall show the
 341 name, date of commitment, offense and sentence of each prisoner. The judge of such court, after
 342 examining the report, shall enter an order directing the clerk to file the same in the clerk's office of such
 343 court.

344 B. If requested by the chief judge of the circuit court, general district court or juvenile and domestic
 345 relations district court, the sheriffs of all local jails and the jail superintendents of all regional jails of
 346 the Commonwealth shall report semimonthly to the circuit court, general district court, and juvenile and
 347 domestic relations district court, to the attorney for the Commonwealth, and to the public defender, if
 348 any, as established in ~~Article 4 (§ 19.2-163.1 et seq.)~~ *Article 3.1 (§ 19.2-163.01 et seq.)* of Chapter 10
 349 of Title 19.2, showing the number of prisoners in jail on that day awaiting trial. The report shall include
 350 the name, offense, date of commitment to jail, and amount of bail established.

351 C. If requested by the judge, the sheriffs of all local jails and the jail superintendents of all regional
 352 jails shall report weekly to the juvenile and domestic relations district court located within that county,
 353 city or region concerning the identity and number of juveniles kept in their jails and the length of time
 354 such juveniles have been incarcerated therein.

355 2. That the persons responsible for appointing members to the Virginia Indigent Defense
 356 Commission may, by agreement, make the initial appointments for such lengths of time as to allow
 357 the appointment terms to be staggered.

358 3. That §§ 19.2-163.1, 19.2-163.2 and 19.2-163.6 of the Code of Virginia are repealed.

*Attachment 3:
Indigent Defense Study Committee*

**Virginia State Crime Commission
SJ43/HJ94 Indigent Defense Study Committee
Member List**

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*Attachment 4:
Virginia Capital Defense Requirements*

VIRGINIA Public Defender Commission[Home](#) > [Capital Defense Requirements](#) > [Requirements](#)[Home](#)[About Us](#)[Agency Directory](#)[Capital Defense Requirements](#)[Requirements](#)[Application Form](#)[Training](#)[Employment](#)[Links](#)**Requirements For**[TRIAL COUNSEL](#)[APPELLATE COUNSEL](#)[HABEAS CORPUS COUNSEL](#)**TRIAL COUNSEL:*****Lead Counsel*** must:

- a. Be an active member in good standing of the Virginia State Bar or admitted to practice pro hac vice;
- b. Have at least five years of criminal litigation practice (defense or prosecution) within the past seven years including experience as defense counsel in at least five jury trials, tried to verdict, involving violent crimes with maximum penalties of at least 20 years or more.
- c. Have had, within the past two years, at least six hours of specialized training in capital litigation, plus at least four hours of specialized training required by §19.2-163.8(A)(vii) of the Code of Virginia of 1950, as amended;
- d. Have had at least one of the following:
experience as "lead counsel" in the defense of at least one capital case within the past five years (FOR THE PURPOSE OF THIS SUBPARAGRAPH, WHENEVER THE TERM "CAPITAL CASE" IS USED, IT SHALL MEAN A CASE IN WHICH THE DEATH PENALTY WAS SOUGHT AND WHICH WAS CONCLUDED AFTER THE JURY WAS IMPANELED), or experience as co-counsel in the defense of at least two capital cases within the past seven years;
- e. Be thoroughly familiar with the appropriate court systems, including specifically the procedural rules regarding timeliness of filings and procedural default;
- f. Have demonstrated proficiency and commitment to quality representation.

Co-counsel must meet all of the requirements of "lead counsel" except A.1(d).

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APPELLATE COUNSEL:

Appellate counsel must meet the following requirements:

1. Be an active member in good standing of the Virginia State Bar or admitted to practice pro hac vice.
2. Have, within the past five years, briefed and argued the merits, after writs have been granted, in:
 - a. At least three felony cases in an appellate court; or
 - b. The appeal of a case in which the death penalty was imposed by the trial court.
3. Have had, within the past two years, at least six hours of specialized training in capital litigation, plus at least four hours of specialized training required by §19.2-163.8(A)(vii) of the Code of Virginia of 1950, as amended.
4. Be thoroughly familiar with the rules and procedures of appellate practice.

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HABEAS CORPUS COUNSEL:

Habeas Corpus counsel must satisfy one of the following requirements:

- a. Possess experience as counsel of record in Virginia or federal post conviction proceedings involving attacks on the validity of one or more felony convictions, as well as a working knowledge of state and federal habeas corpus practice through specialized training in the representation of persons with death sentences, including the training required by §19.2.163.8(A)(vii) of the Code of Virginia of 1950, as amended;
- b. Have served as counsel in at least one capital habeas corpus proceeding in Virginia and/or federal courts during the past three years; or
- c. Have at least seven years civil trial and appellate litigation experience in the Courts of Record of the Commonwealth and/or federal courts.

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*Attachment 5:
Virginia State Crime Commission Comparison
Chart: 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		PD approves expenditures; sets salary that is then approved by Administrative Director of Courts. Salary won't exceed that of DA	
Alaska	Yes	Yes, Gov. appts 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 atty, then must pay for services of atty.	
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. appts. And meet qualifications; Maintain list of private attys willing & qualified to accept capital appts. 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		County or 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. Appted 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.	Comm. 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 system for mental health and death cases 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 with 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 assts.			
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.	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.	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.	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			<p>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.</p> <p>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.</p>	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 to 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 Defender 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		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 state 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 defense: 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.	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. 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	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? Develops 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	Chief of the State Defender: Chief pd, 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.	Chief of the State Defender: Chief pd, 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.	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: appointment of counsel, determination of compensation, appointment of experts, use of funds for experts; allocate & disburse funds; Director hires support, conducts training.</p> <p>Commission on Indigent Defense Services: W/in 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		
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>	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. Appts 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.	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		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	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 appt.	Office of State Public Defender	Counties provide office space; 85% from state, county supplements rest		

*Attachment 6:
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?

