

# VIRGINIA INDIGENT DEFENSE COMMISSION

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Pursuant to Virginia Code § 19.2-163.01(A)(15), the Virginia Indigent Defense Commission ("VaIDC") submits this 2005 Annual Report to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance. This annual report is to include "the state of indigent criminal defense and Virginia's ranking amongst the fifty states in terms of pay allowed for court-appointed counsel. In addition to these requirements, the VaIDC has endeavored to submit a document that provides information regarding the VaIDC's legislative mandates with a status of accomplished tasks.

We would like the 25 allowable copies of this report and will pick them up from the General Assembly building. Thank you for this opportunity to provide this report on Virginia's indigent defense delivery system.

Sincerely,



Judge Alan E. Rosenblatt  
Acting Executive Director

## **Virginia Indigent Defense Commission 2005 Annual Report Executive Summary**

### **I. Virginia Indigent Defense Commission**

#### **A. Introduction**

The Virginia Indigent Defense Commission (“VaIDC”) is an independent state agency under the judicial branch of government charged with carrying out the Commonwealth’s constitutional obligation to provide attorneys for indigent people accused of crimes. Commission clients are charged with crimes that carry a potential penalty of incarceration or death. In such cases, Virginia courts appoint public defender offices and effective July 1, 2005, members of the private bar certified by the VaIDC to provide legal representation.

#### **B. Virginia Code § 19.2-163.01 – Statutory Mandates**

The 2004 legislation that created the VaIDC sets forth several statutory mandates. Many of these mandates relate to the new responsibility of certifying public defenders and members of the private bar who are appointed by the courts to represent indigent defendants. The VaIDC developed a core curriculum for initial certification training courses and began conducting certification training programs throughout the Commonwealth. Many lawyers were able to waive the certification training requirements due to previous criminal trial work in Virginia’s courts. Certification trainings and the statutory certification standards were publicized through articles in *Virginia Lawyers Weekly* newspaper, the *Voice* newspaper, the Virginia Lawyer magazine, by the Virginia Trial Lawyers Association and the Virginia Bar Association. Currently, the VaIDC has certified 1,559 attorneys. Working with the Virginia State Bar, VaIDC will develop standards of practice and conduct for court appointed attorneys and guidelines for removing attorneys from the certified court-appointed attorney list. In furtherance of this process, VaIDC has gathered information from other jurisdictions as well as nationally recognized standards of practice.

#### **C. VaIDC FY05 Training Initiatives**

During FY05, VaIDC enhanced the training and development opportunities provided to public defenders, investigators, sentencing advocates, support staff and members of the private bar. The VaIDC also sent attorneys and support staff to a number of non-VaIDC training programs both within and outside of Virginia. A summary of the training programs attended by VaIDC employees and private bar members during FY05 is contained in the full text of the 2005 VaIDC Annual Report.

#### **D. VaIDC Appropriated Funds**

The General Assembly appropriated to the VaIDC general funds in the amount of \$31,363,168 as its base budget for FY05. For the public defender offices, 90% of the budget is allocated to personnel and rent costs, leaving little for the ongoing costs of training, operating and litigation expenses. The administrative office prepares budgets for each of the public and capital defender offices and the administrative office. Budgets are then presented to VaIDC members for approval.

## **II. The State of Indigent Defense in Virginia**

### **A. Introduction**

In January 2004, the American Bar Association report, A Comprehensive Review of Indigent Defense in Virginia prepared by the Spangenberg Group was released. Although the 2004 General Assembly began the process of addressing some of its findings, the report still provides a good overview of the ongoing challenges of reforming Virginia's indigent defense delivery system. According to Spangenberg, Virginia continues to inadequately protect the rights of poor people accused of committing crimes, perpetuates the disparity in pay between court-appointed counsel and GAL counsel and sanctions unreasonably low court appointed attorney fee caps while consistently under funding the statutorily established fee caps.

### **B. Virginia's National Ranking – Court-Appointed Attorney Fees**

Virginia's ranking amongst the 50 states in terms of compensation allowed for court-appointed counsel continues to be among the lowest in the nation. Current data indicates that Virginia ranks 49<sup>th</sup>. Mississippi ranks the lowest with a \$1,000 cap on non-capital felony charges.

### **C. Virginians Speak out on Indigent Defense Representation**

At the request of the Virginia Indigent Defense Coalition ("VIDC"), a non-profit organization established to educate the public, state and local officials on indigent defense issues, Virginia Commonwealth University's Center for Public Policy conducted a statewide public opinion poll to address the issue of providing legal representation to people who cannot afford counsel. According to the *Commonwealth Poll* results, a majority of Virginians favor providing legal representation to people who cannot afford a lawyer and strongly believe that the amount of money spent for legal representation makes a difference in the quality of representation.

### **D. Appellate Representation by Indigent Defense Counsel**

During FY05 it was discovered that appellate issues and entire appeals were being defaulted at an alarming rate. To address these issues, the VaIDC contacted David R. Rosenfeld, Esq., a recognized expert on legal ethics and professional responsibility, who agreed to assess the appellate deficiencies on a pro bono basis. Several recommendations were implemented by the VaIDC; an Appellate Procedure Manual has been written and distributed to all public defender offices, an Appellate Trial Checklist for the Court of Appeals and the Supreme Court of Virginia has been distributed with the manual, the VaIDC's current Case Management System has been updated to accurately capture appellate data and all VaIDC attorneys have completed mandatory appellate procedure training.

To address the procedural concerns of appellate reinstatement, the VaIDC proposed HB 2628, Reinstatement of Defaulted Appeals to the 2005 General Assembly and VaIDC member Delegate Dave Albo sponsored the bill. The new statute, Va. Code § 8.01-654, which became effective July 1, 2005, allows an appellant to petition the appellate courts to reinstate the right to appeal upon dismissal due to appellant counsel's failure to make timely filings.

**E. Representation of Juveniles**

In response to the American Bar Association's Juvenile Justice Center's report, *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* and the request of many Virginia juvenile defenders, the 2004 General Assembly amended Va. Code § 16.1-266 to require courts to appoint counsel prior to the initial detention hearing. The statute was further amended in 2005 to require that any child facing commitment to the Department of Juvenile Justice must be allowed to consult with an attorney prior to waiving his or her constitutional right to counsel.

The American Bar Association's report also enumerated other problems including a lack of training for juvenile defenders. In direct response to the report and priorities established by the Virginia Department of Criminal Justice Services, the VaIDC secured grant funds and conducted regional detention advocacy workshops for public defenders and members of the private bar.

**F. Public Defender Office Caseloads**

FY05 saw a drop in most public defender office caseloads, although they still exceed national standards. Virginia State Bar, Legal Ethics Opinion 1798 discusses the need for prosecutors' caseloads to be controlled. However, the Ethics Committee also opined that "excessive caseloads for public defenders and court-appointed counsel raise the same ethical problems [as for prosecutors] if each client's case cannot be attended to with reasonable diligence and competence." Similarly, on July 19, 2004, James M. McCauley, Ethics Counsel for the Virginia State Bar, issued an informal letter opinion stating that, "[t]he acceptance of an overwhelming caseload may result in an ethical breach, leaving the defense attorney exposed to disciplinary action."

The 2005 General Assembly amended Va. Code § 19.2-163.0 A (7) to require the VaIDC to annually report public defender caseload data to the General Assembly. On November 9, 2004, the VaIDC adopted a resolution to facilitate the legislative mandate, to adhere to Legal Ethics Opinion 1798, and the letter of Virginia State Bar counsel. The resolution directs the staff of the VaIDC to develop a process for presenting caseload related policy and fiscal issues to the General Assembly and to report its findings to the VaIDC prior to the 2006 General Assembly. It further directs that until caseload limits with adequate funding can be enacted on an agency wide level, public defenders are to monitor caseloads within their offices.

**G. Salary and Resource Parity**

To fully address the state of indigent defense in Virginia, the VaIDC conducted a comparative analysis of the salaries paid to VaIDC employees, Commonwealth's Attorneys' employees, Executive Branch employees and private sector employees. The analysis clearly demonstrates that salaries throughout the VaIDC are significantly lower than those of organizations with which it competes for employees. To help to alleviate these salary inequities, the VaIDC will seek an appropriation of \$1.8 million to increase all VaIDC salaries by 7% in FY07. This will serve as an initial step to help the VaIDC move toward parity with Commonwealth's Attorneys and enable us to be competitive in relevant labor markets.

## **H. Information Technology Advancements**

In FY05, VaIDC achieved full implementation of agency-wide desktop Internet access through a wide area network. In addition, over 250 outmoded computers and other equipment items were replaced with current technology. After negotiating a very competitive rate, the VaIDC entered a three-year contract with Thomson/Westlaw in May 2005 to provide internet-based legal research capability for all VaIDC attorneys and investigators. The VaIDC has also contracted with VIPNet to upgrade its current web site so that it can serve as a valuable communication tool to be used by VaIDC staff, court personnel, private attorneys and the public.

## **I. New Public Defender Offices**

The 2004 General Assembly authorized the creation of four new public defender offices; Arlington/Falls Church, Hampton, Chesapeake, and Newport News. In October 2004, the public defenders for Arlington, Hampton, and Chesapeake were hired. The Newport News Public Defender assumed her duties on January 10, 2005. Chesapeake, fully staffed with 18.5 FTE at the time, moved into permanent office space in February 2005. The Hampton Office of the Public Defender moved into its permanent space in April 2005. With the help of the Newport News Housing Authority, permanent office space for the Newport News Office of the Public Defender has been located and a December 1, 2005 move in date has been set. The search for permanent office space in Arlington is ongoing, however, the Arlington public defender is currently accepting court appointments while operating out of temporary office space. We are committed to locating permanent space before the end of the calendar year.

## **III. Future Plans and Conclusion**

The coming year for the VaIDC will be filled with challenges. January 2006 will usher in not only a new year, but also a new Executive Director to lead the agency forward. In September 2005, the Commission hired a Deputy Executive Director to oversee the assigned counsel process and to provide much needed public defender leadership. Efforts toward integration of the court-appointed and public defender systems into one agency that will provide the support, training, and oversight that both systems require will continue. We will continue to enhance the agency's information technology and data-gathering processes to fulfill our statutory obligation to develop, promulgate, publicize, and enforce standards of practice and conduct for all indigent defense attorneys. The VaIDC will also continue to provide high quality, certification training for new and less experienced attorneys while still providing advanced training for more experienced attorneys.

The creation of the Virginia Indigent Defense Commission was a major advance toward indigent defense reform. Efforts to educate the public, state and local officials, and members of Virginia's criminal justice system must continue as we work to ensure a fair, just, and reliable criminal justice system for all regardless of the their station in life.

**VIRGINIA INDIGENT DEFENSE COMMISSION  
2005 ANNUAL REPORT**

**Judge Alan E. Rosenblatt, Acting Executive Director  
Submitted September 29, 2005**

# VaIDC 2005 ANNUAL REPORT

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The Virginia Indigent Defense Commission (“VaIDC”) submits this 2005 Annual Report pursuant to Virginia Code § 19.2-163.01(A)(15).

## **I. VIRGINIA INDIGENT DEFENSE COMMISSION**

### **A. INTRODUCTION**

The Virginia Indigent Defense Commission (“VaIDC”) is an independent state agency under the judicial branch of government charged with carrying out the Commonwealth’s constitutional obligation to provide attorneys for indigent people accused of crimes.<sup>1</sup>

Commission clients are charged with crimes that carry a potential penalty of incarceration or death. In such cases, Virginia courts appoint public defender offices and effective July 1, 2005, members of the private bar certified by the Commission to provide legal representation.

The VaIDC, formerly the Virginia Public Defender Commission was created by the 2004 General Assembly following a two-year study of the feasibility of creating a state entity that could effectively advocate for indigent defense needs in Virginia. Details of the study are contained in Senate Document 11 (2003)<sup>2</sup> and Senate Document 13 (2004)<sup>3</sup>. The legislation, as passed, is attached. (**Appendix A, VaIDC Enabling Statute**) The VaIDC is governed by a twelve-member commission charged with oversight of Virginia’s delivery of indigent defense services.

### **B. VIRGINIA CODE § 19.2-163.01 - STATUTORY MANDATES**

The 2004 legislation sets forth several statutory mandates. Many of these mandates relate to the VaIDC’s new responsibility of providing oversight to members of the private bar who are appointed by the courts to represent indigent defendants.

**1. VIRGINIA CODE § 19.2-163.01A(1) - Publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants**

During FY05, the VaIDC publicized qualification standards and requirements for indigent defense certification through articles in *Virginia Lawyers Weekly* newspaper, the *Voice* newspaper, the *Virginia Lawyer* magazine and publications by Virginia Trial Lawyers Association and Virginia Bar Association. VaIDC staff made presentations at local Town Hall meetings, to which local bar associations, local judges and the Commonwealth's Attorneys were invited. These meetings were open to the public and the opportunity to ask questions about the certification process was made available. Written materials including the certification applications were distributed to attendees. VaIDC also prepared and submitted attorney certification information packets for inclusion in bar admission materials for new attorneys and in registration materials at certification training events. The qualification standards continue to be posted on the VaIDC web site at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov).

**2. VIRGINIA CODE § 19.2-163.01A(2) - Develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.**

In October 2004, the VaIDC developed a core curriculum for initial certification training courses with the assistance of the Virginia State Bar, Virginia CLE, the Virginia Association of Criminal Defense Lawyers and several public defenders. **(Appendix B, VaIDC Court Appointed Attorney Certification Training Curriculum)** The Executive Secretary of the Supreme Court then distributed the proposed curriculum to the Circuit Court judges for feedback. VaIDC incorporated many of the recommendations provided by the judges into the final curriculum. A mechanism was also adopted to review and certify legal education courses

that satisfy the continuing education requirements for attorneys to maintain their eligibility for receiving court appointments.

VaIDC began conducting Indigent Defense Certification Trainings in March 2005.

Through September 2005, more than 400 attorneys have attended twelve certification training events held throughout the state. Attorneys attending these training events submitted evaluation forms and over 98% of those responding rated the certification trainings as either “helpful” or “extremely helpful”. Additionally, VaIDC has reviewed and certified an upcoming training sponsored by Virginia CLE as satisfying the continuing education requirement for maintaining eligibility for court appointment.

3. **VIRGINIA CODE § 19.2-163.01A(3) - Maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards. Disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts.**

To fulfill this obligation, VaIDC developed the Certified Assigned Attorney Process (“CAAP”) in November 2004. The objective of the process was to capture and monitor the names and qualifications of attorneys eligible for indigent defense court appointment. A CAAP rollout time line was established with the initial task being to establish the training and experience criteria for representing misdemeanor, juvenile, and felony cases. The capital case requirements were already established and in use. Using these requirements, an application process was designed to obtain the information needed to verify an attorney's compliance with the different case standards. The VaIDC created a Lotus Notes database to track applications and to electronically maintain the application information.

In April 2005, the VaIDC sent the certification application to all public defenders and private attorneys who submitted vouchers for payment in the preceding year for indigent defense

representation. A printable version of the application was made available through the VaIDC web site. The web site was modified to allow Virginia court personnel to easily retrieve certification information by jurisdiction and/or case type. The system became operational in June 2005 and as of September 20, 2005, 1,589 applications have been received and 1,545 attorneys have been certified for indigent defense representation. Attorney certification by case type is as follows:

- 1490 attorneys have been approved for Misdemeanor Cases
- 1340 attorneys have been approved for Felony Cases
- 1173 attorneys have been approved for Juvenile Cases
- 57 attorneys have been approved for Capital Appellate Cases
- 40 attorneys have been approved for Capital Habeas Cases
- 117 attorneys have been approved for Capital Trial Lead Counsel Cases
- 172 attorneys have been approved for Capital Trial Co-Counsel Cases

Some judicial circuits have considerably more certified attorneys than others. As we continue to refine the certification process, we will endeavor to increase the number of certified court appointed attorneys. Increasing the number of attorneys will result in more comprehensive indigent defense services and reduce the caseloads of appointed attorneys who are currently eligible for appointment. **(Appendix C, Court Appointed Attorney Data by Judicial Circuit)**

4. **VIRGINIA CODE § 19.2-163.01A(4) - Establish official standards of practice for court-appointed counsel to follow in representing their clients and guidelines for the removal of an attorney from the official list. Notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.**
5. **VIRGINIA CODE § 19.2-163.01A(6) - Establish and thereafter maintain, in conjunction with the Virginia State Bar, the Supreme Court and the Virginia State Crime Commission, standards of conduct for indigent defense counsel in Virginia.**

Working with the Virginia State Bar, VaIDC will develop standards of practice and conduct and removal guidelines. In furtherance of this process, VaIDC has gathered information from other jurisdictions as well as nationally recognized standards of practice.

6. **VIRGINIA CODE § 19.2-163.01A(5) - Develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.**

VaIDC continues to enhance training and development opportunities provided to its public defenders, investigators, sentencing advocates and support staff. A summary of the training programs offered VaIDC employees during FY05 is as follows:

**July 12 – 15, 2004 - 1<sup>st</sup> Trial Skills Bootcamp, Richmond** – This training was an intensive, multi-day program designed to build and enhance the trial skills of new and lesser experienced attorneys using an interactive, participatory format. The program was limited to 30 participants who prepared for, presented and were evaluated on their handling of every critical stage of a mock criminal trial.

**August 6, 2004 – The Immigration Consequences of Criminal Convictions, Richmond** – This full-day training was devoted to problem solving and participation by attendees on issues relating to the representation of non-citizen, non-resident aliens. This training was also the first official program by the VaIDC and was offered to the private bar at no cost.

**October 7, 2004 – Employee Performance Evaluation Training for Public Defenders, Richmond** – This half-day training program was for public defenders, who had been in office for less than one year and had not previously conducted staff performance evaluations.

**November 3-5, 2004 – Virginia Public Defender Retreat, Virginia Beach** – This multi-day management training for public and capital defenders consisted of presentations on community and media relations, evaluating the public defender job performance, and HR/personnel/diversity issues.

**December 2-3, 2004 – Public Defender Investigator Conference, Norfolk**  
This two-day annual conference for the investigator and sentencing advocates offered training on the issues that are unique to their positions.

**January 7, 2005 – Handling and Presenting Your Client's Appeal, Richmond**  
In response to recent issues involving late appeals, the Appellate Defender Office

staff instructed criminal defense attorneys on the procedures involved in drafting, filing and arguing appellate petitions and briefs before state appellate courts.

**March 4, 2005 – Public Defender Retreat Follow-up Meeting, Charlottesville**  
This meeting continued the analysis of issues identified during the November Public Defender Retreat, including performance evaluations.

**March 8, 2005 - New Office Manager Training, Richmond** – This mini – training provided information for new or less experienced office managers and senior support staff concerning fiscal, procurement and HR policies.

**July 11- 15, 2005 – 2<sup>nd</sup> Trial Skills Bootcamp, Richmond** – During the second year of this multi-day trial skills training for new and lesser-experienced public defenders, the program was expanded to allow participants to handle a full-day mock-trial.

The following training events were offered to public defenders and members of the private bar during FY05:

**October 8, 2004 – 1<sup>st</sup> Virginia Juvenile Defender Summit, Richmond** – This training was a collaborative venture by the VaIDC, the Virginia Association of Criminal Defense Lawyers, and the Mid-Atlantic Juvenile Defender Center. The theme for this full-day training, which was offered free to defense attorneys who practice in juvenile court, was A Nuts and Bolts for Litigating Juvenile Mental Health Issues in Delinquency Cases.

**October 28-29, 2004 – 12<sup>th</sup> Annual Capital Defense Workshop, Richmond** - The VaIDC assisted in the planning and staffing of this program, which was sponsored by the Criminal Law Section of the Virginia Bar Association for attorneys representing defendants charged with capital murder or sentenced to death.

**March 21-22, 2005 – Virginia Indigent Defense Commission Conference and CLE, Roanoke** – This two-day program offered training on a number of important subjects with a track for attorneys who are new to or wish to practice indigent criminal defense as well as a track for more experienced attorneys. There were also separate tracks for juvenile defenders and attorneys representing adult clients. This training was open to public defenders and private attorneys who accepted court appointed criminal cases.

**March 28-29, 2005 – Indigent Defense Certification Training for Court Appointed Lawyers, Fredericksburg**– This two-day introductory practice training was offered to new and less experienced court appointed criminal defense lawyers. The first day was devoted to representing adults in general district and circuit courts and the second day was devoted to the representation of juvenile clients. Co-sponsored by Virginia Association of Criminal Defense Lawyers with a grant from Virginia Law Foundation.

**April 11-12, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Virginia Beach – See above.**

**April 18-19, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Richmond – See above.**

**April 25-26, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Radford – See above.**

**May 9-10, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Manassas – See above.**

**May 23 –24, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Bristol – See above.**

**June 6-7, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Charlottesville – See above.**

**June 13-14, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Portsmouth – See above.**

**June 24, 2005 –10<sup>th</sup> Juvenile Law and Education Conference, Richmond -** The theme of the 2005 program was “Alternatives to Detention Advocacy”. The VaIDC co-sponsored this event.

**June 27-28, 2005 – Indigent Defense Certification Training for Court Appointed Lawyers, Alexandria – See above.**

**June 29-30, 2005 – Indigent Defense Certification Training for Court Appointed Lawyers, Richmond (“Best of” video replay) – See above.**

VaIDC training initiatives continue throughout FY06 and are as follows:

**July 6-7, 2005 – Indigent Defense Certification Training for Court Appointed Lawyers, Richmond (“Best of” video replay mini training for newly hired public defenders) See above.**

**August 16-17, 2005 – Indigent Defense Certification Training for Court Appointed Lawyers, Richmond (“Best of” video replay) See above.**

**September 9, 2005 – Advocating for Alternatives to Juvenile Detention, Manassas –** This training was grant funded by the Department of Criminal Justice Services (“DCJS”). The curriculum, developed by the National Juvenile Defender Center is designed to assist attorneys in advocating for the release of juvenile clients from detention.



**September 14-15, 2005 - Indigent Defense Certification Training for Court Appointed Lawyers, Newport News.** See above.

**September 15, 2005 –Employee Performance Evaluation Training for Public Defenders, Richmond** – This was a half-day program offered to new public defenders in office less than one year.

**September 23, 2005 –Advocating for Alternatives to Juvenile Detention, Richmond** – See above.

**September 30, 2005 –Advocating for Alternatives to Juvenile Detention, Virginia Beach** – See above.

**October 5, 2005 –Advocating for Alternatives to Juvenile Detention, Roanoke, VA** – See above.

**October 18, 2005 – Charlottesville, VA - Advocating for Alternatives to Juvenile Detention** – See above.

**October 26-27, 2005 –Indigent Defense Certification Training for Court Appointed Lawyers Roanoke** – See above.

**November 1-2, 2005 –Indigent Defense Certification Training for Court Appointed Lawyers, Fredericksburg** – See above.

**December 8-9, 2005 – Second Juvenile Defender Summit, Richmond** – This year's program offers a day and a half of training for Juvenile Defenders focusing on representing juveniles charged with serious gang and sex offenses.

Other training events which have not yet been scheduled include a training on DUI Defense; an Advanced Trial Skills Training; a training on Evidence; and skills training on Legal Writing and Motion Practice. In addition to these programs for attorneys, the VaIDC is committed to providing training opportunities for investigators, sentencing and disposition advocates, and support staff in public defense offices.

During FY05, the VaIDC sent attorneys and support staff to a number of non-VaIDC training programs both within and outside of Virginia:

- 2005 Life in the Balance program, New Orleans, LA
- National Assoc. of Criminal Defense Lawyers meetings, Atlanta, GA and New York, NY
- Forensic Bioformatics Conference, Dayton, Ohio

- National Legal Aid and Defender Association Annual Conference, Washington, D.C.
- National Criminal Defense College, Macon, GA
- National Juvenile Defender Summit, Nashville, TN
- Capital Defense Workshop, Richmond, VA
- National Defense Investigators Association meeting, Boston, MA
- National Association of Criminal Defense Lawyers Annual Meeting, San Francisco, CA
- Virginia CLE Criminal Defense Workshop, Richmond, VA

Individuals who attended these programs have served as presenters at VaIDC sponsored training events sharing many valuable trial skills with their colleagues.

**7. VIRGINIA CODE § 19.2-163.01A(13) - Receive and expend moneys appropriated by the General Assembly of Virginia and to receive other moneys as they become available to it and expend the same in order to carry out the duties imposed upon it.**

The General Assembly appropriated to VaIDC general funds in the amount of \$31,363,168 as its base budget for FY05. In the spring of 2005, the VaIDC base budget was reduced by \$3 million for a revised appropriation of \$28,363,168. For the public defender offices, 90% of their budget is allocated to personnel and rent costs, leaving little for the ongoing costs of training, operating and litigation expenses. (**Appendix D, FY05 Expenditures**). The administrative office continues to prepare budgets for each of the public and capital defender offices and the administrative office. Budgets are then presented to VaIDC members for approval.

The initial field office base budgets for FY06 were approved by VaIDC members on September 9, 2005. (**Appendix E, VaIDC Field Office Budgets**) With Commission approval, the administrative office adjusts these initial budgets as necessary during the course of the year to account for (1) savings due to personnel turnover and vacancy rates and (2) increases when funds are available to satisfy unbudgeted needs of the office. These supplemental funds result from the administrative office pooling the savings from the various offices or when carry-forward funds are available. The pooled savings are then redistributed on an as-needed basis to

pay for one-time purchases for which the offices have little or no funds budgeted. Because of the agency's dependence on a savings fund, which, by its nature, is unpredictable, it is impossible to engage in long range planning for replacement or upgrading of aging "big ticket" resources.

While VaIDC has maintained its offices at current funding levels, public defender offices cannot keep pace with the technological, staffing and career development advances made by the Commonwealth's Attorneys' offices.

## **II. THE STATE OF INDIGENT DEFENSE IN VIRGINIA**

### **A. INTRODUCTION**

In January 2004, the American Bar Association ("ABA") report, A Comprehensive Review of Indigent Defense in Virginia<sup>4</sup> was released. The report was prepared by the Spangenberg Group, nationally recognized experts on indigent defense systems. Although the 2004 General Assembly began the process of addressing some of the findings, the report still provides a good overview of the ongoing challenges of reforming Virginia's indigent defense delivery system.

The Spangenburg Group found that Virginia's indigent defense system:

1. Inadequately protects the rights of poor people who are accused of committing crimes. Contributing to this problem is inadequate funding for vital resources. As a result, court-appointed attorneys and public defenders make very limited use of expert witnesses and court-appointed lawyers make very little use of investigator services that are essential to proper representation of clients in many cases.<sup>5</sup>
2. Under funds statutory fee caps for court-appointed counsel,<sup>6</sup>
3. Perpetuates unreasonably low statutory fee caps that act as a disincentive to many assigned counsel, keeping many of them from doing the work necessary to provide meaningful and effective representation to their indigent clients,<sup>7</sup>
4. Perpetuates numerous systemic deficiencies with the assigned counsel system that result in the failure of court-appointed lawyers to provide adequate representation to indigent defendants,<sup>8</sup>
5. Perpetuates the disparity in pay between court-appointed counsel representing parents in abuse and neglect cases and GALs who represent the best interests of children, and<sup>9</sup>

6. Over-burdens and substantially under funds the public defender system.<sup>10</sup>

**B. VIRGINIA'S NATIONAL RANKING - COURT-APPOINTED ATTORNEY FEES**

The Supreme Court of Virginia continues to set the maximum hourly rate at which court appointed counsel are paid.<sup>11</sup> The current maximum rate is \$90 per hour for both in-court and out-of-court work. The maximum fee that an attorney can earn at those rates is set by the legislature through substantive law and through its power to appropriate funds. The following chart shows the statutory maximum as it appears in 19.2-163, the actual maximum paid by the Supreme Court of Virginia prior to July 1, 2005<sup>12</sup> and the effect of the \$2 million 2005 General Assembly appropriation to the Criminal Fund.

	<b>Adult Misdemeanors or any Juvenile Charge in District Court</b>	<b>Misdemeanors in Circuit Court</b>	<b>Felonies punishable by 20 years in prison or less</b>	<b>Felonies punishable by more than 20 years in prison</b>
<b>Maximum as Stated in Code</b>	<b>\$120</b>	<b>\$158</b>	<b>\$445</b>	<b>\$1,235</b>
<b>Actual Maximum Paid</b>	<b>\$112</b>	<b>\$148</b>	<b>\$395</b>	<b>\$1,096</b>
<b>2005 Appropriation</b>	<b>No Change</b>	<b>No Change</b>	<b>\$428</b>	<b>\$1,186</b>

These maximums continue to act as caps on the total fee that an attorney may receive for representing a defendant on any single charge. The caps may not be waived or exceeded. Regardless of the number of hours an attorney actually devotes to defending a charge, the maximum that he or she will receive can be no more than the amount authorized by the Supreme Court.

Pursuant to Virginia Code § 19.2-163.01(15), this Report is required to specifically address "Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel." Numerous reports, including the 2005 ABA report, have noted that Virginia's caps place its fees among the lowest in the nation.<sup>13</sup> Current data indicates that Virginia ranks 49<sup>th</sup> in

the nation based on its compensation for court-appointed counsel.<sup>14</sup> The only state that has a lower rate of compensation is Mississippi with a \$1,000 cap on non-capital felony charges.<sup>15</sup> Virginia has dropped in the ratings over the past two years. In 2003 and 2004, Virginia was ranked 48<sup>th</sup> in the nation<sup>16</sup> with Mississippi and Maryland having lower compensation rates.

The 2005 General Assembly's appropriation to the Criminal Fund still does not fully fund the current statutory fee cap.<sup>17</sup> The Supreme Court of Virginia increased felony compensation fees as indicated in the chart above. Despite the increased FY06 appropriation, Virginia dropped in the rankings due to changes in Maryland's compensation. In 2003, Maryland had a rate cap of \$1,000 for all non-capital felony charges.<sup>18</sup> In 2005 Maryland raised its compensation rate cap for all non-capital felony charges to \$3,000.<sup>19</sup> It also raised the caps for Misdemeanor and Juvenile charges to \$750.<sup>20</sup> These changes increased Maryland's rank to 44<sup>th</sup> in the nation.<sup>21</sup>

### **C. VIRGINIANS SPEAK OUT ON INDIGENT DEFENSE REPRESENTATION**

At the request of the Virginia Indigent Defense Coalition ("VIDC"), a non-profit organization established to educate the public, state and local officials on indigent defense issues, Virginia Commonwealth University's Center for Public Policy conducted a statewide public opinion poll to address the issue of providing legal representation to people who cannot afford counsel. **(Appendix F, Commonwealth Poll)** The Commonwealth Poll's telephone survey was conducted by the Center for Public Policy between March 31 and April 7, 2004 and it was released to the press on July 14, 2004. The survey interviewed 812 respondents across the state. The margin of sampling error is plus or minus 4 percentage points.

According to the Commonwealth Poll results, a majority of Virginians favor providing legal representation to people who cannot afford a lawyer and believe it is important to have fair

courts and a fair and efficient criminal justice system. Furthermore, Virginians strongly believe that the amount of money spent for legal representation makes a great deal of difference in the quality of representation. Those polled also believe that the quality of legal representation influences the outcome of a case. The results show that Virginians support a quality indigent defense delivery system.

#### **D. APPELLATE REPRESENTATION BY INDIGENT DEFENSE COUNSEL**

The 2004 ABA report also described deficiencies in Virginia's appellate advocacy for defendants who cannot afford retained counsel.<sup>22</sup> According to the report, "Virginia's compensation system for court-appointed counsel makes it extremely unlikely that counsel will be able to vigorously pursue the full panoply of appellate review available to their clients."<sup>23</sup> Recent media accounts have confirmed that the "substandard" quality of representation on behalf of indigent clients does not end with the trial verdict and that the Commonwealth is also failing to ensure that defendants on appeal receive quality representation.<sup>24</sup> Appellate issues and entire appeals are being defaulted at an alarming rate. Compounding the problem are reports that clients are sometimes not being made aware of the defaults and that some attorneys may not be aware of all of the legal consequences that flow from the defaults.<sup>25</sup>

To address the appellate practice issues, the VaIDC contacted David R. Rosenfeld, Esq., a recognized expert on legal ethics and professional responsibility, who agreed to assess the appellate deficiencies on a pro bono basis. Mr. Rosenfeld worked with a group of public defenders who were assigned the task of improving the VaIDC appellate procedures. After reviewing the appellate processes within the public defender offices and measuring them against other "best practices", Mr. Rosenfeld made numerous recommendations for improvement. The VaIDC has followed Mr. Rosenfeld's recommendations and the following improvements have been implemented:

1. An Appellate Procedure Manual has been written and distributed to all public defender offices.<sup>26</sup>
2. An Appellate Trial Checklist for the Court of Appeals and the Supreme Court of Virginia has been distributed with the manual.<sup>27</sup>
3. The VaIDC's current Case Management System has been updated to accurately capture appellate data.
4. All VaIDC attorneys have completed mandatory appellate procedure training.<sup>28</sup>

To address the appellate procedural roadblocks faced by criminal defendants attempting to reinstate defaulted appeals, the VaIDC proposed HB 2628, Reinstatement of Defaulted Appeals to the 2005 General Assembly with VaIDC member Delegate Dave Albo sponsoring the bill. The new statute, which became effective July 1, 2005, allows an appellant to petition the appellate courts to reinstate the right to appeal upon dismissal due to appellant counsel's failure to make timely filings. With no objection from the Commonwealth, the appellate court can reinstate the petitioner's appeal back to the time of the procedural default while preserving an appellant's right to raise claims of ineffective assistance of counsel under the current habeas corpus proceeding. (**Appendix G, Va. Code § 8.01-654**) The need to appoint new counsel to reinstate an appeal is eliminated when the Commonwealth raises no objections to the reinstatement, thus, reducing any negative impact upon the Commonwealth's Criminal Fund.

#### **E. REPRESENTATION OF JUVENILES**

The American Bar Association's Juvenile Justice Center and the Mid-Atlantic Juvenile Defender Center issued a report outlining numerous deficiencies in Virginia's provision of counsel to children accused of juvenile delinquency in 2002. The report, *Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings* made several recommendations including the need for the appointment of counsel at an early

stage in juvenile proceedings.<sup>29</sup> Additionally, the report enumerated other serious problems including:

- Inadequate access to ancillary services, i.e. support staff, investigators, paralegals, social workers and sentencing advocates<sup>30</sup>
- Inadequate mental health services for children;<sup>31</sup>
- A widespread perception that juvenile court is “kiddie court,” which serves merely as a training ground for lawyers handling adult criminal cases;<sup>32</sup>
- Overrepresentation and disparate treatment of minority youths in the juvenile justice system;<sup>33</sup>
- Inadequate compensation for court-appointed counsel.<sup>34</sup>

In 2004, the General Assembly amended Va. Code § 16.1-266 to require courts to appoint counsel prior to the initial detention hearing. The statute was further amended in 2005 to require that any child facing commitment to the Department of Juvenile Justice must be allowed to consult with an attorney prior to waiving his or her constitutional right to counsel.

For the last two years, the VaIDC has secured grant funds for juvenile defender training for public defenders and members of the private bar. To ensure that meaningful detention hearings are conducted at a juvenile’s initial court appearance, grant funds were secured from the Department of Criminal Justice Services to provide regional detention advocacy skills workshops. Five workshops are scheduled during the months of September and October.

To address the rising number of juveniles before the courts with mental health challenges, VaIDC held the first Juvenile Defender Summit in October 2004 where 195 defense attorneys attended free of charge. Grant funds have been requested to host the 2<sup>nd</sup> Juvenile Defender Summit in December 2005 on the topics of defending juvenile sex offenders and the influx of criminal street gangs in Virginia and their impact on the juvenile justice process.



## **F. PUBLIC DEFENDER OFFICE CASELOADS**

**VIRGINIA CODE § 19.2-163.01A(7) - Periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.**

FY05 saw a drop in most public defender office caseloads, although they still exceed national standards. **(Appendix H, VaIDC FY05 Caseload Data)** Despite a 1990 Department of Planning and Budget report that suggested caseload limits for public defender offices, the former Public Defender Commission never promulgated or enforced any caseload or workload limits within public defender offices. As a result, caseloads have been without limits, other than those placed on them through agreement between individual Public Defenders and the courts.

Recent ethics opinions issued by the Virginia State Bar highlight the importance of confronting the problem of high caseloads.<sup>35</sup> Virginia State Bar, Legal Ethics Opinion 1798 discusses the need for prosecutors' caseloads to be controlled. However, the Committee also opined that "excessive caseloads for public defenders and court-appointed counsel raise the same ethical problems [as for prosecutors] if each client's case cannot be attended to with reasonable diligence and competence."<sup>36</sup> Similarly, on July 19, 2004, James M. McCauley, Ethics Counsel for the Virginia State Bar, issued an informal letter opinion stating that, "[t]he acceptance of an overwhelming caseload may result in an ethical breach, leaving the defense attorney exposed to disciplinary action." **(Appendix I, Virginia State Bar Ethic's Counsel Opinion Letter)**

VaIDC enabling legislation recognized the seriousness of the issue and required the VaIDC to "establish appropriate caseload limits for public defender offices." Virginia Code § 19.2-163.01(7). In response to the legislation, a committee of public defenders began working to submit recommendations to the Commission, however, during the 2005 General Assembly

session, the statute was amended to require the VaIDC to annually report public defender caseload data to the General Assembly.

To facilitate the legislative mandate, the VaIDC adopted a resolution regarding the ongoing issues of public defender caseloads on November 9, 2004. **(Appendix J, VaIDC Resolution)** The resolution directs the staff of the VaIDC to develop a process for presenting caseload related policy and fiscal issues to the General Assembly and to report its findings to the VaIDC prior to the 2006 General Assembly. It further directs that until caseload limits with adequate funding can be enacted at an agency wide level, public defenders are to monitor caseloads within their offices. They are to take all reasonable steps necessary to limit caseloads so that each attorney may fulfill his or her ethical duty of competency consistent with the opinion of the Virginia State Bar's Standing Committee on Legal Ethic's Opinion 1798 issued July 19, 2004.

#### **G. VaIDC FY05 CASELOAD DATA**

FY05 caseload data revealed that public defender offices handled approximately 87,225 cases. They handled 87,714 cases in FY 04, 86,450 cases in FY 03, and 82,912 cases in FY 02. **(Appendix K, VaIDC FY02, FY03, FY04, and FY05 Caseload Data)** The decrease in cases from FY 04 to FY 05 can be attributed to a decline in the overall crime rate and efforts by certain public defender offices to reduce their caseloads to comply with the VaIDC 2004 resolution and Virginia State Bar LEO1798.

#### **H. SALARY AND RESOURCE PARITY**

The American Bar Association's 10 Principles of a Public Defense Delivery System requires "parity between defense counsel and the prosecution," including parity of "workload,

salaries, and other resources.”<sup>37</sup> As the ABA-Spangenberg report found, “There is great disparity in resources afforded to public defenders and Commonwealth’s Attorneys.”<sup>38</sup> In Virginia, there is no parity of salaries, with many Commonwealths’ Attorneys’ offices receiving local funding for salaries and additional positions beyond what the state has supplied. Public Defender offices historically have not received similar funding.

The VaIDC is presently funded for 488 FTE positions. Turnover among VaIDC staff has been averaging 20% per year, presenting significant problems in terms of cost as well as client representation. As of August 31, 2005, the VaIDC had 45 position vacancies. While field offices work in earnest to fill these positions as quickly as possible, VaIDC salaries, the availability of comparable positions with more competitive salaries and improved work load conditions within the jurisdictions we serve work to our detriment.

To begin addressing this problem VaIDC surveyed employees who resigned over the past three years. The overwhelming reason given for leaving was compensation. The majority of respondents indicated that they enjoyed the work and would have preferred to continue their careers as public defenders and/or support staff but could not afford to do so. These statements were verified by a comparative analysis of our compensation structure during the summer of 2005. **(Appendix L VaIDC Compensation Study Attachment 1)** We compared VaIDC salaries with similar positions in Commonwealth’s Attorney’s offices in each jurisdiction served by a public defender office. Commonwealth’s Attorneys are our chief competitors for attorneys and legal secretaries and the study confirmed that salaries for positions in the Commonwealth’s Attorney offices are higher than comparable positions in public defender offices. **(Appendix M VaIDC Compensation Study Attachment 2)**

To further illustrate the non-competitiveness of VaIDC salaries, we compared Virginia's public defender office salaries with those of public defender offices in several nearby states. VaIDC salaries are significantly lower than their counterparts in other states. These figures are adjusted for cost of living differences. **(Appendix N VaIDC Compensation Study Attachment 3)**

VaIDC administrative office position salary ranges were also compared with comparable positions in the Executive Branch. This comparison revealed that if VaIDC were part of the Executive Branch, administrative support salaries would be in the lowest quartile of the respective ranges. **(Appendix O VaIDC Compensation Study Attachment 4)**

The second table shows that VaIDC's administrative positions are also significantly lower than comparable positions in the Richmond market. *Mercer Consulting Group's 2004 Study*. **(Appendix P VaIDC Compensation Study Attachment 4)** These analyses clearly demonstrate that salaries throughout the VaIDC are significantly lower than those of organizations with which we compete for employees.

To alleviate the high, costly turnover the VaIDC experiences year in and year out, we are seeking an appropriation of \$1.8 million to increase all VaIDC salaries by 7.0% in FY07. This will serve as an initial step to help the VaIDC move toward parity with Commonwealth's Attorneys and enable us to be competitive in relevant labor markets.

#### **I. INFORMATION TECHNOLOGY ADVANCEMENTS**

After years of having limited Internet service, in FY05, VaIDC achieved full implementation of agency-wide desktop Internet access through a wide area network. In addition, over 250 outmoded computers, several public defender office telephone systems, and copiers have been replaced.

## **J. INTERNET BASED LEGAL RESEARCH SYSTEM**

Until FY05, public defender offices had very limited access to on-line legal research tools utilizing one dial-up Internet connection per office. In October 2004, a legal research work group consisting of representatives from each office convened in Richmond to evaluate vendors offering such services and to select a vendor for VaIDC. The work group met at the General Assembly building and heard presentations from Lexis/Nexis, Thomson/Westlaw, Geronimo Casefinder, and Lois Law. At the conclusion of each presentation, work group members prepared written evaluations addressing advantages, disadvantages and preference. The overwhelming request was for Thomson/Westlaw and Geronimo Casefinder until such time as all offices were properly trained. After negotiating a very competitive user fee, the VaIDC entered a three-year contract with Thomson/Westlaw in May 2005. Thomson/Westlaw provided individual field office training and continues to provide 24-hour research and technical assistance. One-on-one training is also available. Currently, the VaIDC provides legal research and people locator services for our attorneys and investigators utilizing the following vendors:

**Accurint** – Internet-based locator tool used by our investigators to locate witnesses nationwide.

**Thomson/Westlaw** – Internet-based legal research tool currently used agency-wide.

**Geronimo-Casefinder** – CD-ROM with Virginia only cases and statutes. This product was continued for no more than one year as a back-up tool while field office staff became proficient in the use of Westlaw. Because the field offices managed this service, expiration dates vary. All Geronimo-Casefinder renewals will expire by February 28, 2006.

## **K. FUTURE INTERNET BASED TRIAL PREPARATION TOOLS**

VaIDC staff has been contacted by Lexis/Nexis with a proposal to purchase Lexis/Nexis Internet-based Model Jury Instructions prepared by the Model Jury Instructions Committee. The online instructions cover most, if not all, Virginia criminal offenses and includes statutory

authority as well as relevant case law for courtroom use. Providing this trial preparation tool would increase support staff efficiency by eliminating the need to physically create jury instructions for each jury trial. Over the course of FY06, supporting materials will be presented to our Commission members for their input and authorization to pursue this very valuable trial preparation tool.

While the improvement of staff access to technology is an important step forward, public defenders still lag significantly behind their counterparts in the Commonwealth's Attorneys' offices who often are able to utilize current technology such as PowerPoint presentations in the courtroom. Additionally, attorneys and investigators in public defender offices would be able to better prepare cases with access to digital cameras, digital camcorders, digital recorders, portable scanners to copy discovery documents, as well as the technology to support these devices on their individual computers.

#### **L. VaIDC WEB SITE**

In March 2005, the VaIDC entered discussions with VIPNet, a subsidiary of the Virginia Information Technology Agency ("VITA") charged with assisting state agencies and local governments to web enable their business processes. After gathering input from public defender offices, administrative staff and VIPNet project managers assigned to assist us, VaIDC contracted with VIPNet to upgrade the current web site so that it can serve as a valuable communication tool to be used by VaIDC staff, court personnel, private attorneys and the public.

#### **M. NEW PUBLIC DEFENDER OFFICES**

The 2004 General Assembly authorized the creation of four new public defender offices; Arlington/Falls Church, Hampton, Chesapeake, and Newport News. In October 2004, the public defenders for Arlington, Hampton, and Chesapeake were hired. The Newport News Public

Defender assumed her responsibilities on January 10, 2005. The office space allocation process began in May 2004 with requests to the Department of General Services (“DGS”) for office specific space standards.

On July 1, 2004, the Virginia Secretary of Administration notified all state agencies leasing office space that Governor Warner had issued Executive Order 75, an initiative to optimize the Commonwealth’s real estate portfolio, including leased facilities. As a result, the Commonwealth’s long standing office space standards were reduced to 210 square feet per full time employee negating the space allocations previously received from DGS and delaying the search for new office space.

In November 2004, temporary space was secured for the Hampton and Chesapeake offices and the hiring of office staff began. The search for space in Arlington and Newport News proved to be more challenging. Despite use restrictions in Arlington and limited office space opportunities in Newport News, joint efforts with local Offices of Economic Development located temporary space in Newport News in January 2005 in March 2005 for Arlington.

The Newport News Housing Authority submitted a lease proposal for permanent office space in January 2005. The proposal was accepted and the lease approval process was initiated with the Department of General Services. The Housing Authority gave several move-in dates with the first being July 1, 2005. The public defender was advised and hiring and an assigned case acceptance plan was devised. Once the contractor began to work, a crack in the foundation was discovered, the roof needed replacing and asbestos was discovered. Due to these problems, a new completion date of September 1, 2005 was suggested. The asbestos removal required specialized workers and was not completed until July 21, 2005. The final and current completion date is December 1, 2005.

Due to this additional delay, 2,159 additional square footage not available in January when the temporary space was contracted was added. Today, the Newport News office is fully staffed with 24.5 FTE and all the necessary equipment and furniture has been purchased.

Chesapeake, fully staffed with 18.5 FTE at the time, relocated to its permanent office space in February 2005. **(Appendix R, New Office FTE Chart)** Since January 2005, the Chesapeake office has handled 2,575 adult felonies and misdemeanors and 236 juvenile felonies and misdemeanors. The office currently has 39 open felony appeals having closed 5 for a total of 44. Misdemeanor appeals totaled 50 with 38 closed and 12 pending in circuit court.

The Hampton Office of the Public Defender moved into its permanent space in April 2005. With the assistance of the Hampton Office of Economic Development and the Virginia Department of General Services, office space was located within one block of Hampton's courts. The office space consists of 6,176 square feet and employs 21 FTE. Since March 2005, the Hampton office has handled 1,962 cases, 995 felonies, 718 misdemeanors, 249 juvenile cases and 20 appeals.

To introduce the Public Defenders and their staffs to the Chesapeake and Hampton communities, Delegates John A. Cosgrove and Thomas D. Gear accepted the VaIDC's invitations to host Town Hall meetings in their respective districts. The meetings were held in March 2005 for Chesapeake and in June 2005 for Hampton. City Council chambers were used and state and local officials, judges, court personnel, community leaders and the general public were invited to attend. Attendees were given an opportunity to learn the role of the Office of the Public Defender within their communities, how the courts assign cases to the Public Defender, and the role of the VaIDC regarding public defender offices and court appointed attorneys.



Immediately following the Town Hall meetings, attendees were invited back to the offices for a tour of the new spaces.

With the help of the Newport News Housing Authority, permanent office space for the Newport News Office of the Public Defender has been located and a December 1, 2005 move in date has been set. The search for permanent office space in Arlington is ongoing, however, the Arlington public defender is currently accepting court appointments while operating out of temporary office space. He has hired 12 of his 22 staff members and the VaIDC is committed to locating permanent office space by the end of 2005.

#### **N. NEW CHIEF DEFENDERS**

During FY05 five chief public defenders were hired for the Fairfax, Winchester, and Roanoke Public Defender offices, the Northern Virginia Capital office and the Appellate Defender office. Leonard Piotrowski, the former Northern Virginia Capital Defender, retired in December 2004.

Under current leadership, these offices continue to provide quality legal representation to indigent clients and have become an integral part of the communities they serve.

#### **O. EXISTING PUBLIC DEFENDER OFFICE RELOCATION EFFORTS**

Several public defender offices were relocated during FY05 due to growing staff and unsafe working conditions. Relocations included the Petersburg, Portsmouth, Franklin and Winchester offices. There have been many positive effects associated with the relocations. Office morale has improved, clients seem to have more confidence in their assigned counsel, and the communities' perception of the public defender offices in these locations has dramatically improved. Several other offices will be relocated during FY06 for the same reasons with the same effects expected.

### **III. Future Plans and Conclusion**

The coming year for the VaIDC will be filled with challenges. January 2006 will usher in not only a new year, but also a new Executive Director to lead the agency forward. In September 2005, the Commission hired a Deputy Executive Director to oversee the assigned counsel process and to provide much needed public defender leadership. Efforts toward integration of the court-appointed and public defender systems into one agency that will provide the support, training, and oversight that both systems require will continue.

The VaIDC will continue building the infrastructure needed to engage in all of its new statutory tasks to report caseload data and other valuable indigent defense related information. We will continue to enhance the agency's information technology and data-gathering processes to fulfill our statutory obligation to develop, promulgate, publicize, and enforce standards of practice and conduct for all indigent defense attorneys. The VaIDC will continue to provide high quality, certification training for new and lesser-experienced attorneys while still aggressively providing advanced training for more experienced attorneys.

Virginians deserve a balanced criminal justice system that protects fairness, protects victims and the community, and protects the truth. Only then can we accept that the innocent are set free and that only the guilty are punished. The American Bar Association/Virginia State Bar's 10 Principles of a Public Defense Delivery System, as well as other national standards require that we continue to strive for:

- Reformation of the private bar fee caps,
- Parity of salary and resources between public defenders, court appointed counsel and prosecutors,
- Increased resources for trial skills training for all new attorneys,
- Funding the infrastructure necessary to enforce practice standards,

- Information technology resources necessary for managing the VaIDC and for properly equipping its public defender offices, and
- Caseloads that meet national caseload standards.<sup>39</sup>

The creation of the Virginia Indigent Defense Commission was a major advance toward indigent defense reform. However, efforts to educate the public, state and local officials, and the members of Virginia's criminal justice system must not falter, but be ever present as we continue the hard work necessary to ensure a fair, just, and reliable criminal justice system for all who come before it regardless of their station in life.

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<sup>1</sup> U.S. Const. Amend. VI

<sup>2</sup> Senate Document No. 11 (2003)

<sup>3</sup> Senate Document No. 13 (2004)

<sup>4</sup> American Bar Association, A Comprehensive Review of Indigent Defense in Virginia, (2004)

<sup>5</sup> Id. at 82

<sup>6</sup> Id. at 86

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at 87

<sup>11</sup> Court-Appointed Counsel-Public Defender Procedures and Guidelines Manual 25 (Supreme Court of Virginia July 2004)

<sup>12</sup> ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group n.17, August 2005

This discussion does not include the defense of capital cases. In such cases there is no statutory cap and a reasonable fee is to be set by the trial court. Virginia Code § 19.2-163 (2)(ii). The Supreme Court has recently set a suggested hourly rate in capital cases of \$125 per hour. Court-Appointed Counsel-Public Defender Procedures and Guidelines Manual 26, 50 (Supreme Court of Virginia July 2003). In addition there is no set rate or cap for appeals, fees being set on an *ad hoc* basis. See Indigent Defense, Report of the Virginia State Crime Commission 8 (House Document No. 32 2002); see also American Bar Association, A Comprehensive Review of Indigent Defense in Virginia 55 (2004).

<sup>13</sup> ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2005)

<sup>14</sup> Id. at 9

<sup>15</sup> Id.

<sup>16</sup> ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2003)

<sup>17</sup> Va. Code § 19.2-163

<sup>18</sup> ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2005)

<sup>19</sup> Id. at 9

<sup>20</sup> Id. at 4

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<sup>21</sup> Id.

<sup>22</sup> American Bar Association, A Comprehensive Review of Indigent Defense in Virginia, 55-57 (2004)

<sup>23</sup> Id.

<sup>24</sup> See *Courts of No Appeal*, Washington Post, July 4, 2004, at B6; *Inexcusable Delay*, Washington Post, July 5, 2004, at A16; *Attention: Virginia Bar*, Washington Post, July 6, 2004, at A18; *Fixing Virginia's System*, Washington Post, July 7, 2004, at A18.

<sup>25</sup> E.g., The appellant stated that “he had no idea his appeal had been dismissed even once – let alone twice – until we told him of the dismissals in a recent interview.” *Inexcusable Delay*, , Washington Post, July 5, 2004, at A16  
E.g., The attorney “insists – wrongly, according to prominent defense lawyers and the office of Attorney General Jerry W. Kilgore – that filing an action to restore defaulted appeals has no effect on a client’s ability to file another challenge later.” *Attention: Virginia Bar*, Washington Post, July 6, 2004,

<sup>26</sup> Available at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov)

<sup>27</sup> Id.

<sup>28</sup> Id.

<sup>29</sup> ABA Juvenile Justice Center, Virginia: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings. (September 2002)

<sup>30</sup> Id. at 26

<sup>31</sup> Id. at 27

<sup>32</sup> Id. at 28

<sup>33</sup> Id. at 29

<sup>34</sup> Id. at 30

<sup>35</sup> Virginia State Bar, Legal Ethics Opinion 1798

<sup>36</sup> Id. at n.2

<sup>37</sup> ABA, 10 Principles of Public Defense Delivery System, (February 5, 2002)

<sup>38</sup> American Bar Association, A Comprehensive Review of Indigent Defense in Virginia, 34-36 (2004)

<sup>39</sup> ABA, 10 Principles of Public Defense Delivery System, (February 5, 2002)

**APPENDIX A**  
**VIRGINIA INDIGENT DEFENSE COMMISSION**  
**ENABLING STATUTE**  
**PAGE 1**

# VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

## CHAPTER 884

*An Act 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 through 19.2-163.04, and 19.2-163.4:1 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.*

[S 330]

Approved April 15, 2004

**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 through 19.2-163.04, and 19.2-163.4:1 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 2 a 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 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or guardian.

D. In those cases described in subsections A, B and C which in the discretion of the court require counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult

party in addition to the representation provided in those subsections, a discreet and competent attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

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

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

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

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

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

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

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

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

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

If the available funds of the accused exceed 125% *percent* of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

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

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

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

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

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

Except in jurisdictions having a public defender pursuant to Article 4 (§ 19.2-163.1 et seq.) of Chapter 10 of Title 19-2, counsel appointed by the court for representation of the accused shall be selected by 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 whose names are on the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01.

Article 3.1.

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

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

1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants pursuant to § 19.2-159.
2. To develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.
3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards and to disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts. In establishing and updating the list, the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Commission's assessment of whether the attorney is competent to provide quality legal representation.
4. To establish official standards of practice for court-appointed counsel to follow in representing their clients, and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.
5. To develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility; and to establish standards of practice for public defenders.
6. To establish and thereafter maintain, in conjunction with the Virginia State Bar, the Supreme Court and the Virginia State Crime Commission, standards of conduct for indigent defense counsel in Virginia.
7. To establish appropriate caseload limits for public defender offices.
8. To maintain all public defender and regional capital defender offices established by the General Assembly.
9. To hire and employ and, at its pleasure, remove an executive director, counsel, and such other persons as it deems necessary, and to authorize the executive director to appoint for each of the above offices a public defender or capital defender, as the case may be, who shall devote his full time to his duties and not engage in the private practice of law.
10. To authorize the public defender or capital defender to employ such assistants as authorized by the Commission.
11. To authorize the public defender or capital defender to employ such staff, including secretarial and investigative personnel, as may be necessary to carry out the duties imposed upon the public defender office.
12. To authorize the public defender or capital defender to secure such office space as needed, to purchase or rent office equipment, to purchase supplies and to incur such expenses as are necessary to carry out the duties imposed upon him.
13. To receive and expend moneys appropriated by the General Assembly of Virginia and to receive other moneys as they become available to it and expend the same in order to carry out the duties imposed upon it.



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

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

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

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

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

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

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

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

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

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

C. To initially qualify to serve as appointed counsel in a juvenile and domestic relations district court pursuant to subdivision B 2 of § 16.1-266, the attorney shall (i) be a member in good standing of the Virginia State Bar, (ii) have completed the six hours of MCLE-approved continuing legal education developed by the Commission, (iii) have completed four additional hours of MCLE-approved continuing legal education on representing juveniles developed by the Commission, and (iv) certify that he has participated as either lead counsel or cocounsel in four cases involving juveniles in a juvenile and domestic relations district court. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has, within the past year, been lead counsel in four cases involving juveniles in juvenile and domestic relations district court, the requirement to complete the 10 hours of continuing legal education shall be waived. If the attorney has been an active member of the Virginia State Bar for more than one year and certifies that he has participated, within the past five years in five cases involving juveniles in a juvenile and domestic relations district court, the requirement to participate as either lead counsel or cocounsel in four juvenile cases shall be waived.

D. After initially qualifying, an attorney shall maintain his eligibility for certification by completing

biennially thereafter six hours of MCLE-approved continuing legal education, certified by the Commission. In addition, to maintain eligibility to accept court appointments under subdivision B 2 of § 16.1-266, an attorney shall complete biennially thereafter four additional hours of MCLE-approved continuing legal education on representing juveniles, certified by the Commission.

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

§ 19.2-163.04. Public Defender offices.

Public defender offices are established in:

- 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.

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

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

§ 19.2-163.7. Counsel in capital cases.

In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit court, upon request for the appointment of counsel, shall appoint one or more attorneys from the list or lists established by the Supreme Court and the ~~Public Defender Indigent Defense~~ Commission pursuant to ~~§ 19.2-163.8~~ to represent the defendant at trial and, if the defendant is sentenced to death, on appeal. In all cases after July 1, 2004, where counsel is to be appointed under this section, one of the attorneys appointed shall be from a capital defense unit maintained by the ~~Public Defender Indigent Defense~~ Commission; this section shall be construed in conformity with the provisions of § 19.2-163.4. If the sentence of death is affirmed on appeal, the court shall, within ~~thirty~~ 30 days after the decision of the Supreme Court of Virginia, appoint counsel from the same list, or such other list as the Supreme Court and the Commission may establish, to represent an indigent prisoner under sentence of death in a state habeas corpus proceeding. The Attorney General shall have no standing to object to the appointment of counsel for the petitioner.

§ 19.2-163.8. List of qualified attorneys.

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

B. The Supreme Court and the ~~Public Defender Indigent Defense~~ Commission shall maintain a list ~~of~~ lists of attorneys admitted to practice law in Virginia who are qualified to represent defendants charged

with capital murder or sentenced to death. In establishing such a list ~~or lists~~, the Court and the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Court's and the Commission's assessment of whether the attorney is competent to provide quality legal representation.

C. Notwithstanding the requirements of § 19.2-163.7, the judge of the circuit court may 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.

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

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

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

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

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

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

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

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

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

**4. That the provisions of § 19.2-163.03 shall become effective July 1, 2005.**

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 230

*An Act to amend and reenact § 19.2-163.01 of the Code of Virginia, relating to the powers and duties of the Virginia Indigent Defense Commission.*

[S 1165]

Approved March 20, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-163.01 of the Code of Virginia is amended and reenacted as follows:**

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

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

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

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

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

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

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

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

7. To establish appropriate caseload limits for public defender offices periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.

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

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

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

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

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

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

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

15. To report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including

Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed pursuant to § 19.2-159 or subdivision B 2 of § 16.1-266.

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

**APPENDIX B**

**VaIDC COURT APPOINTED ATTORNEY CERTIFICATION TRAINING  
CURRICULUM  
PAGE 2**

# INDIGENT DEFENSE CERTIFICATION TRAINING FOR COURT APPOINTED LAWYERS

## PROGRAM OUTLINE

### DAY 1

#### REPRESENTING ADULT CLIENTS IN MISDEMEANOR AND FELONY CASES (6- 1 Hour Sessions)

##### 9:00 – 10:00: Initial Client Interview

*Preparation:* Obtain charging document  
Review charge and penalty statutes  
Consult relevant guidelines forms (if a felony)

*Objectives:* Build rapport and inspire confidence [discuss interview techniques and how to respond to questions challenging competence or dedication of the attorney when challenged by client]

Explain client confidentiality

Obtain the following necessary information:

- Contact Information
- Bond Information
- Citizenship/Alien Status Information
- Relevant information concerning the offense
- Background information needed to calculate guidelines
- Details concerning arrest/seizure of evidence/statements to police for motions preparation
- Background information for mitigation (substance abuse/mental health history)
- Names and Addresses of Witnesses

Educate the defendant about the relevant law pertaining to his/her case  
Explain what will happen in court  
How and whether to raise competency/sanity issues  
Advise defendant of steps he/she can take pretrial to advance his/her case

\*\*\*\* *In the case of juveniles, be aware of developmental issues as they affect competency and criminal responsibility*

##### 10:00 – 11:00: Pretrial Preparation

- Obtain Discovery
- Conduct Factual Investigation
- Develop a theory of the defense (Fact based) and a case strategy (Legal)
- File Appropriate Pretrial Motions
- Assess the Strength of the Case
- Consider possible sentencing alternatives or pleas that meet client objectives
- Discuss possible pleas with prosecutor
- Keep Client Advised
- Subpoena Witnesses
- Prepare Witnesses to Testify

##### 11:00 – 11:15: Break

**11:15 – 12:15: Litigation Skills**

- Refresher on the Rules of Evidence
  - Form of Questions
  - Bases for Objection (hearsay, competency, etc.)
  - Techniques for Direct and Cross examination
  - Laying Foundations
  - Impeachment
- Motions to Exclude
- Evidentiary Hearings
- Qualifying Experts/Attacking Expert Qualifications

**12:15 – 1:15: Misdemeanor Practice in the General District Court & JDR Court (adults)**

- Procedures in GDC --Subpoenas, Discovery, Motions
- Investigate local diversion programs and alternative sentencing options (consider having client pre-qualified or enrolled before court date)
- Common Misdemeanor Defenses (self defense, trespass defenses, etc.)
- Determine collateral consequences of convictions as they affect immigration, employment, etc.
- Accord and Satisfaction
- How to negotiate plea agreements with prosecutors
  - Appeals
  - Felonies: preliminary hearings
  - Guidelines preparation in aid of plea negotiations

**1:15 – 2:30 Lunch (Provided)**

**2:30 – 3:30: Practice in Traffic Court**

- Obtaining Client's driving transcript and other relevant documents from DMV
- Review of Traffic Statutes
- Investigate Diversion Programs
- Mandatory Minimums
- Review of Traffic Defenses
- Sentencing Alternatives and Programs for Traffic Offenders
- Collateral Consequences of Conviction
- Negotiating Pleas with Prosecutors
- De Novo Appeal

**3:30 – 4:30: Practice in Circuit Court**

- Bond Appeals
- De Novo Appeal Trials B Judge or Jury (Bi-furcated)
- Discovery Motions
- Pre-trial Motions (in limine, to suppress, on other statutory or Constitutional grounds)
- Burdens of Proof in Motions Practice
- Preserving Appellate Issues at Trial
- Sentencing Alternatives
- Plea Negotiations
- Sentencing Trials and Hearings
- Appeals and Motions to Reconsider Sentence
- Probation Violation Hearings



**INDIGENT DEFENSE CERTIFICATION TRAINING FOR COURT APPOINTED LAWYERS**  
**Day 2**

**JUVENILE CASES**  
**(4 – 1 HOUR SEGMENTS)**

- 8:30 – 9:30: Overview of the Juvenile Court**  
Background of the Court  
Special Issues Concerning Juveniles (developmental issues, competency issues, Issues of criminal responsibility)  
Statutes applicable only to juveniles (transfer statutes)  
Diversion Options  
Sentencing Options  
Role of the Attorney (contra Guardian ad litem)  
Client' s Right of Confidentiality  
Identify Treatment and Sentencing Options
- 9:30 – 10:30: Client Interview and Pretrial Preparation**  
Develop trust relationship with client  
Advise client of attorney client privilege  
Educate the client as to what to expect in court  
Advise client as to how to prepare for court and how to act in court  
Obtain family, school, social services, and any medical or psychological records  
Speak with client' s counselors at school or at court services  
Detention Advocacy (including review of new statutory requirements)  
Obtain Discovery  
Conduct Factual Investigation  
Identify Mitigating Factors  
Assess the Case and Devise Strategy  
Consider Possible Collateral Consequences (i.e., future effects on guidelines, Immigration status)  
Discuss Plea Offer with Prosecutor  
File and Argue Pretrial Motions (including for release)
- 10:30 – 10:45: Break**
- 10:45 – 11:45: Adjudication**  
Prepare client and witnesses for trial  
Record proceedings in the event of an appeal  
Have a cogent theory of the defense (legal and/or factual)  
Subpoena all necessary witnesses  
Have sentencing witnesses and arguments prepared
- 11:45 – 12:45: Disposition**  
Learn all possible dispositional alternatives available  
Obtain records from prior cases  
Call witnesses for mitigation  
Meet with court services to discuss options beneficial to the client and the dispo. recommendation  
Prepare client to address the court  
Explore alternative sentencing options  
Appeal

**APPENDIX C**  
**COURT APPOINTED ATTORNEY DATA**  
**BY JUDICIAL CIRCUIT**  
**PAGE 4**

Sheet1

<b>Circuit</b>	<b>Certified Case Type</b>	<b>Total</b>
1		491
	Capital Appellate	14
	Capital Habeas	9
	Capital Trial Co-Counsel	26
	Capital Trial Lead Counsel	20
	Felony	140
	Juvenile	131
	Misdemeanor	151
2		488
	Capital Appellate	14
	Capital Habeas	8
	Capital Trial Co-Counsel	23
	Capital Trial Lead Counsel	18
	Felony	144
	Juvenile	125
	Misdemeanor	156
3		436
	Capital Appellate	14
	Capital Habeas	9
	Capital Trial Co-Counsel	23
	Capital Trial Lead Counsel	21
	Felony	124
	Juvenile	112
	Misdemeanor	133
4		536
	Capital Appellate	15
	Capital Habeas	9
	Capital Trial Co-Counsel	29
	Capital Trial Lead Counsel	25
	Felony	160
	Juvenile	129
	Misdemeanor	169
5		311
	Capital Appellate	13
	Capital Habeas	9
	Capital Trial Co-Counsel	22
	Capital Trial Lead Counsel	19
	Felony	84
	Juvenile	77
	Misdemeanor	87
6		275
	Capital Appellate	12
	Capital Habeas	7
	Capital Trial Co-Counsel	18
	Capital Trial Lead Counsel	15
	Felony	75
	Juvenile	70
	Misdemeanor	78

Sheet1

<b>Circuit</b>	<b>Certified Case Type</b>	<b>Total</b>
7		403
	Capital Appellate	12
	Capital Habeas	7
	Capital Trial Co-Counsel	26
	Capital Trial Lead Counsel	16
	Felony	121
	Juvenile	97
	Misdemeanor	124
8		345
	Capital Appellate	11
	Capital Habeas	7
	Capital Trial Co-Counsel	20
	Capital Trial Lead Counsel	14
	Felony	104
	Juvenile	82
	Misdemeanor	107
9		347
	Capital Appellate	9
	Capital Habeas	6
	Capital Trial Co-Counsel	20
	Capital Trial Lead Counsel	14
	Felony	105
	Juvenile	85
	Misdemeanor	108
10		222
	Capital Appellate	11
	Capital Habeas	6
	Capital Trial Co-Counsel	15
	Capital Trial Lead Counsel	14
	Felony	61
	Juvenile	52
	Misdemeanor	63
11		415
	Capital Appellate	16
	Capital Habeas	8
	Capital Trial Co-Counsel	26
	Capital Trial Lead Counsel	20
	Felony	117
	Juvenile	106
	Misdemeanor	122
12		635
	Capital Appellate	14
	Capital Habeas	7
	Capital Trial Co-Counsel	29
	Capital Trial Lead Counsel	23
	Felony	187
	Juvenile	175
	Misdemeanor	200

Sheet1

Circuit	Certified Case Type	Total
13		640
	Capital Appellate	16
	Capital Habeas	7
	Capital Trial Co-Counsel	32
	Capital Trial Lead Counsel	22
	Felony	189
	Juvenile	165
	Misdemeanor	209
14		585
	Capital Appellate	14
	Capital Habeas	8
	Capital Trial Co-Counsel	29
	Capital Trial Lead Counsel	22
	Felony	171
	Juvenile	154
	Misdemeanor	187
15		500
	Capital Appellate	17
	Capital Habeas	10
	Capital Trial Co-Counsel	32
	Capital Trial Lead Counsel	22
	Felony	141
	Juvenile	129
	Misdemeanor	149
16		355
	Capital Appellate	17
	Capital Habeas	9
	Capital Trial Co-Counsel	21
	Capital Trial Lead Counsel	16
	Felony	96
	Juvenile	85
	Misdemeanor	111
17		283
	Capital Appellate	13
	Capital Habeas	7
	Capital Trial Co-Counsel	15
	Capital Trial Lead Counsel	10
	Felony	78
	Juvenile	69
	Misdemeanor	91
18		253
	Capital Appellate	10
	Capital Habeas	4
	Capital Trial Co-Counsel	11
	Capital Trial Lead Counsel	8
	Felony	74
	Juvenile	62
	Misdemeanor	84

Sheet1

<b>Circuit</b>	<b>Certified Case Type</b>	<b>Total</b>
19		383
	Capital Appellate	13
	Capital Habeas	6
	Capital Trial Co-Counsel	16
	Capital Trial Lead Counsel	10
	Felony	117
	Juvenile	85
	Misdemeanor	136
20		208
	Capital Appellate	12
	Capital Habeas	6
	Capital Trial Co-Counsel	14
	Capital Trial Lead Counsel	9
	Felony	58
	Juvenile	46
	Misdemeanor	63
21		143
	Capital Appellate	9
	Capital Habeas	5
	Capital Trial Co-Counsel	17
	Capital Trial Lead Counsel	13
	Felony	36
	Juvenile	30
	Misdemeanor	33
22		248
	Capital Appellate	10
	Capital Habeas	7
	Capital Trial Co-Counsel	24
	Capital Trial Lead Counsel	18
	Felony	66
	Juvenile	53
	Misdemeanor	70
23		314
	Capital Appellate	10
	Capital Habeas	6
	Capital Trial Co-Counsel	20
	Capital Trial Lead Counsel	14
	Felony	94
	Juvenile	74
	Misdemeanor	96
24		293
	Capital Appellate	14
	Capital Habeas	8
	Capital Trial Co-Counsel	21
	Capital Trial Lead Counsel	18
	Felony	79
	Juvenile	64
	Misdemeanor	89

Sheet1

<b>Circuit</b>	<b>Certified Case Type</b>	<b>Total</b>
25		312
	Capital Appellate	12
	Capital Habeas	10
	Capital Trial Co-Counsel	18
	Capital Trial Lead Counsel	14
	Felony	88
	Juvenile	77
	Misdemeanor	93
26		234
	Capital Appellate	10
	Capital Habeas	6
	Capital Trial Co-Counsel	14
	Capital Trial Lead Counsel	11
	Felony	64
	Juvenile	57
	Misdemeanor	72
27		284
	Capital Appellate	11
	Capital Habeas	6
	Capital Trial Co-Counsel	17
	Capital Trial Lead Counsel	12
	Felony	83
	Juvenile	69
	Misdemeanor	86
28		238
	Capital Appellate	6
	Capital Habeas	4
	Capital Trial Co-Counsel	14
	Capital Trial Lead Counsel	10
	Felony	74
	Juvenile	59
	Misdemeanor	71
29		241
	Capital Appellate	8
	Capital Habeas	4
	Capital Trial Co-Counsel	16
	Capital Trial Lead Counsel	13
	Felony	70
	Juvenile	58
	Misdemeanor	72
30		181
	Capital Appellate	5
	Capital Habeas	3
	Capital Trial Co-Counsel	14
	Capital Trial Lead Counsel	9
	Felony	56
	Juvenile	42
	Misdemeanor	52

Sheet1

<b>Circuit</b>	<b>Certified Case Type</b>	<b>Total</b>
31		373
	Capital Appellate	11
	Capital Habeas	8
	Capital Trial Co-Counsel	20
	Capital Trial Lead Counsel	13
	Felony	114
	Juvenile	86
	Misdemeanor	121



**APPENDIX D**

**VaIDC PUBLIC DEFENDER OFFICES  
FY05 EXPENDITURES  
PAGE 9**

**Virginia Indigent Defense Commission**  
**Expenditures - All Funds**  
**FY 05**

<u>Expenditure</u> <u>category</u>	<u>FY 05</u> <u>Expenditures</u> <u>(rounded to</u> <u>nearest \$100)</u>	<u>Per Cent of</u> <u>Total</u> <u>Expenditures</u>
Personnel	22,075,100	82.91%
Rent	1,598,700	6.00%
Other	<u>2,951,300</u>	11.08%
Total	26,625,100	99.99%

**Virginia Indigent Defense Commission**  
**Expenditures - General Fund**  
**FY 05**

<u>Expenditure</u> <u>category</u>	<u>FY 05</u> <u>Expenditures</u> <u>(rounded to</u> <u>nearest \$100)</u>	<u>Per Cent of</u> <u>Total</u> <u>Expenditures</u>
Personnel	22,067,000	83.00%
Rent	1,598,700	6.01%
Other	<u>2,921,400</u>	10.99%
Total	26,587,100	100.00%

**APPENDIX E**

**VaIDC PUBLIC DEFENDER  
FY06 OFFICE BUDGETS  
PAGE 9**

**INDIGENT DEFENSE COMMISSION  
BASE BUDGET - FY06 - General Fund**

	100	200	201	202	204	205	206	301	302	303	304
<u>Expenditure Category</u>	<u>Commission</u>	<u>Admin</u>	<u>Capital Case Standards</u>	<u>Agency Training</u>	<u>Appellate Defender Office</u>	<u>Information Tech</u>	<u>Atty Cert</u>	<u>Staunton</u>	<u>Virginia Beach</u>	<u>Roanoke</u>	<u>Petersburg</u>
<b>PERSONNEL:</b>											
Salaries - Fulltime Employees	0	760,460	0	0	269,620	193,260	72,340	452,790	1,145,120	665,180	429,990
Salaries - Part-time Employee	0	19,350	0	0	25,270	0	0	77,560	163,820	0	0
Retirement	0	72,050	0	0	26,270	17,220	6,680	47,250	116,630	59,270	38,310
Social Security	0	57,420	0	0	22,560	14,780	6,490	40,260	100,240	50,890	32,890
Group Life Insurance	0	0	0	0	0	0	0	0	0	0	0
Medical Insurance	0	114,120	0	0	38,040	25,360	6,340	63,400	171,180	97,640	63,400
Retiree Health Credit (medical ins)	0	8,110	0	0	3,070	2,010	750	5,520	13,610	6,920	4,470
Long-term Disability Insurance	0	12,870	0	0	4,870	3,190	1,190	8,750	21,600	10,980	7,090
Defined Contribution Plan	0	4,020	0	0	840	960	0	3,840	4,200	1,920	1,440
Wages	0	0	0	0	0	0	0	0	0	0	0
Social Security - Wages	0	0	0	0	0	0	0	0	0	0	0
Per diem	3,400	0	0	0	0	0	0	0	0	0	0
<b>Total Personnel</b>	<b>3,400</b>	<b>1,048,400</b>	<b>0</b>	<b>0</b>	<b>390,540</b>	<b>256,780</b>	<b>93,790</b>	<b>699,370</b>	<b>1,736,400</b>	<b>892,800</b>	<b>577,590</b>
<b>CONTRACTUAL SERVICES:</b>											
Media Services (newspaper ads)	0	1,170	0	0	20	80	1,400	670	1,420	310	600
Messenger/Delivery Services	0	30	0	0	50	600	0	30	50	50	50
Freight (inbound)	0	2,560	0	0	560	400	920	620	1,190	390	640
Postage	0	4,760	0	0	860	400	1,520	830	980	200	330
Printing (copying)	0	1,180	1,970	0	1,010	0	4,720	1,010	1,040	370	1,020
Telephone - State DIT	0	20,310	0	0	14,750	56,080	0	4,880	20,820	6,020	5,330
Telephone - Non-State	0	420	0	0	0	2,690	0	40	0	0	0
Organization Dues	0	1,270	0	0	870	60	500	930	2,680	860	1,080
Publication Subscriptions	0	2,940	0	0	3,780	450	820	4,410	9,350	6,320	5,470
Employee Training Courses	0	4,060	0	4,000	1,800	3,420	3,600	2,240	3,490	3,800	1,680
Employee Training - travel expenses	3,000	4,920	0	6,000	2,550	2,000	1,180	2,900	4,730	5,700	2,470
Attorney Services (office exp allow)	0	0	0	0	0	0	0	12,500	20,000	0	0
Custodial Services	0	0	0	0	0	0	0	0	0	0	4,680
Equipment Repair/Maintenance	0	9,020	0	0	2,250	2,150	0	2,220	3,550	1,750	790
Production Services (film developing)	0	0	0	0	0	0	0	50	260	160	50
Computer Hardware Maintenance	0	1,370	0	0	360	290	70	790	2,380	1,220	0
Computer Software Maintenance	0	2,760	0	0	0	0	0	0	0	0	0
Seat Management	0	0	0	0	0	0	0	0	0	0	6,000
Computer Operating Svcs (mainframe)	0	1,400	0	0	0	0	0	0	0	0	0
Mileage (personal vehicles)	2,870	8,530	0	0	2,950	770	9,440	4,660	5,660	2,480	2,950
Travel - Public Carriers	250	0	0	0	910	0	0	0	0	0	0

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**INDIGENT DEFENSE COMMISSION  
BASE BUDGET - FY06 - General Fund**

	100	200	201	202	204	205	206	301	302	303	304
<u>Expenditure Category</u>	<u>Commission</u>	<u>Admin</u>	<u>Capital Case Standards</u>	<u>Agency Training</u>	<u>Appellate Defender Office</u>	<u>Information Tech</u>	<u>Atty Cert</u>	<u>Staunton</u>	<u>Virginia Beach</u>	<u>Roanoke</u>	<u>Petersburg</u>
Travel - State Car	0	0	0	0	0	4,000	0	0	0	0	0
Subsistence & Lodging (pkg & tolls)	3,640	11,610	0	0	1,930	5,750	17,560	200	440	150	210
Meals	1,360	8,420	0	0	180	750	11,700	100	200	150	100
<b>Total Contractual Services</b>	<b>11,120</b>	<b>86,730</b>	<b>1,970</b>	<b>10,000</b>	<b>34,830</b>	<b>79,890</b>	<b>53,430</b>	<b>39,080</b>	<b>78,240</b>	<b>29,930</b>	<b>33,450</b>
<b>SUPPLIES:</b>											
Office Supplies	0	4,370	0	100	1,620	0	1,000	1,050	2,820	1,460	1,430
Stationery & Forms	0	3,130	0	0	1,640	0	1,100	1,500	3,380	1,580	1,800
Custodial Supplies	0	340	0	0	0	0	0	160	80	0	0
Computer Operating Supplies	0	370	0	0	130	1,420	300	100	100	0	50
Photographic Supplies	0	590	0	0	80	0	1,500	100	100	360	250
<b>Total Supplies</b>	<b>0</b>	<b>8,800</b>	<b>0</b>	<b>100</b>	<b>3,470</b>	<b>1,420</b>	<b>3,900</b>	<b>2,910</b>	<b>6,480</b>	<b>3,400</b>	<b>3,530</b>
<b>CONTINUOUS CHARGES:</b>											
Property Insurance	0	10	0	0	0	0	0	10	20	10	10
Plant Rentals (Office)	0	72,350	0	0	27,540	15,830	4,020	36,000	122,790	65,950	25,020
Electricity	0	0	0	0	0	0	0	0	0	0	0
Liability Insurance	120	190	0	0	70	40	10	120	310	150	100
Workers Compensation Insurance	0	700	0	0	270	170	70	480	1,180	600	390
<b>Total Continuous Charges</b>	<b>120</b>	<b>73,250</b>	<b>0</b>	<b>0</b>	<b>27,880</b>	<b>16,040</b>	<b>4,100</b>	<b>36,610</b>	<b>124,300</b>	<b>66,710</b>	<b>25,520</b>
<b>EQUIPMENT:</b>											
Personal Computer Equipment	0	0	0	0	0	16,620	1,250	1,250	2,500	0	1,250
Network Services	0	0	0	0	0	26,360	0	0	0	0	0
Network Components	0	0	0	0	0	680	0	0	0	0	0
Other Computer Equipment	0	0	0	0	0	25,490	0	0	0	0	0
Off-the-Shelf Software	0	0	0	0	0	62,910	610	610	1,210	0	610
Reference Equipment (books)	0	770	0	0	950	1,050	270	950	1,590	1,310	1,340
Photographic Equipment	0	0	0	0	0	0	0	0	900	0	0
Telephone Equipment	0	0	0	0	700	0	1,400	700	1,400	0	700
Office Furniture	0	1,610	0	0	2,580	150	7,200	6,180	10,760	890	5,500
Office Incidentals (staplers, etc.)	0	510	0	0	320	100	450	390	850	450	360
Office Machines	0	700	0	0	1,080	200	1,210	1,160	1,420	700	910
<b>Total Equipment</b>	<b>0</b>	<b>3,590</b>	<b>0</b>	<b>0</b>	<b>5,630</b>	<b>133,560</b>	<b>12,390</b>	<b>11,240</b>	<b>20,630</b>	<b>3,350</b>	<b>10,670</b>
<b>TOTAL BUDGET</b>	<b>14,640</b>	<b>1,220,770</b>	<b>1,970</b>	<b>10,100</b>	<b>462,350</b>	<b>487,690</b>	<b>167,610</b>	<b>789,210</b>	<b>1,966,050</b>	<b>996,190</b>	<b>650,760</b>

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**INDIGENT DEFENSE COMM**  
**BASE BUDGET - FY06 - Gene**

	305	306	307	308	309	310	311	312	313	314	315
<u>Expenditure Category</u>	<u>Portsmouth</u>	<u>Richmond</u>	<u>Alexandria</u>	<u>Fairfax</u>	<u>Winchester</u>	<u>Pulaski</u>	<u>Leesburg</u> <u>Total</u>	<u>Bedford</u>	<u>Franklin</u>	<u>Suffolk</u>	<u>Danville</u>
<b>PERSONNEL:</b>											
Salaries - Fulltime Employees	936,840	1,608,320	818,210	1,441,450	418,600	376,760	842,240	235,050	326,320	468,410	303,060
Salaries - Part-time Employee	0	0	0	21,520	132,090	0	0	0	0	0	10,560
Retirement	83,470	143,300	72,900	130,350	49,070	33,570	75,040	20,940	29,080	41,740	27,940
Social Security	71,520	122,490	61,910	112,110	44,420	28,820	64,280	18,170	24,960	35,830	23,990
Group Life Insurance	0	0	0	0	0	0	0	0	0	0	0
Medical Insurance	139,480	240,920	114,120	209,220	63,400	57,060	120,460	29,160	50,720	69,740	44,380
Retiree Health Credit (medical ins)	9,740	16,730	8,510	15,210	5,730	3,920	8,760	2,440	3,390	4,870	3,260
Long-term Disability Insurance	15,460	26,540	13,500	24,140	9,090	6,220	13,900	3,880	5,380	7,730	5,170
Defined Contribution Plan	4,740	9,300	2,760	3,840	2,160	960	1,800	1,680	1,440	2,160	0
Wages	0	0	0	0	0	0	960	760	0	0	0
Social Security - Wages	0	0	0	0	0	0	70	60	0	0	0
Per diem	0	0	0	0	0	0	0	0	0	0	0
<b>Total Personnel</b>	<b>1,261,250</b>	<b>2,167,600</b>	<b>1,091,910</b>	<b>1,957,840</b>	<b>724,560</b>	<b>507,310</b>	<b>1,127,510</b>	<b>312,140</b>	<b>441,290</b>	<b>630,480</b>	<b>418,360</b>
<b>CONTRACTUAL SERVICES:</b>											
Media Services (newspaper ads)	920	1,240	380	2,640	1,230	140	680	130	530	220	550
Messenger/Delivery Services	50	50	50	0	50	50	50	50	20	50	50
Freight (inbound)	700	1,040	380	1,100	1,070	120	650	190	590	100	600
Postage	820	2,040	650	820	2,130	950	1,600	250	200	900	250
Printing (copying)	1,030	1,020	240	1,000	1,020	0	40	20	1,150	20	1,010
Telephone - State DIT	12,660	12,850	2,210	15,450	4,240	7,630	19,030	6,430	5,330	8,090	8,370
Telephone - Non-State	0	110	80	0	0	0	950	0	4,200	20	10
Organization Dues	1,540	3,090	1,380	1,460	1,230	530	1,960	680	880	880	680
Publication Subscriptions	6,900	11,080	6,290	8,660	4,610	3,260	6,320	3,190	3,850	4,150	4,320
Employee Training Courses	4,560	3,140	3,020	4,000	2,300	450	3,730	760	1,700	1,260	1,880
Employee Training - travel expenses	6,400	4,200	5,010	5,350	2,440	1,340	4,610	1,650	2,050	1,890	2,790
Attorney Services (office exp allow)	0	0	0	2,500	30,000	0	0	2,500	0	0	0
Custodial Services	0	0	0	0	0	0	7,200	0	4,390	0	0
Equipment Repair/Maintenance	2,040	2,820	2,400	3,180	1,770	600	3,110	960	990	790	1,250
Production Services (film developing)	50	210	130	320	50	0	160	50	50	50	50
Computer Hardware Maintenance	1,660	2,810	1,300	2,450	0	0	1,440	220	580	790	0
Computer Software Maintenance	0	0	0	0	0	0	0	0	0	0	0
Seat Management	0	0	0	0	6,600	6,000	0	0	0	0	5,400
Computer Operating Svcs (mainframe)	0	0	0	0	0	0	0	0	0	0	0
Mileage (personal vehicles)	6,320	12,410	2,990	7,530	3,620	8,740	10,430	1,220	3,200	510	3,220
Travel - Public Carriers	0	0	0	0	0	0	0	0	0	0	0

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**INDIGENT DEFENSE COMM**  
**BASE BUDGET - FY06 - Gene**

	305	306	307	308	309	310	311	312	313	314	315
<u>Expenditure Category</u>	<u>Portsmouth</u>	<u>Richmond</u>	<u>Alexandria</u>	<u>Fairfax</u>	<u>Winchester</u>	<u>Pulaski</u>	<u>Leesburg Total</u>	<u>Bedford</u>	<u>Franklin</u>	<u>Suffolk</u>	<u>Danville</u>
Travel - State Car	0	0	0	0	0	0	0	0	0	0	0
Subsistence & Lodging (pkg & tolls)	370	2,560	290	470	460	50	550	160	220	150	380
Meals	200	300	100	200	200	100	250	80	150	80	180
<b>Total Contractual Services</b>	<b>46,220</b>	<b>60,970</b>	<b>26,900</b>	<b>57,130</b>	<b>63,020</b>	<b>29,960</b>	<b>62,760</b>	<b>18,540</b>	<b>30,080</b>	<b>19,950</b>	<b>30,990</b>
<b>SUPPLIES:</b>											
Office Supplies	2,340	4,620	2,050	3,980	1,880	680	2,510	710	1,240	660	1,110
Stationery & Forms	3,290	4,370	2,500	4,030	1,880	700	2,920	830	1,440	1,200	1,160
Custodial Supplies	0	0	0	0	0	150	170	30	0	0	0
Computer Operating Supplies	100	100	0	100	200	0	200	50	60	0	50
Photographic Supplies	100	350	400	200	150	200	230	110	100	50	100
<b>Total Supplies</b>	<b>5,830</b>	<b>9,440</b>	<b>4,950</b>	<b>8,310</b>	<b>4,110</b>	<b>1,730</b>	<b>6,030</b>	<b>1,730</b>	<b>2,840</b>	<b>1,910</b>	<b>2,420</b>
<b>CONTINUOUS CHARGES:</b>											
Property Insurance	10	20	10	20	10	0	10	0	0	10	10
Plant Rentals (Office)	109,500	101,620	0	137,720	44,230	28,170	107,340	14,900	18,430	37,760	24,250
Electricity	0	0	0	0	0	0	0	0	5,530	0	0
Liability Insurance	220	380	180	340	140	90	190	50	80	110	80
Workers Compensation Insurance	840	1,530	740	1,330	520	340	750	220	290	420	280
<b>Total Continuous Charges</b>	<b>110,570</b>	<b>103,550</b>	<b>930</b>	<b>139,410</b>	<b>44,900</b>	<b>28,600</b>	<b>108,290</b>	<b>15,170</b>	<b>24,330</b>	<b>38,300</b>	<b>24,620</b>
<b>EQUIPMENT:</b>											
Personal Computer Equipment	1,250	1,250	0	1,250	2,500	0	0	0	1,250	0	1,250
Network Services	0	0	0	0	0	0	0	0	0	0	0
Network Components	0	0	0	0	0	0	0	0	0	0	0
Other Computer Equipment	0	0	0	0	0	0	0	0	0	0	0
Off-the-Shelf Software	610	610	0	610	1,210	0	0	0	610	0	610
Reference Equipment (books)	1,190	1,820	1,260	1,250	910	600	2,000	810	940	830	1,090
Photographic Equipment	0	0	0	900	900	0	0	0	0	0	0
Telephone Equipment	700	700	0	700	1,400	0	0	0	700	0	700
Office Furniture	6,620	9,100	1,010	8,640	11,700	360	1,120	650	5,990	410	5,270
Office Incidentals (staplers, etc.)	710	1,160	480	960	500	230	880	130	280	280	230
Office Machines	1,410	1,410	700	1,410	1,420	350	1,100	250	1,020	550	760
<b>Total Equipment</b>	<b>12,490</b>	<b>16,050</b>	<b>3,450</b>	<b>15,720</b>	<b>20,540</b>	<b>1,540</b>	<b>5,100</b>	<b>1,840</b>	<b>10,790</b>	<b>2,070</b>	<b>9,910</b>
<b>TOTAL BUDGET</b>	<b>1,436,360</b>	<b>2,357,610</b>	<b>1,128,140</b>	<b>2,178,410</b>	<b>857,130</b>	<b>569,140</b>	<b>1,309,690</b>	<b>349,420</b>	<b>509,330</b>	<b>692,710</b>	<b>486,300</b>

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**INDIGENT DEFENSE COMM**  
**BASE BUDGET - FY06 - Gene**

Expenditure Category	316	317	318	319	320	321	322	323	324	325	601
	Fredericksburg	Halifax	Lynchburg	Martinsville Total	Charlottesville	Norfolk	Arlington	Newport News	Chesapeake	Hampton	Central VA CDO
<b>PERSONNEL:</b>											
Salaries - Fulltime Employees	826,560	422,210	527,190	324,940	476,290	1,312,100	968,600	957,120	726,830	814,140	289,700
Salaries - Part-time Employee	22,340	0	0	0	0	0	25,270	19,350	19,350	37,040	0
Retirement	75,640	37,620	46,970	28,950	42,440	116,910	88,550	87,000	66,480	75,840	25,810
Social Security	64,940	32,300	40,330	24,860	36,410	100,380	76,410	74,700	57,270	65,120	22,160
Group Life Insurance	0	0	0	0	0	0	0	0	0	0	0
Medical Insurance	120,460	63,400	76,080	50,720	69,740	215,560	139,480	152,160	114,120	126,800	38,040
Retiree Health Credit (medical ins)	8,830	4,390	5,480	3,380	4,950	13,650	10,340	10,160	7,760	8,850	3,010
Long-term Disability Insurance	14,010	6,970	8,700	5,360	7,860	21,650	16,400	16,110	12,310	14,040	4,780
Defined Contribution Plan	2,700	2,640	2,940	780	2,880	2,400	0	0	0	0	0
Wages	0	0	0	0	0	0	0	0	0	0	0
Social Security - Wages	0	0	0	0	0	0	0	0	0	0	0
Per diem	0	0	0	0	0	0	0	0	0	0	0
<b>Total Personnel</b>	<b>1,135,480</b>	<b>569,530</b>	<b>707,690</b>	<b>438,990</b>	<b>640,570</b>	<b>1,782,650</b>	<b>1,325,050</b>	<b>1,316,600</b>	<b>1,004,120</b>	<b>1,141,830</b>	<b>383,500</b>
<b>CONTRACTUAL SERVICES:</b>											
Media Services (newspaper ads)	930	600	240	560	220	2,140	2,250	2,450	1,850	2,100	120
Messenger/Delivery Services	50	50	50	50	50	50	0	0	0	0	50
Freight (inbound)	820	560	180	740	300	1,400	1,840	1,960	1,510	1,700	160
Postage	890	460	250	1,030	260	5,500	5,530	5,800	3,800	5,180	1,380
Printing (copying)	1,020	1,020	20	1,040	120	1,600	1,000	1,000	1,000	1,000	4,000
Telephone - State DIT	14,490	2,820	8,480	18,480	6,990	10,550	9,380	13,570	8,770	9,670	10,100
Telephone - Non-State	20	4,450	20	0	30	0	0	0	0	0	0
Organization Dues	1,230	780	980	810	880	7,920	5,170	5,530	4,240	4,810	1,440
Publication Subscriptions	6,440	2,620	4,350	4,400	4,600	11,250	3,440	3,760	2,820	3,240	830
Employee Training Courses	4,670	1,700	2,450	2,540	2,890	13,230	8,700	9,000	6,900	7,800	4,300
Employee Training - travel expenses	6,490	2,540	4,080	3,300	4,330	8,490	5,800	6,000	4,600	5,200	8,010
Attorney Services (office exp allow)	0	0	0	0	0	0	5,000	0	2,500	0	0
Custodial Services	0	0	0	0	0	0	0	0	5,710	7,670	0
Equipment Repair/Maintenance	2,440	790	790	1,870	1,570	3,220	6,900	6,990	6,120	6,270	2,000
Production Services (film developing)	210	50	320	50	160	0	0	0	0	0	0
Computer Hardware Maintenance	1,510	0	860	0	860	2,380	1,660	1,800	1,150	1,440	70
Computer Software Maintenance	0	0	0	0	0	0	0	0	0	0	50
Seat Management	0	6,000	0	5,400	0	0	0	0	0	0	0
Computer Operating Svcs (mainframe)	0	0	0	0	0	0	0	0	0	0	0
Mileage (personal vehicles)	10,360	15,110	2,330	6,330	4,290	11,200	11,800	15,000	10,600	13,200	13,000
Travel - Public Carriers	0	0	0	0	0	0	0	0	0	0	0

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.



**INDIGENT DEFENSE COMM  
BASE BUDGET - FY06 - Gene**

Expenditure Category	316	317	318	319	320	321	322	323	324	325	601
	Fredericksburg	Halifax	Lynchburg	Martinsville Total	Charlottesville	Norfolk	Arlington	Newport News	Chesapeake	Hampton	Central VA CDO
Travel - State Car	0	3,750	0	0	0	0	0	0	0	0	0
Subsistence & Lodging (pkg & tolls)	490	280	150	310	150	1,800	2,100	2,340	1,740	2,040	17,330
Meals	230	100	100	150	100	150	880	980	730	850	0
<b>Total Contractual Services</b>	<b>52,290</b>	<b>43,680</b>	<b>25,650</b>	<b>47,060</b>	<b>27,800</b>	<b>80,880</b>	<b>71,450</b>	<b>76,180</b>	<b>64,040</b>	<b>72,170</b>	<b>62,840</b>
<b>SUPPLIES:</b>											
Office Supplies	2,580	790	1,150	1,380	1,960	10,830	7,180	7,500	5,750	6,500	1,950
Stationery & Forms	3,380	1,040	970	1,930	1,660	10,830	7,180	7,500	5,750	6,500	1,950
Custodial Supplies	40	20	0	0	20	0	0	0	0	0	0
Computer Operating Supplies	130	50	0	50	0	200	1,100	1,230	930	1,050	0
Photographic Supplies	200	200	230	180	100	570	730	750	580	650	450
<b>Total Supplies</b>	<b>6,330</b>	<b>2,100</b>	<b>2,350</b>	<b>3,540</b>	<b>3,740</b>	<b>22,430</b>	<b>16,190</b>	<b>16,980</b>	<b>13,010</b>	<b>14,700</b>	<b>4,350</b>
<b>CONTINUOUS CHARGES:</b>											
Property Insurance	10	10	10	10	10	20	10	10	10	10	0
Plant Rentals (Office)	110,200	22,800	44,550	31,800	63,140	144,090	192,110	160,980	91,180	141,260	34,230
Electricity	0	0	0	0	0	0	0	0	6,910	0	0
Liability Insurance	200	100	120	80	110	340	230	250	190	210	60
Workers Compensation Insurance	770	380	470	290	430	1,200	890	880	670	770	260
<b>Total Continuous Charges</b>	<b>111,180</b>	<b>23,290</b>	<b>45,150</b>	<b>32,180</b>	<b>63,690</b>	<b>145,650</b>	<b>193,240</b>	<b>162,120</b>	<b>98,960</b>	<b>142,250</b>	<b>34,550</b>
<b>EQUIPMENT:</b>											
Personal Computer Equipment	1,250	1,250	0	1,250	0	2,500	0	0	0	0	0
Network Services	0	0	0	0	0	0	0	0	0	0	0
Network Components	0	0	0	0	0	0	0	0	0	0	0
Other Computer Equipment	0	0	0	0	0	0	0	0	0	0	0
Off-the-Shelf Software	610	610	0	610	0	1,210	0	0	0	0	0
Reference Equipment (books)	1,170	840	830	1,050	980	2,150	1,750	7,500	5,750	6,500	3,000
Photographic Equipment	0	0	0	0	0	0	0	0	0	0	0
Telephone Equipment	700	700	0	700	0	1,400	0	0	0	0	0
Office Furniture	6,640	5,700	2,980	6,140	1,160	3,000	7,180	7,850	6,050	6,800	1,000
Office Incidentals (staplers, etc.)	670	310	330	340	480	1,000	1,730	1,840	1,390	1,580	450
Office Machines	1,360	910	600	810	550	1,420	1,300	1,430	1,130	19,280	300
<b>Total Equipment</b>	<b>12,400</b>	<b>10,320</b>	<b>4,740</b>	<b>10,900</b>	<b>3,170</b>	<b>12,680</b>	<b>11,960</b>	<b>18,620</b>	<b>14,320</b>	<b>34,160</b>	<b>4,750</b>
<b>TOTAL BUDGET</b>	<b>1,317,680</b>	<b>648,920</b>	<b>785,580</b>	<b>532,670</b>	<b>738,970</b>	<b>2,044,290</b>	<b>1,617,890</b>	<b>1,590,500</b>	<b>1,194,450</b>	<b>1,405,110</b>	<b>489,990</b>

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**INDIGENT DEFENSE COMM**  
**BASE BUDGET - FY06 - Gene**

<u>Expenditure Category</u>	602	603	604	<u>Pay Practice</u> <u>Accounts</u>	<u>Unallocated</u>	<u>Turnover &amp;</u> <u>Vacancy</u>	<u>Agency Total</u>
	<u>Southeastern</u> <u>VA CDO</u>	<u>NOVA CDO</u>	<u>Western</u> <u>CDO</u>				
<b>PERSONNEL:</b>							
Salaries - Fulltime Employees	289,820	316,450	287,670	199,710	0	(164,720)	20,338,630
Salaries - Part-time Employee	0	0	0	0	0	0	573,520
Retirement	25,820	28,200	25,630	17,790	66,200	(14,680)	1,932,250
Social Security	22,170	24,210	22,010	15,280	0	(12,600)	1,599,980
Group Life Insurance	0	0	0	0	167,300	0	167,300
Medical Insurance	38,040	38,040	38,040	0	(672,161)	0	2,326,659
Retiree Health Credit (medical ins)	3,010	3,290	2,990	2,080	35,550	(1,710)	253,030
Long-term Disability Insurance	4,780	5,220	4,750	3,300	(121,290)	(2,720)	223,780
Defined Contribution Plan	480	1,920	0	0	0	0	64,800
Wages	0	0	0	0	0	0	1,720
Social Security - Wages	0	0	0	0	0	0	130
Per diem	0	0	0	0	0	0	3,400
<b>Total Personnel</b>	<b>384,120</b>	<b>417,330</b>	<b>381,090</b>	<b>238,160</b>	<b>(524,401)</b>	<b>(196,430)</b>	<b>27,485,199</b>
<b>CONTRACTUAL SERVICES:</b>							
Media Services (newspaper ads)	120	620	120	0	0	0	28,650
Messenger/Delivery Services	50	100	50	0	0	0	1,880
Freight (inbound)	160	160	160	0	0	0	25,470
Postage	1,380	1,000	1,380	0	0	0	54,330
Printing (copying)	4,000	3,000	4,000	0	0	0	42,690
Telephone - State DIT	10,100	13,550	12,260	0	0	0	379,690
Telephone - Non-State	0	1,000	0	0	0	0	14,040
Organization Dues	1,440	1,440	1,440	0	0	0	60,670
Publication Subscriptions	830	830	830	0	0	0	146,410
Employee Training Courses	4,300	4,300	4,300	0	0	0	131,970
Employee Training - travel expenses	8,010	8,010	8,010	0	0	0	156,050
Attorney Services (office exp allow)	0	0	0	0	0	0	75,000
Custodial Services	0	0	0	0	0	0	29,650
Equipment Repair/Maintenance	2,000	2,000	2,250	0	0	0	86,850
Production Services (film developing)	0	400	0	0	0	0	2,830
Computer Hardware Maintenance	70	70	70	0	0	0	29,670
Computer Software Maintenance	0	0	0	0	0	0	2,810
Seat Management	0	0	0	0	0	0	35,400
Computer Operating Svcs (mainframe)	0	0	0	0	0	0	1,400
Mileage (personal vehicles)	13,000	13,000	13,000	0	0	0	252,720
Travel - Public Carriers	0	0	0	0	0	0	1,160

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**INDIGENT DEFENSE COMM  
BASE BUDGET - FY06 - Gene**

Expenditure Category	602	603	604	Pay Practice Accounts	Unallocated	Turnover & Vacancy	Agency Total
	Southeastern VA CDO	NOVA CDO	Western CDO				
Travel - State Car	0	0	0	0	0	0	7,750
Subsistence & Lodging (pkg & tolls)	17,330	17,330	17,330	0	0	0	127,870
Meals	0	0	0	0	0	0	29,070
<b>Total Contractual Services</b>	<b>62,790</b>	<b>66,810</b>	<b>65,200</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1,724,030</b>
<b>SUPPLIES:</b>							
Office Supplies	1,950	1,750	1,950	0	0	0	88,850
Stationery & Forms	1,950	1,750	1,920	0	0	0	92,760
Custodial Supplies	0	0	0	0	0	0	1,010
Computer Operating Supplies	0	0	0	0	0	0	8,070
Photographic Supplies	450	450	450	0	0	0	10,960
<b>Total Supplies</b>	<b>4,350</b>	<b>3,950</b>	<b>4,320</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>201,650</b>
<b>CONTINUOUS CHARGES:</b>							
Property Insurance	0	0	0	0	0	0	270
Plant Rentals (Office)	40,000	48,790	31,540	0	0	0	2,150,090
Electricity	0	0	0	0	0	0	12,440
Liability Insurance	60	60	60	0	0	0	5,040
Workers Compensation Insurance	260	280	260	0	0	0	18,930
<b>Total Continuous Charges</b>	<b>40,320</b>	<b>49,130</b>	<b>31,860</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2,186,770</b>
<b>EQUIPMENT:</b>							
Personal Computer Equipment	0	0	0	0	0	0	37,870
Network Services	0	0	0	0	0	0	26,360
Network Components	0	0	0	0	0	0	680
Other Computer Equipment	0	0	0	0	0	0	25,490
Off-the-Shelf Software	0	0	0	0	0	0	73,250
Reference Equipment (books)	3,000	3,500	3,000	0	0	0	61,950
Photographic Equipment	0	0	0	0	0	0	2,700
Telephone Equipment	0	0	0	0	0	0	13,300
Office Furniture	1,000	1,000	1,000	0	0	0	143,240
Office Incidentals (staplers, etc.)	450	450	450	0	0	0	20,740
Office Machines	300	300	300	0	0	0	47,750
<b>Total Equipment</b>	<b>4,750</b>	<b>5,250</b>	<b>4,750</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>453,330</b>
<b>TOTAL BUDGET</b>	<b>496,330</b>	<b>542,470</b>	<b>487,220</b>	<b>238,160</b>	<b>(524,401)</b>	<b>(196,430)</b>	<b>32,050,979</b>

NOTE: This budget agrees with the 2005 Appropriation Act and does not include funds to be transferred this fiscal year for salary and fringe benefit increases or FY05 carryover funds.

**APPENDIX F**

**VIRGINIA COMMONWEALTH UNIVERSITY  
COMMONWEALTH POLL  
PAGE 12**

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# Virginia Indigent Defense Coalition

## Public Opinion in Virginia on Indigent Defense

April 2004

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Prepared by:

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### Study Background

The Virginia Indigent Defense Coalition (VIDC) contracted with the VCU Center for Public Policy to conduct a telephone survey with a representative sample of adults living in Virginia. This survey was conducted March 31- April 7, 2004 as part of the VCU Commonwealth Poll. Interviews were completed with 812 respondents across the state. The margin of sampling error is plus or minus four percentage points.

### Overview of Findings

#### Support for Indigent Defense and a Fair Criminal Justice System

- Seven in ten Virginians favor the idea of providing legal representation to people who cannot afford a lawyer. Twenty-three percent oppose this idea. Support for the concept of indigent defense is a bit stronger in Virginia compared to the nation as a whole. The 2001 national survey conducted by Belden Russonello & Stewart found 64% in favor and 32% opposed when using the exact same question wording.
- Sixty-eight percent of Virginians consider it extremely important to have a fair courts and criminal justice system. Twenty-two percent think this is very important, nine percent say it is important. Less than one percent considered it not important.
- Issues related to the courts and criminal justice system are considered a top priority by less than two in ten Virginians (17%). A plurality, however, consider these issues to be near the top (46%). Twenty-eight percent place these issues in the middle and 4% consider them to be near or at the bottom of priorities.

#### Public Perceptions of the Quality of Legal Representation

- Respondents rated the quality of legal representation from excellent to poor for court-appointed attorneys, public defenders, and private attorneys. The results show that overall evaluations of "private lawyers you pay for" are more positive than for either of the other two kinds of attorneys. Forty-two percent rated private lawyers as providing

excellent or very good legal representation. This compares with 15% and 17% who did the same for court-appointed lawyers and public defenders, respectively. Ratings of court-appointed lawyers did not differ statistically from those for public defenders.

- A majority of Virginians (51%) believes that the amount of money spent for legal representation makes a great deal of difference in the quality of representation. Thirty-one percent think it has some effect and 11% say it has not much or almost no effect on the quality of representation.
- The quality of legal representation is also widely believed to influence the outcome of a case. Sixty-three percent say it has a great deal of effect on the outcome, 29% think it has some effect, and just 5% say it has not much or almost no effect. Public views are quite divided over whether or not the quality of legal representation should matter in the outcome of the case. Forty-five percent think it should while fifty percent think it should not.

### **Evaluation of Virginia's Indigent Defense**

- When asked to rate how well the current system provides fair access to legal representation, 26% chose to make no rating. This likely reflects limited information about the system among the general public. Among those who rated, the most common response was the middle option of "well".
- The ratings of how well the system provides fair access to legal representation have a similar pattern, however, even among those respondents who have heard a lot about the courts and criminal justice system in Virginia. Among this group of more informed respondents, 36% said well, 30% said extremely or very well, while 23% said not too or not at all well and 12% made no rating.
- A general question on whether state spending was enough or not enough to meet the public defense system needs found the public split in rough thirds between enough (30%), not enough (31%), and don't know (36%). This pattern of results suggests that the limited information held about the indigent defense system makes it difficult to evaluate financial needs. A similar pattern was found among those respondents who know a lot about the criminal justice system in the state; 31% thought state funding was enough, 46% said it was not enough, and 24% did not make a judgment.

Marginal frequencies from the VCU Commonwealth Poll  
 March 31-April 7, 2004  
 812 Respondents  
 Margin of sampling error =/- 4 percentage points  
 Questions asked on behalf of the Virginia Indigent Defense Coalition

Q1 How much have you heard, read, or seen about the courts and criminal justice system in Virginia—a lot, some, a little, or almost nothing?							
	A lot	Some	A little	Almost nothing	Don't know	No answer	Number of cases
Total	26%	36%	24%	15%	0%	0%	812

Q2 How important would you say it is to have a fair courts and criminal justice system in Virginia—extremely important, very important, important, not too important, or not at all important?								
	Extremely important	Very important	Important	Not too important	Not at all important	Don't know	No answer	Number of cases
Total	68%	22%	9%	0%	0%	0%	0%	812

Q3 Compared to other priorities for the state, where would you place issues related to the courts and criminal justice system—at the top, near the top, in the middle, near the bottom, or at the bottom?								
	At the top	Near the top	In the middle	Near the bottom	At the bottom	Don't know	No answer	Number of cases
Total	17%	46%	28%	2%	2%	4%	1%	812

Q4 Given everything we must do in society, do you favor or oppose the government using taxpayer dollars to provide lawyers to represent people accused of crimes who cannot afford a lawyer? Do you (favor/oppose) strongly or somewhat?							
	Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose	Don't Know	No Answer	Number of cases
Total	41%	29%	13%	10%	5%	2%	812

Q5 Virginia has a public defense system whereby the state government pays either a public defender or a court-appointed lawyer to represent people accused of crimes who cannot afford a lawyer. How well does this system provide fair access to legal representation for people accused of crimes who cannot afford a lawyer—extremely well, very well, well, not too well, or not at all well?								
	Extremely well	Very well	Well	Not too well	Not at all well	Don't know	No answer	Number of cases
Total	6%	14%	35%	13%	5%	25%	1%	812

Q6 Would you say that current spending on the public defense system in Virginia is enough or not enough to meet its needs?					
	Enough	Not enough	Don't know	No answer	Number of cases
Total	30%	31%	36%	3%	812

(Introduction) My next 3 questions ask about the quality of legal representation by different kinds of lawyers who represent people accused of crimes. First, ...  
 (Next 3 questions asked in random order.)

Q7 Would you say the quality of legal representation from a <b>court-appointed private lawyer who represents low income people accused of crimes</b> is excellent, very good, good, fair, or poor?								
	Excellent	Very good	Good	Fair	Poor	Don't know	No answer	Number of cases
Total	4%	11%	29%	23%	9%	23%	1%	812

Mean value of 5-point rating =3.3 with low score indicating excellent (standard deviation = 1.0)  
 All mean values are calculated among those who rated from excellent to poor and exclude those with don't know or no answer responses.

Q8 Would you say the quality of legal representation from a <b>public defender</b> is excellent, very good, good, fair, or poor?								
	Excellent	Very good	Good	Fair	Poor	Don't know	No answer	Number of cases
Total	4%	13%	29%	24%	7%	21%	2%	812

Mean value of 5-point rating =3.2 with low score indicating excellent (standard deviation = .99)

Q9 Would you say the quality of legal representation from a <b>private lawyer you pay for</b> is excellent, very good, good, fair, or poor?								
	Excellent	Very good	Good	Fair	Poor	Don't know	No answer	Number of cases
Total	12%	30%	31%	9%	4%	13%	2%	812

Mean value of 5-point rating =2.6 with low score indicating excellent (standard deviation = 1.0)

Ratings were more positive for private lawyers you pay for. The difference in ratings for private lawyers you pay for compared to the other types of lawyers were statistically significant and so, unlikely to have occurred by chance. The small difference between ratings of public defenders and court-appointed lawyers was not statistically significant.

Q10 In general, how much do you think the amount of money you spend for legal defense makes a difference in the quality of legal representation? Would you say that the amount of money spent has a great deal, some, not much, or almost no effect on the quality of legal representation?							
	Great deal	Some	Not much	Almost no effect	Don't know	No answer	Number of cases
Total	51%	31%	7%	4%	6%	1%	812

Q11 How much do you think the quality of legal representation makes a difference in the outcome of a case? Would you say that the quality of legal representation has a great deal, some, not much, or almost no effect on the outcome of a case?							
	Great deal	Some	Not much	Almost no effect	Don't know	No answer	Number of cases
Total	63%	29%	3%	2%	2%	0%	812

Q12 Do you think the quality of legal representation should or should not make a difference in the outcome of a case?					
	Should	Should not	Don't know	No answer	Number of cases
Total	45%	50%	3%	3%	812



#### METHOD OF THE COMMONWEALTH POLL

The Commonwealth Poll is an omnibus public opinion survey of Virginia residents. Each survey covers a variety of topics. The survey is conducted by telephone with a randomly-selected sample of adult Virginians.

Interviewing was conducted by telephone from the facilities of the Survey and Evaluation Research Laboratory at Virginia Commonwealth University in Richmond. The interviewing is conducted by a staff of professionally trained, paid interviewers using computer-assisted telephone interviewing software.

The sample of telephone numbers was prepared by Genesys Sampling Systems of Ft. Washington, Pennsylvania, and was designed so that all residential telephones, including new and unlisted numbers, had a known chance of inclusion. The cooperation rate for the survey was 36% percent. Using the Council of American Survey Research Organization (CASRO) response rate calculations, interviews were obtained with respondents in 30% percent of the known or assumed residential households in the sample.

The data were weighted to adjust for unequal probabilities of selection due to multiple telephone lines and multiple adults living in the household. In addition, the data were weighted on sex, race, age, and region of residence to reflect the demographic composition of the Virginia adult population. Percentages reported in the text and tables are weighted, while the number of cases shown in the tables for various subgroups is the actual number of respondents.

Questions answered by the full sample of adults are subject to a sampling error of plus or minus approximately 4 percentage points at the 95 percent level of confidence. This means that in 95 out of 100 samples like the one used here, the results obtained should be no more than 4 percentage points above or below the figure that would be obtained by interviewing all adult Virginians with telephones. Where the answers of subgroups are reported, the sampling error would be higher. Because of nonresponse (refusals to participate, etc.), standard calculations of sampling error are apt to understate the actual extent to which survey results are at variance with the true population values. Surveys are also subject to errors from sources other than sampling. While every effort is made to identify such errors, they are often difficult or impossible to measure. Readers making use of the results are urged to be mindful of the limitations inherent in survey research.

		Q1 How much have you heard, read, or seen about the courts and criminal justice system in Virginia?						Number of cases
		A lot	Some	A little	Almost nothing	Don't know	No answer	
Total		26%	36%	24%	15%	0%	0%	812
Party Identification	Democrat	30%	32%	21%	16%	0%		221
	Republican	24%	38%	24%	14%			229
	Independent	23%	39%	25%	12%		0%	277

		Q2 How important would you say it is to have a fair courts and criminal justice system in Virginia?							Number of cases
		Extremely important	Very important	Important	Not too important	Not at all important	Don't know	No answer	
Total		68%	22%	9%	0%	0%	0%	0%	812
Party Identification	Democrat	70%	19%	11%					221
	Republican	71%	23%	5%			1%		229
	Independent	64%	25%	10%	0%		0%	0%	277
Heard about the courts and criminal justice system in Virginia?	A lot	79%	15%	6%					214
	Some	69%	23%	7%	0%	0%			301
	A little	63%	24%	12%			0%	1%	180
	Almost nothing	55%	29%	15%			1%		114

		Q3 Compared to other priorities for the state, where would you place issues related to the courts and criminal justice system?							Number of cases
		At the top	Near the top	In the middle	Near the bottom	At the bottom	Don't know	No answer	
Total		17%	46%	28%	2%	2%	4%	1%	812
Party Identification	Democrat	18%	43%	28%	3%	3%	4%	0%	221
	Republican	14%	56%	24%	1%	0%	4%	1%	229
	Independent	18%	41%	32%	2%	2%	3%	2%	277
Heard about the courts and criminal justice system in Virginia?	A lot	23%	46%	24%	2%	3%	2%	1%	214
	Some	15%	48%	28%	1%	2%	4%	2%	301
	A little	13%	44%	32%	4%	0%	4%	2%	180
	Almost nothing	19%	43%	29%		2%	8%		114

		Q4 Given everything we must do in society, do you favor or oppose the government using taxpayer dollars to provide lawyers to represent people accused of crimes who cannot afford a lawyer? Do you (favor/oppose) strongly or somewhat?						Number of cases
		Strongly Favor	Somewhat Favor	Somewhat Oppose	Strongly Oppose	Don't Know	No Answer	
Total		41%	29%	13%	10%	5%	2%	812
Party Identification	Democrat	50%	25%	13%	7%	3%	3%	221
	Republican	32%	33%	17%	13%	4%	2%	229
	Independent	45%	28%	12%	10%	4%	0%	277
Heard about the courts and criminal justice system in Virginia?	A lot	52%	23%	8%	11%	4%	1%	214
	Some	42%	33%	12%	7%	4%	2%	301
	A little	33%	24%	19%	11%	9%	4%	180
	Almost nothing	35%	36%	17%	11%	1%	1%	114

		Q5 Virginia has a public defense system whereby the state government pays either a public defender or a court-appointed lawyer to represent people accused of crimes who cannot afford a lawyer. How well does this system provide fair access to legal representation for people accused of crimes who cannot afford a lawyer?							Number of cases
		Extremely well	Very well	Well	Not too well	Not at all well	Don't know	No answer	
Total		6%	14%	35%	13%	5%	25%	1%	812
Party Identification	Democrat	7%	9%	35%	15%	10%	23%	1%	221
	Republican	4%	16%	36%	11%	2%	31%	1%	229
	Independent	8%	15%	35%	12%	5%	24%	1%	277
Heard about the courts and criminal justice system in Virginia?	A lot	12%	18%	36%	13%	10%	11%	1%	214
	Some	5%	12%	38%	12%	4%	27%	1%	301
	A little	6%	15%	30%	14%	4%	31%	1%	180
	Almost nothing	2%	12%	33%	16%	4%	34%		114

		Q6 Would you say that current spending on the public defense system in Virginia is enough or not enough to meet its needs?				Number of cases
		Enough	Not enough	Don't know	No answer	
Total		30%	31%	36%	3%	812
Party Identification	Democrat	24%	40%	32%	4%	221
	Republican	36%	23%	38%	2%	229
	Independent	31%	29%	38%	3%	277
Heard about the courts and criminal justice system in Virginia?	A lot	31%	46%	22%	2%	214
	Some	29%	31%	37%	3%	301
	A little	31%	24%	40%	5%	180
	Almost nothing	28%	17%	52%	3%	114

		Q7 Would you say the quality of legal representation from a court-appointed private lawyer who represents low income people accused of crimes is...?							Number of cases
		Excellent	Very good	Good	Fair	Poor	Don't know	No answer	
Total		4%	11%	29%	23%	9%	23%	1%	812
Party Identification	Democrat	5%	13%	29%	19%	13%	19%	2%	221
	Republican	2%	12%	28%	20%	6%	31%	1%	229
	Independent	5%	8%	31%	27%	9%	19%	2%	277
Heard about the courts and criminal justice system in Virginia?	A lot	7%	13%	33%	21%	11%	14%	1%	214
	Some	4%	10%	30%	21%	8%	26%	2%	301
	A little	2%	11%	23%	25%	10%	27%	1%	180
	Almost nothing	4%	8%	25%	27%	8%	25%	3%	114

		Q8 Would you say the quality of legal representation from a public defender is...?							Number of cases
		Excellent	Very good	Good	Fair	Poor	Don't know	No answer	
Total		4%	13%	29%	24%	7%	21%	2%	812
Party Identification	Democrat	4%	13%	24%	30%	7%	19%	3%	221
	Republican	2%	16%	30%	18%	5%	28%	2%	229
	Independent	5%	11%	31%	27%	6%	19%	1%	277
Heard about the courts and criminal justice system in Virginia?	A lot	8%	17%	29%	22%	9%	12%	1%	214
	Some	2%	10%	32%	25%	5%	25%	1%	301
	A little	1%	14%	27%	25%	7%	24%	2%	180
	Almost nothing	4%	11%	27%	25%	6%	24%	3%	114

		Q9 Would you say the quality of legal representation from a private lawyer you pay for is...?							Number of cases
		Excellent	Very good	Good	Fair	Poor	Don't know	No answer	
Total		12%	30%	31%	9%	4%	13%	2%	812
Party Identification	Democrat	15%	28%	30%	11%	2%	12%	1%	221
	Republican	12%	35%	29%	4%	2%	17%	1%	229
	Independent	10%	30%	32%	11%	5%	9%	3%	277
Heard about the courts and criminal justice system in Virginia?	A lot	19%	31%	30%	9%	1%	7%	2%	214
	Some	10%	30%	31%	8%	4%	14%	2%	301
	A little	6%	28%	33%	11%	5%	15%	1%	180
	Almost nothing	13%	28%	25%	9%	5%	17%	2%	114

		Q10 In general, how much do you think the amount of money you spend for legal defense makes a difference in the quality of legal representation? Would you say that the amount of money spent has a great deal, some, not much, or almost no effect on the quality of legal representation?						Number of cases
		Great deal	Some	Not much	Almost no effect	Don't know	No answer	
Total		51%	31%	7%	4%	6%	1%	812
Party Identification	Democrat	54%	26%	7%	5%	8%	1%	221
	Republican	48%	33%	7%	6%	5%	1%	229
	Independent	52%	35%	7%	3%	3%	0%	277
Heard about the courts and criminal justice system in Virginia?	A lot	56%	28%	8%	5%	3%	0%	214
	Some	54%	31%	6%	2%	5%	1%	301
	A little	43%	34%	9%	2%	9%	2%	180
	Almost nothing	48%	31%	5%	8%	7%	1%	114

		Q11 How much do you think the quality of legal representation makes a difference in the outcome of a case? Would you say that the quality of legal representation has a great deal, some, not much, or almost no effect on the outcome of a case?						Number of cases
		Great deal	Some	Not much	Almost no effect	Don't know	No answer	
Total		63%	29%	3%	2%	2%	0%	812
Party Identification	Democrat	67%	25%	3%	2%	3%	0%	221
	Republican	60%	32%	4%	2%	1%	1%	229
	Independent	64%	28%	2%	3%	2%		277
Heard about the courts and criminal justice system in Virginia?	A lot	73%	19%	3%	3%	2%	0%	214
	Some	61%	33%	3%	1%	1%	0%	301
	A little	54%	35%	5%	3%	2%	1%	180
	Almost nothing	63%	26%	1%	4%	6%	0%	114

		Q12 Do you think the quality of legal representation should or should not make a difference in the outcome of a case?				Number of cases
		Should	Should not	Don't know	No answer	
Total		45%	50%	3%	3%	812
Party Identification	Democrat	43%	51%	3%	4%	221
	Republican	44%	52%	3%	1%	229
	Independent	46%	48%	2%	3%	277
Heard about the courts and criminal justice system in Virginia?	A lot	45%	50%	1%	4%	214
	Some	40%	54%	3%	3%	301
	A little	50%	43%	4%	3%	180
	Almost nothing	47%	50%	3%	0%	114

**APENDIX G**

**VIRGINIA CODE § 8.01-654  
WRIT OF HABEAS CORPUS,  
FAILURE TO APPEAL  
PAGE 14**

# VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

## CHAPTER 836

*An Act to amend and reenact § 8.01-654 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-321.1 and 19.2-321.2, relating to petition for writ of habeas corpus; failure to appeal.*

[H 2628]

Approved March 26, 2005

**Be it enacted by the General Assembly of Virginia:**

**1. That § 8.01-654 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-321.1 and 19.2-321.2 as follows:**

§ 8.01-654. When and by whom writ granted; what petition to contain.

A. 1. The writ of habeas corpus ad subjiciendum shall be granted forthwith by the Supreme Court or any circuit court, to any person who shall apply for the same by petition, showing by affidavits or other evidence probable cause to believe that he is detained without lawful authority.

2. A petition for writ of habeas corpus ad subjiciendum, other than a petition challenging a criminal conviction or sentence, shall be brought within one year after the cause of action accrues. A habeas corpus petition attacking a criminal conviction or sentence, except as provided in § 8.01-654.1 for cases in which a death sentence has been imposed, shall be filed within two years from the date of final judgment in the trial court or within one year from either final disposition of the direct appeal in state court or the time for filing such appeal has expired, whichever is later.

B. 1. With respect to any such petition filed by a petitioner held under criminal process, and subject to the provisions of subsection C of this section and of § 17.1-310, only the circuit court which entered the original judgment order of conviction or convictions complained of in the petition shall have authority to issue writs of habeas corpus. If a district court entered the original judgment order of conviction or convictions complained of in the petition, only the circuit court for the city or county wherein the district court sits shall have authority to issue writs of habeas corpus. Hearings on such petition, where granted in the circuit court, may be held at any circuit court within the same circuit as the circuit court in which the petition was filed, as designated by the judge thereof.

2. Such petition shall contain all allegations the facts of which are known to petitioner at the time of filing and such petition shall enumerate all previous applications and their disposition. No writ shall be granted on the basis of any allegation the facts of which petitioner had knowledge at the time of filing any previous petition. *The provisions of this section shall not apply to a petitioner's first petition for a writ of habeas corpus when the sole allegation of such petition is that the petitioner was deprived of the right to pursue an appeal from a final judgment of conviction or probation revocation, except that such petition shall contain all facts pertinent to the denial of appeal that are known to the petitioner at the time of the filing, and such petition shall certify that the petitioner has filed no prior habeas corpus petitions attacking the conviction or probation revocation.*

3. Such petition may allege detention without lawful authority through challenge to a conviction, although the sentence imposed for such conviction is suspended or is to be served subsequently to the sentence currently being served by petitioner.

4. In the event the allegations of illegality of the petitioner's detention can be fully determined on the basis of recorded matters, the court may make its determination whether such writ should issue on the basis of the record.

5. The court shall give findings of fact and conclusions of law following a determination on the record or after hearing, to be made a part of the record and transcribed.

6. If petitioner alleges as a ground for illegality of his detention the inadequacy of counsel, he shall be deemed to waive his privilege with respect to communications between such counsel and himself to the extent necessary to permit a full and fair hearing for the alleged ground.

C. 1. With respect to any such petition filed by a petitioner held under the sentence of death, and subject to the provisions of this subsection, the Supreme Court shall have exclusive jurisdiction to consider and award writs of habeas corpus. The circuit court which entered the judgment order setting the sentence of death shall have authority to conduct an evidentiary hearing on such a petition only if directed to do so by order of the Supreme Court.

2. Hearings conducted in a circuit court pursuant to an order issued under the provisions of subdivision 1 of this subsection shall be limited in subject matter to the issues enumerated in the order.

3. The circuit court shall conduct such a hearing within ~~ninety~~ 90 days after the order of the Supreme Court has been received and shall report its findings of fact and recommend conclusions of law to the Supreme Court within ~~sixty~~ 60 days after the conclusion of the hearing. Any objection to the report of the circuit court must be filed in the Supreme Court within ~~thirty~~ 30 days after the report is



filed.

§ 19.2-321.1. *Motion in the Court of Appeals for delayed appeal in criminal cases.*

A. *Filing and content of motion.* — When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the circuit court or an officer or employee thereof, an appeal in a criminal case has either (i) never been initiated; or (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal as required by law or by the Rules of the Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Court of Appeals within six months after the appeal has been dismissed or the circuit court judgment sought to be appealed has become final, whichever is later. Such motion shall identify the circuit court and the style, date, and circuit court record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment, shall give the Court of Appeals record number in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

B. *Service, response, and disposition.* — Such motion shall be served on the attorney for the Commonwealth or, if a petition for appeal was granted in the original attempt to appeal, upon the Attorney General, in accordance with the Rules of the Supreme Court. If the Commonwealth disputes the facts alleged in the motion, or contends that those facts do not entitle the appellant to a delayed appeal under this section, the motion shall be denied without prejudice to the appellant's right to seek a delayed appeal by means of petition for a writ of habeas corpus. Otherwise, the Court of Appeals shall, if the motion meets the requirements of this section, grant appellant leave to initiate or re-initiate pursuit of the appeal.

C. *Time limits when motion granted.* — If the motion is granted, all computations of time under the Rules of the Supreme Court shall run from the date of the order of the Court of Appeals granting the motion, or if the appellant has been determined to be indigent, from the date of the order by the circuit court appointing counsel to represent the appellant in the delayed appeal, whichever is later.

D. *Applicability.* — The provisions of this section shall not apply to cases in which the appellant is responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal, nor shall it apply in cases where the claim of error, neglect, or fault has already been alleged and rejected in a prior judicial proceeding.

§ 19.2-321.2. *Motion in the Supreme Court for delayed appeal in criminal cases.*

A. *Filing and content of motion.* — When, due to the error, neglect, or fault of counsel representing the appellant, or of the court reporter, or of the Court of Appeals or the circuit court or an officer or employee of either, an appeal from the Court of Appeals to the Supreme Court in a criminal case has either (i) never been initiated; or (ii) been dismissed for failure to adhere to proper form, procedures, or time limits in the perfection of the appeal as required by law or by the Rules of the Supreme Court; then a motion for leave to pursue a delayed appeal may be filed in the Supreme Court within six months after the appeal has been dismissed or the Court of Appeals judgment sought to be appealed has become final, whichever is later. Such motion shall identify by the style, date, and Court of Appeals record number of the judgment sought to be appealed, and, if one was assigned in a prior attempt to appeal the judgment to the Supreme Court, shall give the record number assigned in the Supreme Court in that proceeding, and shall set forth the specific facts establishing the said error, neglect, or fault. If the error, neglect, or fault is alleged to be that of an attorney representing the appellant, the motion shall be accompanied by the affidavit of the attorney whose error, neglect, or fault is alleged, verifying the specific facts alleged in the motion, and certifying that the appellant is not personally responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal.

B. *Service, response, and disposition.* — Such motion shall be served on the attorney for the Commonwealth or, if a petition for appeal was granted in the Court of Appeals or in the Supreme Court in the original attempt to appeal, upon the Attorney General, in accordance with Rule 5:4 of the Supreme Court. If the Commonwealth disputes the facts alleged in the motion, or contends that those facts do not entitle the appellant to a delayed appeal under this section, the motion shall be denied without prejudice to the appellant's right to seek a delayed appeal by means of petition for a writ of habeas corpus. Otherwise, the Supreme Court shall, if the motion meets the requirements of this section, grant appellant leave to initiate or re-initiate pursuit of the appeal from the Court of Appeals to the Supreme Court.

C. *Time limits when motion granted.* — If the motion is granted, all computations of time under the Rules of the Supreme Court shall run from the date of the order of the Supreme Court granting the motion, or if the appellant has been determined to be indigent, from the date of the order by the circuit court appointing counsel to represent the appellant in the delayed appeal, whichever is later.

D. *Applicability.* — The provisions of this section shall not apply to cases in which the appellant is responsible, in whole or in part, for the error, neglect, or fault causing loss of the original opportunity for appeal, nor shall it apply in cases where the claim of error, neglect, or fault has already been

*alleged and rejected in a prior judicial proceeding, nor shall it apply in cases in which a sentence of death has been imposed.*

**APPENDIX H**

**VaIDC FY05 CASELOAD DATA  
PAGE 16**

FY05 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TTL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TTL JUV	TTL ATTY	CASES/ ATTY
Alexandria	3177	0	1048	1938	14	3000	50	121	6	177	11	289
Arlington	0	0	0	0	0	0	0	0	0	0	14.5	0
Bedford	758	0	290	464	1	755	1	2	0	3	3	253
Charlottesville	2474	0	935	1219	14	2168	59	245	2	306	7	353
Charlottesville	1411	0	532	732	8	1272	31	108	0	139		
Albermarle	1063	0	403	487	6	896	28	137	2	167		
Chesapeake	1811	0	1053	584	35	1672	58	79	2	139	11.5	157
Danville	1442	1	698	509	44	1252	31	159	0	190	4	361
Fairfax	6492	0	2713	2991	2	5706	222	564	0	786	21	309
Franklin	1302	0	553	650	9	1212	42	47	1	90	4	326
Franklin	321	0	118	183	0	301	8	12	0	20		
Isle of Wright	606	0	238	315	4	557	20	29	0	49		
Southampton	375	0	197	152	5	354	14	6	1	21		
Fredicksburg	6650	2	2230	3677	52	5961	147	540	2	689	13	512
Fredicksburg	1467	1	606	688	13	1308	29	129	1	159		
King George	442	0	129	266	6	401	8	33	0	41		
Spotsylvania	2109	0	689	1139	11	1839	60	210	0	270		
Stafford	2632	1	806	1584	22	2413	50	168	1	219		
Halifax	2222	0	735	1246	18	1999	43	179	1	223	6	370
Halifax	1106	0	359	653	7	1019	21	66	0	87		
Lunenburg	301	0	95	167	4	266	6	28	1	35		
Mecklenburg	815	0	281	426	7	714	16	85	0	101		
Hampton	1058	0	536	383	0	919	40	99	0	139	13	81
Leesburg	3324	1	1229	1609	16	2855	83	386	0	469	12	277
Leesburg	2098	0	760	930	11	1701	60	337	0	397		
Fauquier	990	1	378	550	0	929	17	44	0	61		
Rappahannock	67	0	25	38	1	64	2	1	0	3		
Warrenton	169	0	66	91	4	161	4	4	0	8		
Lynchburg	2847	0	943	1741	3	2687	51	109	0	160	8	356

FY05 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TTL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TTL JUV	TTL ATTY	CASES/ ATTY
Martinsville	2116	0	943	1027	13	1983	35	98	0	133	5	423
Henry County	1032	0	440	527	5	972	16	44	0	60		
Martinsville	790	0	356	370	6	732	14	44	0	58		
Patrick County	294	0	147	130	2	279	5	10	0	15		
Newport News	476	0	50	324	0	374	29	73	0	102	15	32
Norfolk	7123	0	2833	3335	17	6185	242	651	45	938	21	339
Petersburg	2475	0	977	1282	10	2269	66	140	0	206	6	413
Portsmouth	5317	0	1718	3136	98	4952	100	262	3	365	14	380
Pulaski	2331	0	936	1211	2	2149	32	150	0	182	6	389
Bland	61	0	26	29	0	55	4	2	0	6		
Pulaski	1083	0	406	579	0	985	15	83	0	98		
Radford	342	0	133	196	0	329	5	8	0	13		
Wytheville	845	0	371	407	2	780	8	57	0	65		
Richmond	11490	0	5412	5125	44	10581	356	553	0	909	25	460
Richmond	10142	0	5009	5086	44	10139	2	1	0	3		
Richmond Juv.	1348	0	403	39	0	442	354	552	0	906		
Roanoke	3705	0	1854	1563	1	3418	109	177	1	287	10	371
Staunton	4094	0	1401	2247	27	3649	56	389	0	445	6.5	630
Augusta County	1284	0	437	647	0	1084	27	173	0	200		
Buena Vista	135	0	39	90	0	129	1	5	0	6		
Lexington	1	0	0	1	0	1	0	0	0	0		
Rockbridge County	460	0	136	302	0	438	2	20	0	22		
Staunton	1290	0	408	727	0	1135	15	140	0	155		
Waynesboro	924	0	381	480	1	862	11	51	0	62		
Suffolk	1814	1	670	964	33	1668	68	78	0	146	7	259
VA Beach	9759	0	2932	5371	43	8346	299	1111	3	1413	21	465
Winchester	3097	0	1055	1786	1	2842	66	189	0	255	8	387
Clarke County	200	0	62	102	0	164	9	27	0	36		
Frederick County	787	0	246	475	0	721	20	46	0	66		
Winchester	1495	0	566	852	1	1419	27	49	0	76		

FY05 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TTL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TTL JUV	TTL ATTY	CASES/ ATTY
Page:	268	0	72	181	0	253	7	8	0	15		
Shenadoah	347	0	109	176	0	285	3	59	0	62		
Appellate	133				86						4	
COMMISSION	87487	5	33744	44382	583	78602	2285	6401	66	8752	276.5	316

**APPENDIX I**

**VIRGINIA STATE BAR  
ETHICS LETTER BY  
ES M. McCauley, ETHICS COUNSEL  
PAGE 16**

**JAN**

## Excessive Workloads Create Ethical Issues for Court Appointed Counsel and Public Defenders

James M. McCauley, Ethics Counsel

July 19, 2004

In *Strickland v. Washington*, 466 U.S. 668, 686 (1984) the Supreme Court of the United States said that the Sixth Amendment right to counsel is the right to *effective assistance of counsel*. Over a nine-month period, the Spangenberg Group conducted a comprehensive, in-depth study of Virginia's indigent defense system, comprised of public defenders and court-appointed counsel. In February 2004, the Group released its report entitled "A Comprehensive Review of Indigent Defense in Virginia." The report reveals that Virginia's indigent defense system fails to adequately protect the rights of poor people who are accused of committing crimes.

The report cites two primary factors that contribute to this finding: (1) no oversight structure to monitor the system; and (2) inadequate resources, i.e, compensation paid to defense counsel. As to the latter factor, according to the report, Virginia spends an average of only \$245 per case. This figure includes average expenses paid by the state to both public defenders and court appointed counsel. According to the report, Virginia's indigent defense lawyers are likely the lowest paid in the country. Assuming that an attorney spends only minimal time preparing a defense, court-appointed counsel cannot even recover compensation sufficient to meet their overhead expenses. In effect, with respect to court-appointed representation, the state has abdicated its constitutional mandate to provide competent counsel and has shifted the burden to the private bar. While lawyers are expected to provide *pro bono* legal services to the poor, the state and federal constitutions require the state, not the private bar, to provide the indigent with adequate representation in criminal cases.

Hopefully the General Assembly's recent creation of an indigent defense commission will address the first problem. An effective oversight structure, coupled with practical recommendations for improvement of Virginia's system, is a step forward. As things now stand, according to the report: "The deeply flawed system puts lawyers at substantial risk of violating professional rules of conduct when representing indigent defendants." The report states further that "substandard practice has become the accepted norm in Virginia's indigent defense system."

Virginia's non-waiveable fee caps in felony and misdemeanor cases (\$112 for misdemeanors punishable by confinement; \$1,096 for a felony charge punishable by more than 20 years of confinement; and \$395 for all other non-capital felony cases) create a significant disincentive for court appointed lawyers to prepare adequately for effective representation of indigent defendants. According to the report, Virginia has the lowest statutory caps for court-appointed counsel in the country, thus strongly discouraging counsel from spending all but a few hours on circuit court cases and even less on general district court matters.

Far exceeding national standards, oppressive caseloads in public defenders' offices preclude adequate representation. Dedicated but hopelessly overwhelmed public defenders interviewed by the group candidly admitted that as a result of their excessive caseloads:



- Jail visits are reserved for only the most serious cases.
- Continuances are needed and requested because there is no time to work on cases.
- Indigent defendants often do not see their attorney for the first time until their first appearance in court.
- There is no time for investigation and research.
- There is no time to interview officers, visit the crime scene, run checks on prior criminal records, request medical records, file motions, call employers, churches and community groups, talk to witnesses, etc.
- Preparation begins one day before court appearance.

Public defenders and court-appointed counsel are held to the same standards of zealotry, loyalty, competence and integrity as privately retained lawyers. *Cuyler v. Sullivan*, 446 U.S. 335, 342-45 (1980), *remanded* 631 F.2d 14 (3d Cir. 1980) *remanded*, 530 F.Supp. 1353 (E.D. Pa. 1982); *Polk County v. Dodson*, 454 U.S. 312, 321 (1981); *Evitts v. Lucey*, 469 U.S. 387, 395-96 (1985) *reh'g denied* 470 U.S. 1065 (1985); ABA Stds., The Defense Function Std. 4.12 (h) (“Once a lawyer has undertaken the representation of an accused, the duties and obligations are the same whether the lawyer is privately retained, appointed, or serving in a legal aid or defender program.”).

At a bare minimum, competent representation of defendants requires a lawyer to promptly investigate the facts, spot legal issues, conduct necessary research, negotiate with the prosecution and meet with the client. This preparation is all out-of-court work and takes time. The Spangenberg Report raises serious concern that even this minimal amount of work is lacking in most or many cases.

Overwhelming caseloads, especially for public defenders, contribute to the perception by many that “assembly-line” justice is all one can expect. Effective assistance of counsel means “that the lawyer not only possesses adequate skill and knowledge, but also that he has the time to and resources to apply his skill and knowledge to the task of defending each of his individual clients.” *State v. Peart*, 621 So.2d 780, 789 (La. 1993). An overwhelming caseload is not a defense in a disciplinary action based upon neglect of a client’s matter. *In re Conduct of Loew*, 642 P.2d 1174 (Or. 1982).

Public defenders cannot undertake a caseload so overwhelming that they become incapable of rendering effective assistance of counsel to any of their clients. Defense counsel should not carry such a workload that it interferes with the rendering of quality representation or endangers the client’s interest in the speedy disposition of criminal charges, or may lead to a breach of the lawyer’s ethical obligations. ABA Stds., The Defense Function Std. 4-1.3 (e). *See also* Principle 5 of *ABA Ten Principles* (adopted by the VSB Council in February 2004):

**Defense counsel’s workload is controlled to permit the rendering of quality representation.** Counsel’s workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.

As noted in a footnote to Principle 5 regarding caseloads, the annual caseload limits per attorney are:

- 150 felonies
- 400 misdemeanors
- 200 juvenile
- 200 mental health, or
- 25 appeals

Public defenders interviewed by the Spangenberg Group reported caseloads far exceeding these national guidelines which, by anyone's standards, are demanding. One public defender had 250 cases pending just at the time he was interviewed. Another public defender reported that she had closed 372 cases just in the first six months of 2003. These caseloads grossly exceed nationally accepted norms.

The acceptance of an overwhelming caseload may result in an ethical breach, leaving the defense attorney exposed to disciplinary action. Rule 1.1 requires an attorney to provide competent representation for his client; the rule defines "competent" as including "the legal knowledge, skill thoroughness and preparation reasonably necessary for the representation." Further pertinent clarification is found in Comment 5 to Rule 1.1; "adequate preparation" is presented as an aspect of the duty of competence.

Rule 1.3 requires an attorney to perform his legal services with diligence and promptness. Comment 1 to that rule notes that a lawyer should control his work load. "so that each matter can be handled adequately." Also, Comment 2 to that rule explains that the duty of diligence includes *timely* performance of the legal work. As expressed in that comment, a "client's interests often can be adversely affected by the passage of time or the change of conditions."

The language of Rules 1.1 and 1.3 includes no exceptions; there is no language creating a different standard for court-appointed counsel or public defenders. The "Scope" section for the Rules of Professional Conduct states that the rules "apply to all lawyers, whether practicing in the private or public sector." The general duties of competence and diligence apply equally to all attorneys licensed to practice in Virginia, including public defenders and court-appointed counsel.

When public defenders or court-appointed counsel have such a large caseload that they cannot provide effective assistance to their clients, they are obligated to seek a remedy for the benefit of their clients and the integrity of the system. *State v. Peart*, 621 So.2d 780, 791 (La. 1993); *Zarabis v. Bradshaw*, 912 P.2d 5, 8 (Ariz. 1996) (Contract attorney raised colorable questions concerning her ability to provide adequate representation to indigent defendants under her case load, and her request for hiatus in appointments should not have been summarily denied, in suit challenging superior court's system for providing representation to indigent defendants).

Diligent representation, as required by Rule 1.3, means that the lawyer has to act promptly to protect the rights of the accused. ABA Stds., The Defense Function Std. 4-3.6 (a) states:

Many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the accused or his or her rights at the earliest opportunity and take all necessary action to vindicate those rights. Defense counsel should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for a change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, and seeking dismissal of the charges.

If the lawyer cannot act promptly and diligently, he or she should not take the case or should seek leave to withdraw. See *Lane v. Richards*, 957 F.2d 363, 364-65 (7<sup>th</sup> Cir. 1992) *cert. denied* \_\_\_ U.S. \_\_\_ (1993):

This is a woeful performance by the State of Indiana—by a lawyer who has done nothing on her client’s behalf for more than five years, by a judge who has allowed the case to grow a beard, by a prosecutor who at oral argument told us that all of this is really in Lane’s best interest, by a disciplinary body that sees no evil when lawyers deceive their clients about the attention given to their claims. We appreciate the Public Defender’s problem: too many clients, not enough lawyers. As the legislature sets the number of lawyers available, the number of cases per lawyer is beyond the control of the office. But inadequate resources do not justify misleading prisoners about what lies in store. A lawyer who cannot provide zealous representation must withdraw, not lead the client to believe that relief is just around the corner.

According to the National Legal Aid and Defender Association, the chief executive officer of an agency providing public defense services is ethically prohibited from accepting a number of cases that exceeds the capacity of the agency’s attorneys to provide competent quality representation in every case. NLADA Ethics Op. 03-01 (Apr. 2003). What constitutes “competent quality representation?” The opinion states that the elements of “competent quality representation” are the national performance standards set out in the NLADA Performance Guidelines for Criminal Defense Representation and the ABA Defense Function Standards. When confronted with a prospective assignment of cases that overload the agency and exceeds its capacity, the defense agency is ethically required to decline appointment to any and all excess cases.

Among the basic components of competent representation under the ABA and NLADA standards are:

- Timely preparation and prompt action to protect the rights of the accused;
- Thoroughness in preparation, including research to discover readily ascertainable law, at risk of professional discipline;
- Independent investigation of the facts of the case;
- Establishment of a client-attorney relationship based on trust and honesty and not merely fact gathering;

- Regular and timely attorney client communication to support informed decision making and prompt and thorough investigation;
- Pre-trial discovery, i.e., failure to request exculpatory evidence from the prosecution violates the right of the accused to effective representation of counsel. *Kimmelman v. Morrison*, 477 U.S. 365, 368-69 (1986);
- Retention of experts and forensic services where appropriate;
- Exploring and advocating alternative dispositions;
- Competent discharge of all responsibilities at all stages of in-court representation;
- Effective sentencing advocacy, including familiarity with all sentencing guidelines and alternatives and presence at all pre-sentence investigation interviews;
- Appellate representation, including explaining all rights, consequences, grounds and taking all steps necessary to preserve and protect issues for appeal (there are additional duties for appellate counsel under ABA Defense Function Std. 4-8.3, including reviewing the entire record, considering all potential guilt or penalty issues, conducting research, and presenting all pleadings in the interest of the client); and
- Maintaining competence through continuing legal education (see also Principle 9 of the ABA's Ten Principles, approved and adopted by the Virginia State Bar Council at its February 2004 meeting).

The duty to decline excess cases that exceed the defender's capacity is based upon the ethical prohibition against accepting cases which cannot be handled "competently, promptly and to completion." Rule 1.1 and 1.16 (a)(1). In addition, a lawyer has a conflict of interest if he takes on too many cases if the representation of a client may be materially limited by the lawyer's responsibility to another client. Rule 1.7. For example, in *People v. Johnson*, 606 P.2d 738, 744 (Cal. 1980), the court found that the public defender's waiver of a client's speedy trial rights because of the demands imposed by other cases "is not a matter of strategy at all: it is an attempt to resolve a conflict of interest by preferring one client over another."

The Wisconsin bar supports the view that defense counsel must decline appointment to excess cases:

When faced with a workload of cases that makes it impossible for a lawyer to prepare adequately for cases, and to represent clients competently, the staff lawyer should, except in extreme or urgent cases, decline new matters and should continue representation in pending matters only to the extent that the duty of competent, non-neglectful representation can be fulfilled.

Wisconsin Formal Op. E-84-11 (1984).

The Arizona Supreme Court, in *State v. Joe U. Smith*, 140 Ariz. 355, 681 P.2d. 1374 (1984), evaluated the Mohave County bid system for obtaining indigent defense counsel. The court held that the system raised a rebuttable inference of inadequate assistance of defense counsel and violated the due process rights of criminal defendants. The court reminded counsel that "accepting more cases than can be properly handled may result not only in reversals for failing to adequately represent clients, but in disciplinary action for

violation of the Code of Professional Responsibility.” *Smith, supra* at 140 Ariz. 363, 681 P.2d at 1382.

The Virginia State Bar’s Standing Committee on Legal Ethics has recently released its advisory opinion concerning prosecutors accepting more cases than they can competently handle. In Legal Ethics Opinion 1798, issued June 30, 2004, the committee opines that a Commonwealth’s Attorney who operates with a caseload so overly large as to preclude competent, diligent representation in each case is in violation of the ethics rules. Further, the opinion states that it is unethical under Rule 5.1 for a supervising attorney to assign an impermissibly large caseload to a subordinate attorney in the office.

Obviously, Legal Ethics Opinion 1798 applies with equal force to public defenders and court-appointed counsel as no principled distinction can be drawn between prosecutors and defense counsel on the issue of taking too many cases

### **Conclusion**

The bench, bar, legislature and the public cannot accept a substandard system that violates the constitutional rights of an indigent defendant to effective representation or which places an attorney at substantial risk of violating his or her ethical duties. Poor compensation and excessive caseloads are not proper defenses to a disciplinary action against an attorney who has neglected a client’s matter. Until the systemic problems are addressed, however, attorneys who represent indigent defendants must be mindful of the ethical requirements that attach when they accept appointment to the defense of an indigent’s criminal case. The ethical requirements apply no matter how overloaded and underpaid defense counsel may be at the time of appointment. Lawyers who accept more cases when they know or reasonably should know that they have insufficient time or resources to provide competent and diligent representation assume the risk that they may be held accountable in a disciplinary proceeding.

**APPENDIX J**

**VaIDC NOVEMBER 9, 2004 CASELOAD RESOLUTION  
PAGE 17**

VIRGINIA INDIGENT DEFENSE COMMISSION  
Approved November 9, 2004

WHEREAS, Virginia Code §19.2-163.01(7) requires the Virginia Indigent Defense Commission to establish appropriate caseload limits in Public Defenders offices; and

WHEREAS, the assessment of indigent defense in Virginia published by the American Bar Association in January 2004 identifies the unreasonably low and unwaiveable fee caps imposed by Virginia Code §19.2-163 as a factor that contributes to Virginia's provision of substandard indigent defense; and

WHEREAS, the creation of caseload limits and the abolition of the fee caps will require the appropriation and expenditure of considerable fiscal resources; and

WHEREAS, successful implementation of these measures requires consideration of economic impact, ethical mandates, and professional standards, it is hereby RESOLVED:

- 1) That the Virginia Indigent Defense Commission directs its staff to develop a process for presenting these policy and fiscal issues to the General Assembly and to report its findings to the Commission prior to the convening of the 2006 General Assembly; and

2) That until caseload limits with adequate funding can be enacted at the agency-wide level, the Commission directs the public defenders to monitor caseloads within their respective offices and to take all reasonable steps necessary to limit caseloads so that each attorney may fulfill his or her ethical duty of competency consistent with the opinion of The Virginia State Bar's Standing Committee on Legal Ethics' Opinion #1798, and Virginia State Bar Ethics Counsel James M. McCauley's letter opinion, issued July 19, 2004.

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**APPENDIX K**

**VaIDC FY02, FY03, FY04 AND FY05 CASELOAD DATA  
PAGE 17**

**FY02 ANNUAL REPORT: CASES BY OFFICE**

OFFICE		CASES /A		CASES /J		SUBTOTAL		TOTAL	APPEAL	CAPITAL	TOTAL CASES	ATTYS ACTUAL	CASES/ ATTY
		FEL	MISD	FEL	MISD	FEL	MISD						
ALL	OFFICES	30408	41250	3320	7389	33728	48639	82367	587	9	82963	188.94	439.1
APP				(Allocated to the lower court jurisdiction)					0				
ALE		1184	1806	43	115	1227	1921	3148	18	0	3166	11.79	268.53
BED		535	33	994	221	1529	254	1783	2	0	1785	2.50	714
CHA		1069	1235	133	366	1202	1601	2803	11	0	2814	7.00	402
	Albemarle	517	457	62	178	579	635	1214	8	0	1222		
	Charlottesville	552	778	71	188	623	966	1589	3	0	1592		
DAN		753	648	32	271	785	919	1704	13	0	1717	4.00	429.25
FAI		3209	4960	83	1332	3292	6292	9584	10	1	9595	21.21	452.38
FRA		616	626	51	71	667	697	1364	10	0	1374	4.42	310.86
	Franklin	124	165	13	24	137	189	326	0	0	326		
	Isle of Wight	232	260	31	36	263	296	559	0	0	559		
	Southampton	260	201	7	11	267	212	479	0	0	479		
FRE		1878	3375	159	635	2037	4010	6047	36	1	6084	12.00	507
	Fredericksburg	523	682	28	134	551	816	1367	0	0	1367		
	King George	100	284	8	88	108	372	480	0	0	480		
	Spotsylvania	548	822	64	233	612	1055	1667	0	0	1667		
	Stafford	707	1587	59	180	766	1767	2533	0	0	2533		
HAL		741	1017	47	117	788	1134	1922	4	0	1926	6.00	321
	Halifax	314	450	19	68	333	518	851	0	0	851		
	Lunenburg	105	126	5	21	110	147	257	0	0	257		
	Mecklenburg	322	441	23	28	345	469	814	0	0	814		
LEE		1927	1942	117	387	2044	2329	4373	4	1	4378	10.00	437.8
	Fauquier	415	515	34	67	449	582	1031	0	1	1032		
	Loudoun	1425	1305	76	305	1501	1610	3111	0	0	3111		
	Rappahannock	49	34	1	7	50	41	91	0	0	91		
	Warrenton	38	88	6	8	44	96	140	0	0	140		
LYN		954	1456	40	128	994	1584	2578	9	0	2587	7.17	360.81
MAR		986	956	63	64	1049	1020	2069	23	1	2093	4.92	425.41
	Henry	512	563	36	26	548	589	1137	10	0	1147		
	Patrick	112	118	5	7	117	125	242	2	0	244		
	Martinsville	362	275	22	31	384	306	690	11	0	701		
PET		1269	1094	117	192	1386	1286	2672	7	1	2680	5.71	469.35

**FY02 ANNUAL REPORT: CASES BY OFFICE**

OFFICE	CASES /A		CASES /J		SUB TOTAL		TOTAL	APPEAL	CAPITAL	TOTAL CASES	ATTYS ACTUAL	CASES/ ATTY	
	FEL	MISD	FEL	MISD	FEL	MISD							
POR	2046	4395	115	286	2161	4681	6842	234	1	7077	12.79	553.32	
PUL	852	1401	49	203	901	1604	2505	4	0	2509	4.42	567.65	
	Bland	31	51	2	1	33	52	85	0	0	85		
	Pulaski	436	570	21	66	457	636	1093	0	0	1093		
	Radford	144	335	5	38	149	373	522	0	0	522		
	Wythe	241	445	21	98	262	543	805	0	0	805		
RIC		4504	4299	593	936	5097	5235	10332	32	1	10365	25.29	409.85
	Adult	3947	4257	0	1	3947	4258	8205					
	Juvenile	557	42	593	935	1150	977	2127					
ROA		1894	2303	105	294	1999	2597	4596	22	0	4618	9.21	501.41
STA		1082	1649	97	536	1179	2185	3364	27	0	3391	6.33	535.7
	Augusta	332	482	30	199	362	681	1043	0	0	1043		
	Buena Vista	25	69	4	19	29	88	117	0	0	117		
	Lexington	1	2	0	1	1	3	4	0	0	4		
	Rockbridge	130	211	8	45	138	256	394	0	0	394		
	Staunton	305	484	29	170	334	654	988	0	0	988		
	Waynesboro	289	401	26	102	315	503	818	0	0	818		
SUF		722	917	57	119	779	1036	1815	36	0	1851	6.38	290.13
VIR		2952	5159	317	912	3269	6071	9340	81	2	9423	20.90	450.86
WIN		1235	1979	108	204	1343	2183	3526	4	0	3530	6.90	511.59
	Clarke	67	88	5	10	72	98	170	0	0	170		
	Frederick	295	432	33	45	328	477	805	0	0	805		
	Page	100	260	9	38	109	298	407	0	0	407		
	Shenandoah	191	275	17	50	208	325	533	0	0	533		
	Warren	102	199	6	4	108	203	311	0	0	311		
	Winchester	480	725	38	57	518	782	1300	0	0	1300		

1	A	B	C	D	E	F	G	H	I	J	K	L
	FY03 ANNUAL REPORT: CASES BY OFFICE											
2	OFFICE		CASES /A		CASES /J		SUB TOTAL		TOTAL	APPEAL	CAPITAL	TOTAL
3			FEL	MISD	FEL	MISD	FEL	MISD				CASES
4	ALL	OFFICES	31662	45311	2345	6245	34007	51556	85563	880	7	86450
5	APP		(Allocated to the lower court jurisdiction)							157		
6	ALE		1142	1861	34	95	1176	1956	3132	15	0	3147
7	BED		288	565	16	102	304	667	971	1	0	972
8	CHA		1074	1550	85	294	1159	1844	3003	13	0	3016
9		Albemarle	385	418	38	143	423	561	984	0	0	984
10		Charlottesville	689	1132	47	151	736	1283	2019	0	0	2019
11	DAN		704	547	32	246	736	793	1529	41	0	1570
12	FAI		2726	5050	65	363	2791	5413	8204	44	0	8248
13	FRA		554	710	52	70	606	780	1386	12	0	1398
14		Franklin	110	250	13	22	123	272	395	0	0	395
15		Isle of Wight	214	263	30	35	244	298	542	2	0	544
16		Southampton	230	197	9	13	239	210	449	3	0	452
17	FRE		2025	3666	143	637	2168	4303	6471	32	0	6503
18		Fredericksburg	568	746	22	171	590	917	1507	13	0	1520
19		King George	115	279	5	50	120	329	449	2	0	451
20		Spotsylvania	571	960	54	205	625	1165	1790	7	0	1797
21		Stafford	771	1681	62	211	833	1892	2725	10	0	2735
22	HAL		810	1122	53	130	863	1252	2115	17	2	2134
23		Halifax	353	485	13	60	366	545	911	17	2	930
24		Lunenburg	108	141	15	24	123	165	288	0	0	288
25		Mecklenburg	349	496	25	46	374	542	916	0	0	916
26	LEE		1488	1938	86	404	1574	2342	3916	19	2	3937
27		Fauquier	371	515	17	39	388	554	942	0	0	942
28		Loudoun	1008	1284	66	362	1074	1646	2720	8	0	2728
29		Rappahannock	30	51	1	1	31	52	83	0	1	84
30		Warrenton	79	88	2	2	81	90	171	11	1	183

	A	B	C	D	E	F	G	H	I	J	K	L
1	FY03 ANNUAL REPORT: CASES BY OFFICE											
2	OFFICE		CASES /A		CASES /J		SUB TOTAL		TOTAL	APPEAL	CAPITAL	TOTAL
3			FEL	MISD	FEL	MISD	FEL	MISD				CASES
4	ALL	OFFICES	31662	45311	2345	6245	34007	51556	85563	880	7	86450
31	LYN		865	1404	40	125	905	1529	2434	41	0	2475
32	MAR		912	908	55	64	967	972	1939	16	0	1955
33		Henry	445	522	25	36	470	558	1028	8	0	1036
34		Martinsville	340	275	22	22	362	297	659	6	0	665
35		Patrick	127	111	8	6	135	117	252	2	0	254
36	NOR		2266	2876	297	467	2563	3343	5906	82	1	5989
37	PET		939	1086	77	130	1016	1216	2232	15	0	2247
38	POR		1675	3639	149	269	1824	3908	5732	281	0	6013
39	PUL		989	1207	30	184	1019	1391	2410	5	0	2415
40		Bland	29	44	2	4	31	48	79	0	0	79
41		Pulaski	509	533	15	79	524	612	1136	0	0	1136
42		Radford	136	296	4	13	140	309	449	0	0	449
43		Wythe	315	334	9	88	324	422	746	0	0	746
44	RIC		5092	5429	395	761	5487	6190	11677	70	0	11747
45		Adult	4577	4187	0	0	4577	4187	8764	70	0	8834
46		Juvenile	515	1242	395	761	910	2003	2913	0	0	2913
47	ROA		1922	2112	118	253	2040	2365	4405	20	0	4425
48	STA		1146	1601	93	475	1239	2076	3315	34	2	3351
49		Augusta	342	527	33	209	375	736	1111	0	0	1111
50		Buena Vista	27	44	3	8	30	52	82	0	0	82
51		Lexington					0	0	0	0	0	0
52		Rockbridge	104	154	4	35	108	189	297	0	0	297
53		Staunton	329	483	37	154	366	637	1003	0	2	1005
54		Waynesboro	344	393	16	69	360	462	822	0	0	822
55	SUF		819	872	71	74	890	946	1836	45	0	1881
56	VIR		2924	5359	354	886	3278	6245	9523	55	0	9578

	A	B	C	D	E	F	G	H	I	J	K	L
1	FY03 ANNUAL REPORT: CASES BY OFFICE											
2	OFFICE		CASES /A		CASES /J		SUB TOTAL		TOTAL	APPEAL	CAPITAL	TOTAL
3			FEL	MISD	FEL	MISD	FEL	MISD				CASES
4	ALL	OFFICES	31662	45311	2345	6245	34007	51556	85563	880	7	86450
57	WIN		1302	1809	100	216	1402	2025	3427	22	0	3449
58		Clarke	66	89	8	3	74	92	166	1	0	167
59		Frederick	261	404	33	42	294	446	740	1	0	741
60		Page	114	184	13	16	127	200	327	9	0	336
61		Shenandoah	180	261	15	86	195	347	542	1	0	543
62		Warren	64	97	5	9	69	106	175	6	0	181
63		Winchester	617	774	26	60	643	834	1477	4	0	1481

FY04 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	FELONY	MISD	APPEAL	TOTAL ADULT	JUV FEL	JUV MISD	JUV APPEAL	TTL JUV	TOTAL CASES	AUTH ATTNY	CASES/ ATTNY
Alexandria	3049	1064	1843	7	2914	35	100	0	135	3049	10.5	290
Bedford	856	301	506	2	809	9	38	0	47	856	2.25	380
Charlottesville	2918	1008	1476	29	2513	89	314	2	405	2918	6.5	449
Charlottesville	1755	561	980	13	1554	42	159	0	201	1755		
Albermarle	1163	447	496	16	959	47	155	2	204	1163		
Danville	1756	783	706	19	1508	39	209	0	248	1756	3.75	468
Fairfax	8452	2587	5058	5	7650	107	694	1	802	8452	20.75	407
Franklin	1433	585	699	32	1316	54	63	0	117	1433	3.75	382
Franklin	366	123	216	0	339	12	15	0	27	366		
Isle of Wright	591	232	294	5	531	25	35	0	60	591		
Southhampton	476	230	189	27	446	17	13	0	30	476		
Fredericksburg	6963	2172	4042	33	6247	146	569	1	716	6963	11.5	605
Fredericksburg	1476	539	758	8	1305	23	148	0	171	1476		
King George	408	117	262	3	382	7	19	0	26	408		
Spotsylvania	2159	632	1246	4	1882	68	209	0	277	2159		
Stafford	2920	884	1776	18	2678	48	193	1	242	2920		
Halifax	2338	805	1297	30	2132	37	168	1	206	2338	5.75	407
Halifax	1130	377	644	19	1040	10	80	0	90	1130		
Lunenburg	352	123	196	6	325	7	19	1	27	352		
Mecklenburg	856	305	457	5	767	20	69	0	89	856		
Leesburg	3343	1289	1597	8	2894	92	357	0	449	3343	9.5	352
Leesburg	2257	839	1024	8	1871	73	313	0	386	2257		
Warrenton	152	57	86	0	143	4	5	0	9	152		
Fauquier	872	368	451	0	819	14	39	0	53	872		
Rappahannock	62	25	36	0	61	1	0	0	1	62		
Lynchburg	2623	906	1530	33	2469	33	121	0	154	2623	7.5	350
Martinsville	1887	863	893	21	1777	36	74	0	110	1887	4.75	397
Henry County	937	429	463	8	900	14	23	0	37	937		
Martinsville	684	303	310	9	622	20	42	0	62	684		
Patrick County	266	131	120	4	255	2	9	0	11	266		
Norfolk	7949	2977	3918	117	7012	387	550	0	937	7949	18.25	436

**FY04 ANNUAL REPORT: CASES BY OFFICE**

OFFICE	TOTAL CASES	FELONY	MISD	APPEAL	TOTAL ADULT	JUV FEL	JUV MISD	JUV APPEAL	TTL JUV	TOTAL CASES	AUTH ATTNY	CASES/ ATTNY
Petersburg	2639	1044	1363	15	2422	59	158	0	217	2639	5.75	459
Portsmouth	6319	1575	4118	153	5846	137	334	2	473	6319	13.25	477
Pulaski	2552	1095	1245	1	2341	31	180	0	211	2552	5.75	444
Bland	82	28	53	0	81	0	1	0	1	82		
Pulaski	1162	537	545	0	1082	12	68	0	80	1162		
Radford	433	145	270	0	415	3	15	0	18	433		
Wytheville	875	385	377	1	763	16	96	0	112	875		
Richmond	9891	4697	4063	26	8786	408	697	0	1105	9891	24.25	408
Ric/Adt	8045	4283	3736	26	8045	0	0	0	0	8045		
Ric/Juv	1846	414	327	0	741	408	697	0	1105	1846		
Roanoke	4188	2012	1890	9	3911	81	196	0	277	4188	9.5	441
Staunton	3354	1072	1784	23	2879	58	417	0	475	3354	6	559
Augusta County	1072	327	553	2	882	25	165	0	190	1072		
Buena Vista	82	28	48	0	76	0	6	0	6	82		
Rockbridge County	241	83	139	0	222	5	14	0	19	241		
Staunton	1170	365	611	20	996	12	162	0	174	1170		
Waynesboro	789	269	433	1	703	16	70	0	86	789		
Suffolk	1706	733	831	4	1568	55	83	0	138	1706	6.5	262
VA Beach	10070	3083	5624	20	8727	388	955	0	1343	10070	20.25	497
Winchester	3428	1305	1844	28	3177	68	183	0	251	3428	6.5	527
Winchester	1468	601	816	6	1423	16	29	0	45	1468		
Clarke County	137	63	63	0	126	4	7	0	11	137		
Frederick County	823	308	447	9	764	28	31	0	59	823		
Page	310	105	174	8	287	6	17	0	23	310		
Shenandoah	595	193	291	1	485	14	96	0	110	595		
Warren	95	35	53	4	92	0	3	0	3	95		
COMMISSION	87714	31956	46327	615	78898	2349	6460	7	8816	87714	202.5	433



FY05 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TTL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TTL JUV	TTL ATTY	CASES/ ATTY
Alexandria	3177	0	1048	1938	14	3000	50	121	6	177	11	289
Arlington	0	0	0	0	0	0	0	0	0	0	14.5	0
Bedford	758	0	290	464	1	755	1	2	0	3	3	253
Charlottesville	2474	0	935	1219	14	2168	59	245	2	306	7	353
Charlottesville	1411	0	532	732	8	1272	31	108	0	139		
Albermarle	1063	0	403	487	6	896	28	137	2	167		
Chesapeake	1811	0	1053	584	35	1672	58	79	2	139	11.5	157
Danville	1442	1	698	509	44	1252	31	159	0	190	4	361
Fairfax	6492	0	2713	2991	2	5706	222	564	0	786	21	309
Franklin	1302	0	553	650	9	1212	42	47	1	90	4	326
Franklin	321	0	118	183	0	301	8	12	0	20		
Isle of Wright	606	0	238	315	4	557	20	29	0	49		
Southampton	375	0	197	152	5	354	14	6	1	21		
Fredicksburg	6650	2	2230	3677	52	5961	147	540	2	689	13	512
Fredicksburg	1467	1	606	688	13	1308	29	129	1	159		
King George	442	0	129	266	6	401	8	33	0	41		
Spotsylvania	2109	0	689	1139	11	1839	60	210	0	270		
Stafford	2632	1	806	1584	22	2413	50	168	1	219		
Halifax	2222	0	735	1246	18	1999	43	179	1	223	6	370
Halifax	1106	0	359	653	7	1019	21	66	0	87		
Lunenburg	301	0	95	167	4	266	6	28	1	35		
Mecklenburg	815	0	281	426	7	714	16	85	0	101		
Hampton	1058	0	536	383	0	919	40	99	0	139	13	81
Leesburg	3324	1	1229	1609	16	2855	83	386	0	469	12	277
Leesburg	2098	0	760	930	11	1701	60	337	0	397		
Fauquier	990	1	378	550	0	929	17	44	0	61		
Rappahannock	67	0	25	38	1	64	2	1	0	3		
Warrenton	169	0	66	91	4	161	4	4	0	8		
Lynchburg	2847	0	943	1741	3	2687	51	109	0	160	8	356

FY05 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TTL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TTL JUV	TTL ATTY	CASES/ ATTY
Martinsville	2116	0	943	1027	13	1983	35	98	0	133	5	423
Henry County	1032	0	440	527	5	972	16	44	0	60		
Martinsville	790	0	356	370	6	732	14	44	0	58		
Patrick County	294	0	147	130	2	279	5	10	0	15		
Newport News	476	0	50	324	0	374	29	73	0	102	15	32
Norfolk	7123	0	2833	3335	17	6185	242	651	45	938	21	339
Petersburg	2475	0	977	1282	10	2269	66	140	0	206	6	413
Portsmouth	5317	0	1718	3136	98	4952	100	262	3	365	14	380
Pulaski	2331	0	936	1211	2	2149	32	150	0	182	6	389
Bland	61	0	26	29	0	55	4	2	0	6		
Pulaski	1083	0	406	579	0	985	15	83	0	98		
Radford	342	0	133	196	0	329	5	8	0	13		
Wytheville	845	0	371	407	2	780	8	57	0	65		
Richmond	11490	0	5412	5125	44	10581	356	553	0	909	25	460
Richmond	10142	0	5009	5086	44	10139	2	1	0	3		
Richmond Juv.	1348	0	403	39	0	442	354	552	0	906		
Roanoke	3705	0	1854	1563	1	3418	109	177	1	287	10	371
Staunton	4094	0	1401	2247	27	3649	56	389	0	445	6.5	630
Augusta County	1284	0	437	647	0	1084	27	173	0	200		
Buena Vista	135	0	39	90	0	129	1	5	0	6		
Lexington	1	0	0	1	0	1	0	0	0	0		
Rockbridge County	460	0	136	302	0	438	2	20	0	22		
Staunton	1290	0	408	727	0	1135	15	140	0	155		
Waynesboro	924	0	381	480	1	862	11	51	0	62		
Suffolk	1814	1	670	964	33	1668	68	78	0	146	7	259
VA Beach	9759	0	2932	5371	43	8346	299	1111	3	1413	21	465
Winchester	3097	0	1055	1786	1	2842	66	189	0	255	8	387
Clarke County	200	0	62	102	0	164	9	27	0	36		
Frederick County	787	0	246	475	0	721	20	46	0	66		
Winchester	1495	0	566	852	1	1419	27	49	0	76		

FY05 ANNUAL REPORT: CASES BY OFFICE

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TTL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TTL JUV	TTL ATTY	CASES/ ATTY
Page	268	0	72	181	0	253	7	8	0	15		
Shenadoah	347	0	109	176	0	285	3	59	0	62		
Appellate	133				86						4	
COMMISSION	87487	5	33744	44382	583	78602	2285	6401	66	8752	276.5	316

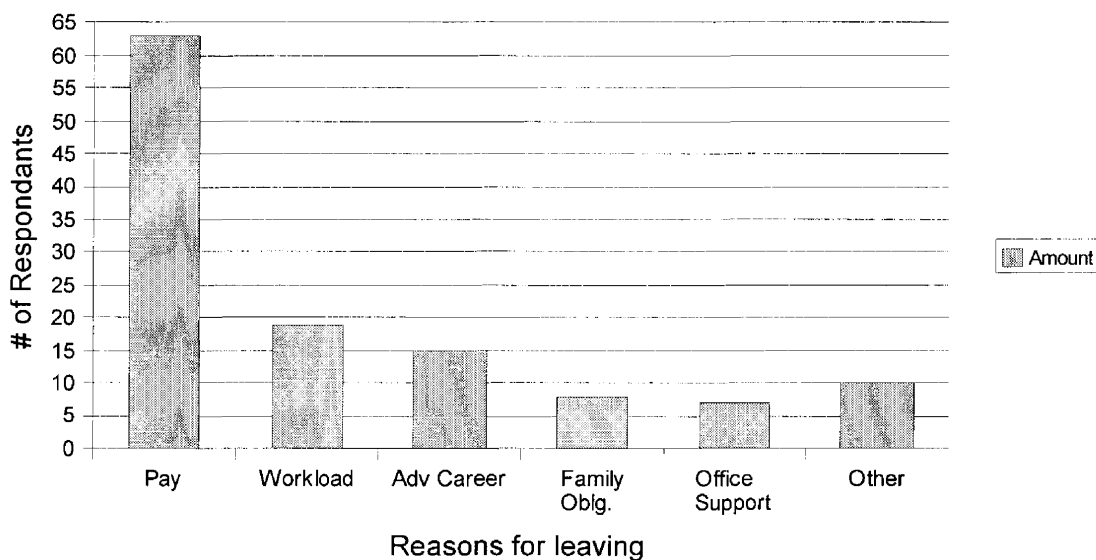
**APPENDIX L**

**VaIDC COMPENSATION STUDY  
ATTACHMENT #1  
PAGE 18**

Attachment #1

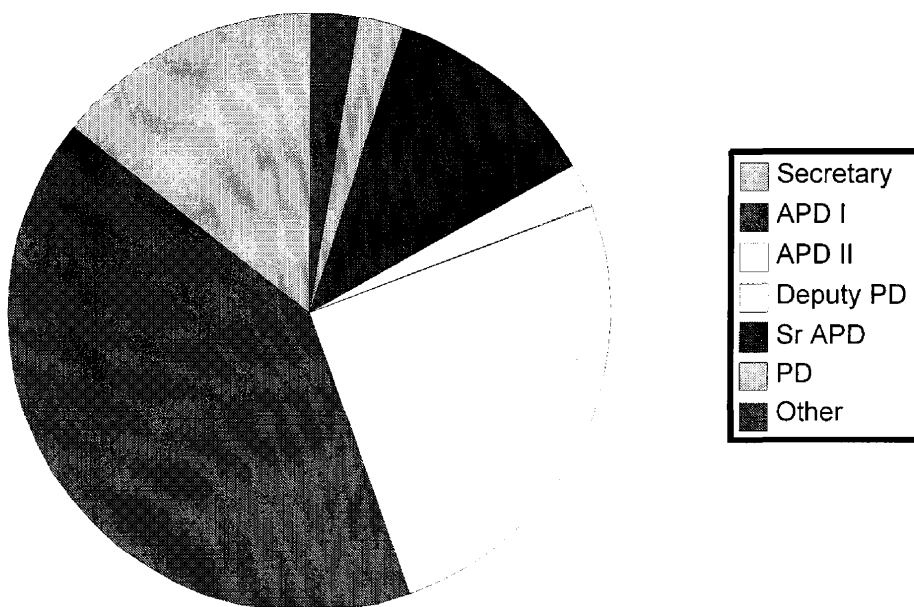
**EXIT INTERVIEW RESPONSES – TERMINATED EMPLOYEES\**  
**July, 2002 – June, 2005**

**Reasons for Leaving ValDC**



NOTE: 84 respondents, several gave multiple reasons for leaving

**Responses by Position**



**APPENDIX M**

**VaIDC COMPENSATION STUDY  
ATTACHMENT #2  
PAGE 19**

Attachment #2

**Average Salaries-Public Defenders & Commonwealth's Attorneys  
July, 2005**

	<u>PDO</u>	<u>CAO</u>	<u>Difference \$</u>	<u>Difference %</u>
Secretary I	\$ 22,853	\$ 29,891	\$ 7,038	24%
Secretary II	\$ 26,543	\$ 36,030	\$ 9,487	26%
APD I	\$ 39,493	\$ 53,917	\$ 14,424	27%
APD II	\$ 47,577	\$ 61,599	\$ 14,022	23%
Sr APD	\$ 53,996	\$ 68,199	\$ 14,203	21%
Deputy	\$ 64,409	\$ 82,917	\$ 18,508	22%
PD	\$ 89,537	\$ 119,189	\$ 29,652	25%

Commonwealth's Attorney data obtained from the VA Compensation Board

**APPENDIX N**  
**VaIDC COMPENSATION STUDY**  
**ATTACHMENT #3**  
**PAGE 19**



Attachment #3

**ValDC Starting Salaries  
Compared  
With Other States' Public Defenders\***

Non-NOVA	VA IDC	Out of State**	Difference	Difference
			\$	%
Sec I	\$20,737	\$24,888	\$4,151	16.7%
Sec II	\$22,669	\$28,062	\$5,393	19.2%
APD I	\$38,691	\$48,534	\$9,843	20.3%
APD II	\$46,236	\$53,685	\$7,449	12.5%
Sr APD	\$50,546	\$59,533	\$8,987	15.1%
Deputy PD	\$55,256	\$70,393	\$15,137	21.5%
PD	\$77,837	\$86,088	\$8,251	9.6%

\*\*Adjusted to Cost Of Living in Richmond VA

NOVA	VA IDC	Out of State**	Difference	Difference
			\$	%
Sec I	\$22,669	\$34,973	\$12,304	35.2%
Sec II	\$27,092	\$40,261	\$13,169	32.7%
APD I	\$42,296	\$70,449	\$28,153	40.0%
APD II	\$50,546	\$78,018	\$27,472	35.2%
Sr APD	\$55,256	\$83,703	\$28,447	34.0%
Deputy PD	\$60,404	\$98,139	\$37,735	38.5%
PD	\$86,268	\$108,956	\$22,688	20.8%

\*\*Adjusted to Cost Of Living in Fairfax, VA

\*Compensation information for public defender systems in DC, CT, DE, MD, NC, GA, TN, WV and MO

**APPENDIX O**

**VaIDC COMPENSATION STUDY  
ATTACHMENT #4  
PAGE 19**

## Attachment #4

## ValDC Administrative Staff Salary Comparison - 8/05

Comparison with Executive Branch  
Position Groups

<u>ValDC Position</u>	<u>Salary</u>	<u>Exec Branch Position</u>	<u>Pay Band</u>	<u>Salary Range</u>		<u>Percentile</u>
Secretary II	\$22,669	Admin/Office Spec II	2	\$18,026	\$36,995	24%
Procurement Officer I	\$22,669	Admin/Office Spec III	3	\$21,543	\$44,213	5%
Accounting Tech	\$25,525	Admin/Office Spec III	3	\$21,543	\$44,213	18%
H.R. Administrator	\$27,092	Admin/Office Spec III	3	\$21,543	\$44,213	24%
Training Administrator	\$36,831	Trainer & Instructor I	3	\$21,543	\$44,213	67%
Accountant #2	\$26,772	Financial Specialist	4	\$28,143	\$57,759	-5%
Office Manager	\$27,092	Gen'l Admin Supv I	4	\$28,143	\$57,759	-4%
Payroll Tech	\$27,894	Financial Specialist	4	\$28,143	\$57,759	-1%
Accountant #1	\$28,834	Financial Specialist	4	\$28,143	\$57,759	2%
Procurement Officer II	\$30,948	Procurement Officer I	4	\$28,143	\$57,759	9%
Data Analyst	\$33,000	Policy/Plan Spec I	4	\$28,143	\$57,759	16%
Computer Supp Spec	\$38,000	I. T. Specialist I	4	\$28,143	\$57,759	33%
Lease Administrator	\$38,692	Land/Prop Mgmt Agent II	4	\$28,143	\$57,759	36%
Benefits Administrator	\$38,606	H.R. Analyst I	4	\$28,143	\$57,759	35%
Sr Systems Eng	\$55,530	I. T. Specialist II	5	\$36,766	\$75,456	48%

## Comparison with Richmond Private Sector

<u>ValDC Position</u>	<u>Salary</u>	<u>Private Sector Avg*</u>	<u>Diff</u>
Secretary II	\$22,669	\$27,000	-16%
Training Administrator	\$36,831	\$42,000	-12%
H.R. Administrator	\$27,092	\$36,000	-25%
Accounting Tech	\$25,525	\$28,000	-9%
Payroll Tech	\$27,894	\$32,000	-13%
Procurement Officer I	\$22,669	\$29,000	-22%
Procurement Officer II	\$30,948	\$41,000	-25%
Lease Administrator	\$38,692	N/A	
Data Analyst	\$33,000	\$43,000	-23%
Computer Supp Spec	\$38,000	\$37,000	3%
Accountant #1	\$28,834	\$38,000	-24%
Accountant #2	\$26,772	\$38,000	-30%
Office Manager	\$27,092	\$43,000	-37%
Benefits Administrator	\$38,606	\$45,000	-14%
Sr Systems Eng	\$55,530	\$65,000	-15%

\*Based on 2004 Mercer Consulting Group Study

**APPENDIX P**  
**NEW PUBLIC DEFENDER OFFICES**  
**FY05 FTE CHART**  
**PAGE 23**

**VA INDIGENT DEFENSE COMMISSION FTE POSITION DATA  
FY 05**

OFFICE	ATTORNEY POSITIONS					
	PUBLIC DEFENDER, CAP DEFENDER	DEPUTY PD, DEP CAP DEFENDER	SENIOR APD, ASST CAP DEFENDER	APD II	APD I	PART-TIME APDs
Arlington	1.00	1.00	3.00	4.00	5.00	0.50
Chesapeake	1.00	1.00	2.00	4.00	3.00	0.50
Hampton	1.00	1.00	3.00	4.00	4.00	
Newport News	1.00	1.00	3.00	5.00	5.00	
	4.00	4.00	11.00	17.00	17.00	1.00

INVESTIGATOR POSITIONS				SECRETARIAL POSITIONS			TOTAL
INV II, INV / PARALEGAL	INV I	MITIGATION, SENT SPECIALIST II	SENT ADV I	OFFICE MANAGER, ADMIN ASST	SEC II	SEC I	
1.00	1.00	1.00		1.00	2.00	2.00	22.50
1.00	1.00		1.00	1.00	2.00	1.00	18.50
1.50	1.00	0.50	1.00	1.00	1.00	2.00	21.00
2.00	1.00	0.50	1.00	1.00	2.00	2.00	24.50
5.50	4.00	2.00	3.00	4.00	7.00	7.00	86.50