

# VIRGINIA INDIGENT DEFENSE COMMISSION

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**CARLOS L. HOPKINS**  
Training & Attorney Certification Director  
**EDWARD ERNOUF, III**  
Information Systems Director  
**BRYAN K. AUD**  
Director of Budget and Finance

October 3, 2008

To: Virginia State Crime Commission  
Members of House Committee for Courts of Justice  
Members of Senate Committee for Courts of Justice  
Members of House Committee on Appropriations  
Members of Senate Committee on Finance

RE: 2008 Annual Report of the Virginia Indigent Defense Commission

Dear Sirs and Madams:

Pursuant to §19.2-163.01 of the Code of Virginia of 1950 as amended, enclosed please find a copy of the 2008 Annual Report of the Virginia Indigent Defense Commission. The Report contains information relating to the state of indigent defense in Virginia, caseloads of public defenders, and the status of the Commission's compliance with statutory mandates.

Please contact me with any questions, concerns or comments you have concerning this report.

Sincerely,



David J. Johnson



# Virginia Indigent Defense Commission

Annual Report 2008

1604 Santa Rosa Road  
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## **FY08 - Commission Members and (Appointing Authorities)**

### Chairman

Robert E. Shepherd, Jr. (Virginia State Bar)

### Vice Chairman

The Honorable Alan E. Rosenblatt (Senate of Virginia)

The Honorable David B. Albo, Virginia House of Delegates

Christopher L. Anderson (Governor)

Steven D. Benjamin (Senate of Virginia)

The Honorable John S. Edwards, Senate of Virginia

Karl R. Hade, Executive Secretary of the Supreme Court

The Honorable Edward W. Hanson, Jr. (Senate of Virginia)

Maria D. Jankowski (Speaker of the House)

The Honorable Terry G. Kilgore, Virginia House of Delegates

David R. Lett (Virginia State Bar)

David D. Walker (Speaker of the House)

Jo-Ann Wallace (Governor)

Carmen B. Williams (Speaker of the House)

### **Commission Staff**

#### Executive Director

David J. Johnson

#### Deputy Director

D. J. Geiger

#### Director, Information Systems

Edward Ernouf III

#### Director Training & Attorney Certification

Carlos L. Hopkins

#### Director, Budget and Finance

Bryan Aud

## Public Defender Offices

Office	Localities Served	Year Established
Alexandria Appellate	City of Alexandria as appointed	1987
Arlington	County of Arlington and City of Falls Church	2005
Bedford	City/County of Bedford	1989
Capital Defender (Central)	Cities of Bedford, Charlottesville, Colonial Heights, Emporia, Hopewell, Lynchburg, Petersburg, Richmond, Staunton, Waynesboro and Counties of Albermarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003

## Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
Capital Defender (Western)	Cities of Bristol, Buena Vista, Covington, Danville, Galax, Lexington, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro and Counties of Alleghany, Augusta, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe	2003
Charlottesville	City of Charlottesville and County of Albermarle	1998
Chesapeake	City of Chesapeake	2005
Danville	City of Danville	1990
Fairfax	City and County of Fairfax	1987
Franklin	City of Franklin and Counties of Isle of Wight and Southampton	1989
Fredericksburg	City of Fredericksburg and Counties of King George, Stafford, and Spotsylvania	1990
Halifax	Counties of Halifax, Lunenburg, And Mecklenburg	1990
Hampton	City of Hampton	2005
Leesburg	Counties of Fauquier, Loudoun, and Rappahannock	1988
Lynchburg	City of Lynchburg	1991
Martinsville	City of Martinsville and Counties of Henry and Patrick	1992

## Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
Newport News	City of Newport News	2005
Norfolk	City of Norfolk	2002
Petersburg	City of Petersburg	1979
Portsmouth	City of Portsmouth	1986
Pulaski	City of Radford and the Counties of Bland, Pulaski, And Wythe	1988
Richmond	City of Richmond	1986
Roanoke	City of Roanoke	1976
Staunton	Cities of Buena Vista, Lexington, Staunton, and Waynesboro and the Counties of Augusta and Rockbridge	1972
Suffolk	City of Suffolk	1989
Virginia Beach	City of Virginia Beach	1973
Winchester	Counties of Clarke, Frederick, Page, Shenandoah, and Warren, and the City of Winchester	1989

# **VIRGINIA INDIGENT DEFENSE COMMISSION**

## **A. BACKGROUND**

The Virginia Indigent Defense Commission (VIDC), in conjunction with court appointed private attorneys, provides legal representation for indigent people accused of crimes for which the possible punishment is incarceration or death.<sup>1</sup>

In 2004, the General Assembly created the VIDC by adding a supervisory governing commission to, expanding the scope of responsibilities of, and renaming the Virginia Public Defender Commission in response to a two-year study assessing the then existing methods for providing indigent defense in Virginia, including the quality and cost effectiveness of each.

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

The sections of the Code of Virginia governing the VIDC include several statutory mandates, most of which concern the duty to oversee court appointed private attorneys. A summary of the recent actions taken and the mandate requiring such action follows.

### **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.**

Qualification standards and certification requirements were developed in FY05. All qualification standards are available twenty-four hours a day on the VIDC website at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov). Applications for initial certification and certification renewal are also available on the website.

### **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.**

The VIDC created the initial certification training courses in October 2005 with the first training held in March. Revisions were made to the course in June 2007 and certification trainings are provided monthly at the administrative offices in Richmond. In addition during FY08, the VIDC partnered with several local law libraries and other groups to provide regular video replays of the certification training program in other areas of the state.

The VIDC reviews and certifies legal education courses provided by other entities that satisfy the continuing education requirements for attorneys to maintain their court appointment eligibility. A current list of MCLE approved courses can be found on the VIDC website and is amended as new courses are submitted for review and approved.

By statute court appointed certification is valid for a period of two years from the date of certification. Attorneys receive multiple recertification notifications in the months preceding expiration of their certification period. Attorneys wishing to maintain certification for court appointed work are required to complete the one page recertification sheet providing information verifying the completion of the statutorily required number of approved MCLE credits.

- 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.**

The VIDC developed the Certified Assigned Attorney Process (CAAP) to maintain an electronic list of the names of certified attorneys eligible for indigent defense court appointment. The VIDC website contains links to a printable version of the list, allowing court personnel to easily retrieve certification information by jurisdiction and/or case type 24 hours per day. Additionally, a letter is sent to the Office of the Executive Secretary annually advising of



attorneys who have not been recertified or who have been removed from the certified list for other reasons. The system became operational in June 2005. As of June 30, 2008, the number of attorney certifications by case type was as follows:

<b>Case Type</b>	<b>Number of Certified Attorneys 6/30/07</b>	<b>Number of Certified Attorneys 6/30/08</b>	<b>Annual Change</b>
Capital Appellate	64	56	-8
Capital Habeas	50	42	-12
Capital Trial Co-Counsel	200	169	-31
Capital Trial Lead Counsel	131	107	-24
Juvenile	1,429	1,184	-245
Misdemeanor	1,874	1,825	-49
Felony	1,637	1,583	-54

**4. VIRGINIA CODE § 19.2-163.01A(4) - Establish official standards of practice for court-appointed counsel and public defenders 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.**

The VIDC created a Committee on the Standards of Practice to develop the official standards of practice for court-appointed counsel and public defenders. The Committee members included representatives from public defender offices, the Office of the Executive Secretary of the Supreme Court of Virginia, the Office of the Attorney General, Commonwealth Attorney offices, the Ethics Counsel of the Virginia State Bar, members of the judiciary, and members of the private bar.

Draft Standards developed for non-capital criminal cases at the trial level, for appellate criminal defense representation and for juvenile defense counsel were published for comment and copies were sent to local bar associations, General Assembly members, and the Virginia

Crime Commission for input. After receiving feedback and making revisions, the VIDC approved the Standards of Practice with an effective date of April 1, 2007. Copies were provided to each certified attorney and are available on the VIDC website.

The General Assembly allocated funding in FY08 for two positions related to the enforcement of the Standards of Practice. The VIDC formed a committee to develop guidelines for the removal of an attorney from the certified list when it finds the attorney violated the Standards of Practice. Members of the committee included representatives from the Virginia Bar Association, the Virginia State Bar (Criminal Law section and Ethics Counsel), the Virginia Association of Criminal Defense Lawyers, the Virginia Trial Lawyers Association, the Office of the Attorney General, the Commonwealth Attorneys Services Council, the Supreme Court of Virginia, members of the private bar, and public defenders. The committee guidelines were adopted August 16, 2007. A copy of the Enforcement Procedures as described in an informational brochure and a copy of the Complaint form are available on the VIDC website. No founded complaints have been filed. (**Appendix A, Standards of Practice Brochure and Standards of Practice Complaint Form**).

**5. 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.**

The VIDC continues to enhance training and development opportunities for private court appointed counsel and public defender office attorneys, investigators, sentencing advocates and support staff. A grant provided in FY08 by the Virginia Department of Criminal Justice Services enabled the VIDC to purchase quality recording equipment for its training room.

All Court Appointed Attorneys. Certification training programs were held monthly during FY08, with public defender and private court appointed counsel attorneys welcome to

attend at no cost. The VIDC training staff also accommodated attorneys with urgent time deadlines by providing monitoring, a location and the equipment to view the certification training program on DVDs at the VIDC administrative office in Richmond.

Two new training programs were instituted during FY08 and are open to all attorneys on the certified list. The Trial Advocacy Workshops are half-day and day long trainings focused on sharpening the trial skills of court appointed attorneys. The topics covered in FY08 included, developing opening statements and closing arguments, cross examination of expert witnesses, and handling exhibits. The Lunchtime Lecture Series is a brown bag lunch hour lecture on specialized criminal defense practice topics including competency, custody and juvenile dispositional hearings, criminal appeals and speaking with parents and guardians in juvenile representation. The Trial Advocacy Workshops and the Lunch Time Lecture Series are provided free of charge and qualify for Continuing Legal Education (CLE) and certification renewal credits. Information is posted on the VIDC website.

Public Defender Attorneys and Staff. In addition to the monthly certification training offerings, the VIDC produced and provided DVDs of the certification training to the public defender offices for use in qualifying newly hired attorneys for certification.

Additional non-certification training programs provided to attorneys in Public Defender offices included the weeklong 5<sup>th</sup> Trial Skills Bootcamp, New Attorney Training program, the Annual Public Defender Conference and the Public Defender Management Training. The Trial Skills Bootcamp for New Attorneys was held at TC Williams School of Law at the University of Richmond, with fifty-four attorneys new to the system in attendance. Training was also provided in FY08 to the sentencing advocates.

The VIDC also partnered with other groups on programs to provide non-certification

training programs which were open to both private bar court appointed counsel and public defender office attorneys, including the Juvenile Law and Education Conference.

**6. VIRGINIA CODE § 19.2-163.01A(6) - 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.**

The number of cases handled by the VIDC public defender offices in FY08 totaled 103,518, which is nearly a 10% increase from the 94,325 cases handled in FY07. The VIDC counts cases by the number of clients represented, rather than the number of charges defended.

**(Appendix B, VIDC FY08 Caseload Data).**

**7. VIRGINIA CODE 19.2-163.01(B) – Commission shall adopt Rules and Procedures for the conduct of its business.**

The VIDC initially adopted the policies and procedures of the Public Defender Commission. As a result of a 2006 recommendation by the Auditor of Public Accounts and the approval of legislation amending § 19.2-163.01(B) requiring such policies and procedures be adopted, the Commission formed an internal committee to develop its own policies and procedures. The Commission initially adopted its policies and procedures in November 2006 and disseminated copies to all employees. The policies and procedures are reviewed and, if necessary, updated annually.

**8. VIRGINIA CODE 19.2-163.01A(14) – 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 B2 of §16.1-266.**

Background Information. In January 2004, the American Bar Association (ABA) released its report, A Comprehensive Review of Indigent Defense in Virginia<sup>2</sup>. The ABA found in part that in Virginia:

1. There is very limited use of expert witnesses and investigator services, which are essential to proper representation of clients in many cases, due to funding and resource constraints.<sup>3</sup>
2. The low statutory fee caps 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>4</sup>
3. The public defender system is over-burdened and underfunded.<sup>5</sup>

A 2005 ABA report, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, noted that Virginia's caps on court appointed compensation placed its fees among the lowest in the nation.<sup>6</sup> The ABA report further indicated that Virginia ranked 49<sup>th</sup> in the nation based on its compensation for court-appointed counsel.<sup>7</sup> At the time of the report, the only state with a lower compensation rate was Mississippi, which placed a \$1,000 cap on non-capital felony charges.<sup>8</sup> In 2003 and 2004, Virginia was ranked 48<sup>th</sup> in the nation;<sup>9</sup> only Mississippi and Maryland ranked lower in compensation rates.

The General Assembly added a reporting component to the VIDC statute which requires the Commission to report on Virginia's ranking among the fifty states. There have been no new studies conducted to rank states by their court appointed compensation rates, and doubts have been raised regarding the accuracy of the report that ranked Virginia near the bottom among the 50 states.

Ranking Analysis. State-to-state comparisons are difficult because the structure and funding of the indigent defense systems vary nationwide. For example, some states pay by the case; others pay by the charge. Some states fully fund public defender and court appointed work and others have a combination of funding from the state and local levels. (Appendix C, State Comparisons Chart). As a result it may be more useful to note the multiple efforts Virginia has

taken to improve its indigent defense system and the funding provided for public defender offices and court appointed counsel. During the 2007 General Assembly session, legislators and the Governor took several significant steps toward improving both public defender and private court appointed indigent defense funding and services.

Private court appointed counsel fees. Legislation was approved allowing for payment to private court appointed counsel above the existing statutory fee caps and in certain cases upon approval of the judge, for a second level waiver.<sup>10</sup>

In addition, \$8.2 million in new funds was appropriated to the Criminal Fund for waivers granted pursuant to the legislation. There are legislative requirements for the collection and maintenance of more detailed information to determine the cost of the complete elimination of fee caps in court appointed cases. Additionally, the Supreme Court of Virginia has developed guidelines to determine whether a request for a waiver meets one of the criteria contained in the statute. Requests by private court appointed counsel were initially low. However, as attorneys adjust to the reporting requirements and the changes to the forms for reimbursement, requests have substantially increased.

Public defender offices. The 2007 General Assembly and the Governor approved efforts to address some of the challenges facing the public defender offices, including a turnover and vacancy rate of 27% in calendar year 2006 despite actions by the VIDC to internally increase salaries and utilize retention bonuses in order to retain employees. Salary increases were approved, additional positions were also allocated and significant adjustments were made to the Capital Defender Offices, which included salary increases and additional positions. The unallocation of \$3 million of carryforward funds, generated previously by the public defender

offices due in large part to turnover and vacancy, funded a large portion of the costs of the salary increases and new positions in the first year.

The increase in funds provided by the General Assembly and the Governor has assisted the public defender offices in recruitment and retention of attorneys and staff. It will take some time to determine the longer term affects of the increased funding. However, within FY08 the turnover rate has decreased by 8% and the number of cases handled by the public defender system has increased by nearly 10%. The expectation is that with increased retention of employees there will be a corresponding increase in the experience level of employees and an increase in the number of indigent people for which the public defender system provides quality representation.

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

<sup>2</sup> American Bar Association, A Comprehensive Review of Indigent Defense in Virginia, (2004)

<sup>3</sup> Id. at 82

<sup>4</sup> Id.

<sup>5</sup> Id. at 87

<sup>6</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>7</sup> Id. at 9

<sup>8</sup> Id.

<sup>9</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>10</sup> House Bill 2361 and Senate Bill 1168 of the 2007 Virginia General Assembly session.

## **Appendix A**

### **Standards of Practice Brochure and Standards of Practice Complaint Form**

#### **STANDARDS OF PRACTICE COMPLAINT PROCEDURE**

##### ***Step 1: Complaint Intake and Initial Evaluation***

All complaints are received by the VIDC Standards of Practice Enforcement Attorney for evaluation. The complaint form may be downloaded from the VIDC website at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov) or a copy from your local court.

Next, the intake attorney will determine if the complain is “qualified.” A complaint shall be deemed “qualified” when it satisfactorily complies with all the filing requirements and if true, would rise to the level of a violation of the Standards of Practice. In order to be deemed “qualified,” a complaint must:

- be submitted in writing on the correct form AND
- not be anonymous AND
- be filed within twelve months of the conclusion of representation AND
- reference a specific case AND
- involve a court-appointed attorney or public defender in an indigent defense case AND
- allege violation(s) of specific Standard(s) of Practice AND
- be inherently credible.

If the Standards of Practice Enforcement Attorney finds the complaint does not meet the requirements as set forth above, the complaint will be dismissed.

There can be no appeal of a dismissal based upon a finding of “unqualified.” However, the complainant may initiate a new revised complaint if the time limit (filing within twelve months of the conclusion of representation) has not elapsed. If the complaint has been dismissed only because the complaint was not written on the correct form, the complainant may amend the complaint within three months or prior to the original twelve month filing period, whichever is later.

If the intake attorney finds the complaint meets the requirements and is “qualified,” the complaint shall then proceed to the investigation stage.

##### ***Step 2: Investigation***

The intake attorney shall thoroughly investigate every qualified complaint and compile a written report. The intake attorney will contact a complainant if more information is needed. The process may take several months to complete, depending on the nature of the complaint and the number of complaints currently under investigation. Every complainant shall be notified in writing as to the outcome of their complaint. The intake attorney shall provide a copy of the complaint to the



attorney against whom the complaint is filed (“respondent attorney”) and request a written response within thirty days.

The investigation report shall contain, at a minimum, a copy of the complaint filed, the respondent attorney’s response, if any, and any supporting documentation or other relevant information obtained by the intake attorney. A copy of the investigative report will be sent to the Informal Resolution Panel.

***Step 3: Informal Resolution***

The Informal Resolution Panel will hear a “qualified” complaint and evaluate the intake attorney’s investigative report. The Informal Resolution Panel will be a three-member panel consisting of the VIDC Executive Director, the VIDC Deputy Director and the VIDC Director of Training and Attorney Certification, or a designated alternate.

Upon receipt of the investigative report, the Informal Resolution Panel will schedule, within thirty days or as soon thereafter as practical, an informal hearing with the respondent attorney. During the informal hearing, any relevant information may be considered. The intake attorney will be available either in person or via telephone conference, to answer questions pertaining to his/her report and investigation. The respondent attorney may choose to appear before the Panel either in person or via telephone conference.

- In the event of multiple complaints against the same attorney, the Panel may combine all complaints into one hearing. Each complaint, however, will be addressed separately.
- The respondent attorney has a duty to cooperate with the Panel and may have counsel present during the Panel hearing.
- Within fifteen days of the hearing, the Panel will issue written findings. If the Panel does not find a violation of the Standards of Practice, the Panel will dismiss the complaint, and a letter of explanation will be sent to the complainant. In the event a violation of the Standards of Practice is found, the Panel will send a letter to the respondent attorney with proposed corrective measures (“Recommendation Letter”).
  1. If the respondent attorney agrees to the proposed recommendation, he/she shall endorse the letter, and send it back to the Panel, at which point the endorsed Recommendation Letter becomes a Resolution Agreement.
  2. The intake attorney will ensure that any corrective measures agreed to by endorsement of the Resolution Agreement are timely completed. If the respondent attorney fails to fully comply with the terms of the Resolution Agreement, the attorney will face additional sanctions, up to and including removal from the list.
  3. If the respondent attorney disagrees with the proposed recommendation offered by the Panel, the matter will proceed to a Hearing.

***Step 4: Hearing***

The Hearing Panel will consist of three Virginia State Bar members chosen from a standing committee of volunteer attorneys serving overlapping terms. The Panel will meet quarterly, as needed and all Hearings will be recorded.

The intake attorney shall be available to answer questions pertaining to his/her report and investigation in person or via telephone conference.

Up until forty-eight hours before the hearing, the respondent attorney may opt to accept the Informal Resolution Panel's recommendation rather than proceed with the Hearing.

Prior to the Hearing, the Panel members shall review the Investigation Report, the attorney's Response Letter, Findings, and the Informal Resolution Panel's Recommendation Letter with its determination of the respondent attorney's alleged violations of the Standards of Practice. Any additional relevant information may be presented to the Panel.

The Hearing Panel may:

1. dismiss the complaint as unfounded,
2. dismiss the complaint because the complained actions do not rise to the level of specific violation,
3. find that a violation has occurred and issue remedial sanctions, or
4. find that a violation has occurred and remove the attorney from the court appointed list.

The intake attorney shall monitor the respondent attorney's compliance with any remedial sanctions issued by the Hearing Panel. If the respondent attorney fails to timely complete imposed sanctions, the respondent attorney may be suspended or removed from the court appointed list.

***Step 5: Appeal to the Virginia Indigent Defense Commission***

In the event that the Hearing Panel finds a violation and imposes a remedial sanction or directs removal from the court appointed list, the respondent attorney may appeal only the remedial sanction or removal from the list to a three-person panel of VIDC members. The appeal shall be in writing only. The Commission Panel may review any written materials in support of the appellant attorney's argument concerning appropriateness of sanction(s). The Commission shall issue a written decision which shall be final.

# COMMONWEALTH OF VIRGINIA

Virginia Indigent Defense Commission

Attn: Standards of Practice Enforcement Attorney

1604 Santa Rosa Road, Suite 109

Richmond, Virginia 23229

Telephone (804)662-7249, ext. 47

## COMPLAINT FORM

Your Name (First, Middle, Last) Home Phone Number

Street Address Work/Cell Phone Number

City State Zip Code

(List the information regarding the attorney against whom you are filing the complaint)

Attorney Name (First, Middle, Last) Office Telephone Number

Firm Name (If Applicable)

Street Address

City State Zip Code

Was this attorney court appointed? \_\_\_\_\_

In what County or City was your case heard? \_\_\_\_\_

Was this a juvenile, general district or circuit court case? \_\_\_\_\_

When did your case end? \_\_\_\_\_

If the case resulted in a conviction, was the case appealed? \_\_\_\_\_

**State your Concern** Please write neatly, giving detailed information about the events surrounding your concern as well as the names of any witnesses to the violation(s) cited. Please include copies of any court orders or other court papers you may have in your possession regarding your court case. Make sure that you include the specific violation of the Standards of Practice which you are complaining about. Refer to the website at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov) to view the Standards of Practice.

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(Continue on the back or a separate page if you need more space)

**I have read the above and it is true to the best of my knowledge.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

Please return to:  
Virginia Indigent Defense Commission  
Attn: Standards of Practice Enforcement Attorney  
1604 Santa Rosa Road, Suite 109 Richmond, Virginia 23229

**APPENDIX B – VIDC FY08 Caseload Data**

OFFICE	TOTAL CASES	CAP.	FEL	MISD	APP.	TOTAL ADULT CASES	JUV. FEL.	JUV. MISD.	JUV. APP.	TOTAL JUV CASES	AUTH. ATTY	CASES / AUTH. ATTY	ACT. ATTY*	CASES/ ACT. ATTY
VA Beach	10766	0	3187	5925	468	9580	344	827	15	1186	24	449	22.29	483.0
Richmond	11152	0	4656	5863	70	10589	256	307	0	563	27	413	24.31	458.7
Staunton	3921	0	1262	2212	66	3540	72	306	3	381	9	436	8.73	449.1
Fredericksburg	7236	0	2614	4023	62	6699	138	396	3	537	17	426	15.39	470.2
Roanoke	4614	0	2028	2164	97	4289	117	199	9	325	12	385	10.31	447.5
Danville	1926	0	728	973	33	1734	34	157	1	192	5	385	3.34	576.6
Charlottesville	2835	0	1156	1487	59	2702	33	100	0	133	7.5	378	7.20	393.8
Winchester	3513	0	1239	1836	149	3224	61	220	8	289	10	351	7.40	474.7
Lynchburg	3399	0	934	2254	53	3241	50	108	0	158	9	378	8.67	392.0
Newport News	6214	0	1686	3822	101	5609	203	399	3	605	17	366	16.44	378.0
Portsmouth	5388	1	1555	3052	434	5042	122	221	3	346	16	337	13.11	411.0
Chesapeake	4068	0	1630	1942	77	3649	172	247	0	419	13	313	12.34	329.7
Petersburg	2326	0	1052	1021	52	2125	76	124	1	201	8	291	7.03	330.9
Norfolk	6955	0	2840	3492	116	6448	162	342	3	507	23	302	21.08	329.9
Leesburg	4802	0	1442	2679	114	4235	97	464	6	567	15	320	13.01	369.1
Halifax	2168	0	772	1182	11	1965	42	161	0	203	7	310	6.10	355.4
Martinsville	2104	0	766	1190	23	1979	44	80	1	125	7	301	5.70	369.1
Hampton	3830	0	1619	1558	35	3212	187	429	2	618	14	274	13.11	292.1
Franklin	1615	0	692	805	25	1522	40	53	0	93	6	269	5.31	304.1
Alexandria	3280	0	976	2134	26	3136	31	113	0	144	11	298	10.51	312.1
Fairfax	5420	0	2267	2409	93	4769	394	253	4	651	22.5	241	21.52	251.9
Suffolk	1631	0	684	718	58	1460	76	95	0	171	7	233	7.17	227.5
Bedford	1011	0	371	617	12	1000	3	8	0	11	4	253	3.18	317.9
Pulaski	1581	0	647	916	1	1564	4	13	0	17	7	226	5.32	297.2
Arlington	1750	0	447	1062	1	1510	60	180	0	240	14.5	121	12.39	141.2
Public Defender	103505	1	37250	55336	2236	94823	2818	5802	62	8682	312.5	331	280.96	368.4

Capital Defender	13	13				13								
Central	5	5				5								
Northern	2	2				2								
Southeastern	3	3				3								
Southwestern	3	3				3								
COMMISSION	103518	14	37250	55336	2236	94836	2818	5802	62	8682				
Appellate	110	0	0	0	109	109	0	0	1	1				

\* Actual Attorney Count takes into account actual position vacancies

\*\* Standardized Case Weights used: MISD=2, JUV=3, FEL=5, Appeal=5

### APPENDIX C: State Comparisons Chart

State	Funding Source <sup>1</sup>			Funding Description <sup>2</sup>	Atty Type			Structure <sup>2</sup>	How Ct App Counsel Paid
	State	Local	Mix		PD	Appt	Contract		
<b>Alabama</b>	X			Fair Trial Tax Fund - from fees added to costs in criminal cases and filing fees in civil; the state picks up any shortfall - \$22m of \$37m in FY2005 by state	X	X	X	3/67 Counties have Public Defender, the rest are contract or appointed counsel	Assigned counsel: \$40/hour out of court; \$60/hour in court. Maximums range from \$1500-3500 and is waivable. (Code of Alabama § 15-12-21)
<b>Alaska</b>	X			State funded	X		X	Two primary providers: Alaska Public Defender Agency and Office of Public Advocacy (domestic primarily); the latter may contract with private attorneys in some cases	\$50/hour out of court; \$60/hour in court. Maximums range from \$350-4000 and is waivable. (2 AA.C.60, Alaska Administrative Code, current as of Dec. 2004.)
<b>Arizona</b>			X	99% provided by counties, 1% from a general fund appropriation	X	X	X	Mix of public defenders, contract attorneys, and assigned counsel	Varies. Authority granted to local courts for determination, AZ Rev. Stat. Ann. § 13-4013(a).
<b>Arkansas</b>			X	Funding for employees at state level; funding for office, equipment, etc. at local level	X			Arkansas Public Defender Commission; Commission's Capital, Conflicts, and Appellate Division provides services as well	Public Defender Commission sets compensation rates for court appointed for capital, appeals, and conflict cases; varies between \$60-90. No maximum. (2002 fees.) Ark. Code Ann. § 16-87-211.
<b>California</b>			X	Primarily county funded	X	X	X	All large counties except San Mateo have Public Defender; others are mixed between PD,, assigned counsel or contract defender; for conflicts, counties contract and/or create second PD; state funded Office of State Public Defender which provides direct appeals, some habeas corpus in capital cases	Varies. No maximum. Authority granted to court, California Penal Code § 987.2.

<b>Colorado</b>	X			State funded	X	X		Colorado State Public Defender; appointed counsel for conflicts	Office of Alternate Defense Counsel sets fees. \$47-51/hour. (2002 fees.) Maximums vary from \$2500-15,000, waivable. Colorado Revised Statutes § 21-2-105
<b>Connecticut</b>	X			State funded	X		X	Connecticut Division of Public Defender Services; contracted defenders for conflicts	\$45/hour out of court; \$65/hour in court. If case does not at trial, limited to 6 days in court and 6 days out of court. Determined by Chief Public Defender, C.G.S. § 51-291(12).
<b>Delaware</b>	X			State funded	X		X	Delaware State Public Defender; pool of contracted attorneys for conflicts	Reasonable fees determined by court. Del. Code Ann. 29 § 4605.
<b>District of Columbia</b>				Federal funds	X	X		Public Defender Services; many cases handled by court appointment (some felonies, many misdemeanors, traffic)	\$65/hour. Maximum \$3600, waivable. D.C. Code Ann. § 11-2604(a).
<b>Florida</b>	X			State funded since 2004	X			Public Defender; circuit indigent defense services committees oversee conflicts	Maximums: misdemeanors and juveniles - \$1000; capital, non-life felonies - \$2500; life felonies - \$3000; capital felonies - \$15,000. Flat fees are not to exceed amounts as delegated in Fla. Stat. § 27.5304.



<b>Georgia</b>			X	State funded according to judicial circuit since 2005	X			Public defender offices based on judicial circuit rather than counties as of Jan. 1, 2005 for superior and juvenile courts; city and county governments may opt out (6 opted out) but must still maintain state standard -still public defender; 15 regional conflict defender offices for conflicts and overloads	\$45/hour out of court; \$60/hour in court. No maximum. (2002 fees. Georgia Code Ann. § 17-12-8(b)(9) grants authority to Georgia Public Defender Standards Council.)
<b>Hawaii</b>	X			State funded	X	X		Office of the Public Defender; court appointed for conflicts	\$40/hour out of court; \$60/hour in court (increased to \$90/hour for in court and out of court work in 2006). Maximum \$3000, waivable. H.R.S. § 802-5(b).
<b>Idaho</b>			X	County funded trial level; state funded appellate level	X	X	X	Public defender, assigned counsel, contract or a mix - chosen by the county; Appellate Defender created in 1998 - counties may receive may draw from them if they contribute to Capital Crimes Defense Fund	Varies; typical fee is \$50/hour. No maximum. Authority granted to local judge pursuant to Idaho Code § 19-860(b).
<b>Illinois</b>			X	County funded primarily; state provided some funding for public defenders in FY2007, full funding for public defenders was requested for FY2008 budget	X	X	X	Counties over 35,000 required to have public defender; other counties use either contract or assigned counsel; in conflicts, court appointed and judge sets fee	Varies; Capital crimes are state funded by the Capital Litigation Trust Fund - no cap for private attorneys, rate readjusted every year according to state's consumer price index; 2002 rate was \$30/hour out of court, \$40/hour in court. Maximum \$1250, waivable. 725 I.L.C.S. 5/113-3.

<b>Indiana</b>			X	State funded Indiana Public Defender Commission assists in capital cases; counties are reimbursed up to 40% on non-capital cases through state funding	X	X		State Public Defender of Indiana represents indigent defendants in post-conviction proceedings and appeals at state level;	\$60/hour; capital cases: \$90/hour. No maximum. (2002 fees. Established by Indiana Public Defender Commission Standards for Indigent Defense Services pursuant to Ind. Code § 33-9-13-3.)
<b>Iowa</b>	X			Primarily state - counties contribute on juvenile defender cases	X	X	X	Mixed - state public defender offices, contract attorneys, and court appointed	Murder cases \$100/hour; >10 years \$90/hour; <10 years \$60/hour. Maximum between \$1000-15,000, waivable. (2002 rates. Recommended by Indigent Defense Advisory Commission and set by state legislature pursuant to I.G.S. § 13B.2A.)
<b>Kansas</b>			X	State for felony and appeals, counties for misdemeanor and juvenile	X	X	X	Kansas Board of Indigents Defense Services for state funded; counties provide contract defenders and assigned counsel	\$50/hour. Maximum \$5000, waivable. (2002 rates. Set by Kansas Board of Indigents' Defense Services pursuant to K.S.A. 22-4501.)
<b>Kentucky</b>			X	Primarily state - counties that choose their own structure augment the state funds	X		X	Department of Public Advocacy - public defender; Jefferson, Fayette, and Boyd counties contract with non-profit organizations to provide public defense	\$40-50/hour. Maximum \$1800-3000, waivable. (2002 fees.) Must not exceed maximum fees paid to attorneys hired by Department of Public Advocacy. Kansas Board of Indigents' Defense Services granted authority to set fees pursuant to K.S.A. § 22-4501.

<b>Louisiana</b>			X	Greater portion now being state-funded as of Aug., 2007	X		X	As of 2007, Louisiana Public Defense Board oversees statewide public defense.	Louisiana Public Defender Board has authority to set contract rates pursuant to L.S.A. Rev. Stat. 15 § 147.
<b>Maine</b>	X			State funded		X		Assigned counsel	\$50/hour. Maximum \$1250-2500, waivable. (2002 fees.) Maine Rev. Stat. Ann. 15 § 810 now grants authority for reasonable fees to be set by the Superior Court for state cases and district courts for district cases.
<b>Maryland</b>	X			State funded	X	X		Maryland State Public Defender; conflicts are court appointed	\$50/hour. Maximum \$750-3000, waivable. (2005 amount. These fees are set from time to time by the Public Defender, pursuant to Ann. Code of Maryland Art. 27 § 6(d).)
<b>Massachusetts</b>	X			State funded	X	X		Mix of "Bar Advocates" (2,400 private attorneys) and public counsel division (110 staff attorneys)	\$50/hour in district court, CHINS, children and family, care and protection, sex offender registry and mental health; \$60/hour in superior court non-homicide; \$100/hour homicide. No maximum. M.G.L. Ch. 211D § 11.
<b>Michigan</b>			X	Trial level - county funding; appellate level - two divisions: State Appellate Defender Office - state funded; Michigan Appellate Assigned Counsel System - state funding for administrative costs, counsel funded by county	X	X	X	Trial level - counties determine and use a mix of public defender, assigned counsel, or contract attorneys	Varies widely. M.C.L. § 775.16 grants authority to local judge.

<b>Minnesota</b>			X	Supposedly fully state funded; unsure of why county funds come into table	X			Minnesota Sate Board of Public Defense; conflicts primarily handled by part-time public defenders with private offices	\$50/hour. No maximum. (2002 fees. No official authority. Established by public defender. Rarely used, contract attorneys are typically used.)
<b>Mississippi</b>			X	Non-capital trial level are county funded; capital trials and appeals are state level through special fund agencies or general fund agencies	X	X	X	Counties have option of public defender or assigned counsel - many have part-time public defenders under contract; Mississippi Office of Capital Defense Counsel may appoint counsel for conflict cases	Varies. Maximum \$1000, (\$2000 for capital cases) plus \$25/hour overhead expenses. <b>Not</b> waivable. (Miss. Code Ann. § 99-15-17.)
<b>Missouri</b>	X			State funded	X			Missouri State Public Defender; conflict of interest given to other state regional office	Authority granted to State Public Defender Mo. Rev. Stat. § 600.017. Rarely used.
<b>Montana</b>	X			State funded	X		X	Montana Public Defender Act newly enacted in 2005 - used to be a mix of contract, court appointed and public defender; now in process of changing to state managed system of public defenders and contracted attorneys	Varies; typically \$40-60/hour. (2002 fees.) No maximum. Commission sets contract rates pursuant to Mon. Code Ann. § 47-1-216.
<b>Nebraska</b>			X	Most county funded; Nebraska Commission on Public Advocacy provides some funding through capital litigation and appellate divisions and major cases	X	X	X	County determines system to use; state statute requires public defender system in counties over 100,000 in population (only 3 counties impacted)	Varies; typically \$60/hour; Omaha is \$65/out of court, \$80/in court. Typically no maximum, but Omaha has \$12,000 maximum, waivable. (2002 fees.) Neb. Code § 29.3905.

<b>Nevada</b>			X	Counties over 100,000 population required to have public defender systems that are self funded; other counties may choose between self funding or contribution to state/county fund	X		X	Three counties have public defender systems; all other counties use flat-fee or low-bid contract programs	\$100/hour; \$125/hour for death penalty cases. Maximum \$12,000 for life; \$2500 remainder. Waivable. N.R.S. § 7.125.
<b>New Hampshire</b>	X			State funded	X	X	X	State Public Defender; New Hampshire Judicial Counsel administers assigned counsel and contract counsel for conflicts	\$60/hour. Maximum \$3000, waivable. (2002 fees.) New Hampshire Constitution, part 2, art. 73A, grants authority to State Supreme Court.
<b>New Jersey</b>	X			State funded	X	X		New Jersey State Public Defender; court appointed for conflicts	\$50/hour out of court; \$60/hour in court. No maximum. (2005 fees.) N.J.S.A. § 2A:158A-7 grants authority to N.J. Public Defender.
<b>New Mexico</b>	X			State funded	X		X	Trial level - about half of counties have access to public defenders; remaining have contract attorneys	Rarely used; no fee given. Chief Public Defender formulates fee schedule pursuant to N.M. Stat. Ann. § 31-15-7(11).
<b>New York</b>			X	Primarily county funded; Indigent Legal Services Fund provides full funding for children in dependency and delinquency cases and some other help to counties; capital punishment struck down in 2005 left limited funding to Capital Defense	X	X	X	Counties choose between public defender, private legal aid society and/or assigned counsel	\$75/hour. Maximum \$4400, waivable. (2005 fees.) Art. 18-B of the County Law § 722-b.

<b>North Carolina</b>	X			State funded	X	X	X	13 counties use public defender; remaining use assigned counsel or contract attorneys - all coordinated now through Indigent Defense Services	\$65/hour. (2002 fee.) No maximum. Office of Indigent Defense Services determines amount pursuant to N.C. Gen. Stat. § 7A-498.5.
<b>North Dakota</b>	X			State funded	X	X	X	In transition - Commission on Legal Counsel now overseeing defense; mix of public defenders; assigned and contract attorneys	Varies; typical \$60-85/hour. No maximum. S.B. 2027 (Apr. 2005) grants authority to the Commission on Legal Counsel for Indigents to set fee effective Jan. 1, 2006).
<b>Ohio</b>			X	County funds and state reimbursement through Public Defender Commission; rate of reimbursement fluctuates	X		X	Ohio Public Defender contracts with 10 counties to provide indigent services - which contracts with local attorneys; limited direct representation through Ohio Public Defender as well	Recommendation by Public Defender Standards: \$50/hour out of court; \$60/hour in court. Maximum \$2500-10,000, waivable. (2002 fees.) Ohio Rev. Code Ann. § 120.33.
<b>Oklahoma</b>			X	Two counties are self-funded (Tulsa and Oklahoma City); others receive funding through Oklahoma Indigent Defense System	X	X	X	Tulsa and Oklahoma City have public defender systems; OID provides staff for capital trial, capital direct appeal, non-capital direct appeal and capital state post-conviction - majority of other cases are handled by contract attorneys; conflicts handled case-by-case through court appointed attorneys	\$40/hour out of court; \$60/hour in court. Maximum \$3500, waivable. (2002 fees.) O.S. 22 § 1355.8.
<b>Oregon</b>	X			State funded	X	X	X	Office of Public Defense Services - counties may choose public defenders, contract attorneys, or court appointed system	\$40/hour. No maximum. (2002 fee.) O.R.S. § 151.216(f)(C) grants authority to Public Defense Services Commission.

<b>Pennsylvania</b>		X		County funding	X			Public defender	Varies. (2002 fees: \$40-75/hour.) Philadelphia pays on per diem basis. Maximum varies. Penn. Stat. Ann. art. 13A § 9960.7 grants authority to local judge.
<b>Rhode Island</b>	X			State funded	X			Public defender	Murder cases \$100/hour; >10 years \$90/hour; <10 years \$60/hour. Maximum murder \$15,000; >10 years \$10,000; <10 years \$5000. Waivable. (2005 fees.) Authority granted to Chief Justice, Supreme Court Executive Order No. 95-01 pursuant to General Laws of the State of R.I. § 8-15-2.
<b>South Carolina</b>			X	Counties primarily fund public defender offices; state provides supplemental funding based on population	X	X		40 public defender offices and statewide appellate defender office	\$40/hour out of court; \$60/hour in court. Maximum \$3500, waivable. Code of Law of S.C. Ann. § 17-3-50.
<b>South Dakota</b>			X	Counties primarily self fund; counties may pay into catastrophic indigent defense funds to help pay for unusual expenditures - reimburse up to 90%	X	X	X	Majority of counties use contract or assigned counsel, some use public defender; three state public defender offices	\$67/hour (2002 Supreme Court rule). No maximum. S.D.C.L. § 23A-40-8.
<b>Tennessee</b>			X	Primarily state funded - exceptions are Shelby and Davidson county which use a mix of state and local funding	X			Elected public defender	\$40/hour out of court; \$50/hour in court. Maximum \$1000; waivable to maximum of \$3500. Supreme Court Rule 13.

<b>Texas</b>			X	Formula determines how much counties receive in reimbursement for indigent defense	X	X	X	Mixed - public defender, appointed, contract - counties determine structure	Varies from \$50-125/hour. Maximum varies widely. Authority granted to local judge pursuant to Tex. Stat. Ann. art. 26.05.
<b>Utah</b>		X		County funded	X	X	X	Three public defender offices, remainder use contract or assigned counsel; 24 of 29 counties participate in Indigent Capital Defense Trust Fund for reimbursement in capital cases	Varies. Utah Code Ann. § 72-32-3(3) grants authority to court.
<b>Vermont</b>	X			State funded	X		X	Public defender - staff attorneys handle 75%, contract counsel provide remaining	\$50/hour. Maximum life: \$25,000; major felony \$5000; minor felony \$2000. Waivable. (These were in place by Supreme Court Order in 2002. 13 V.S.A. § 5205(a) grants the Vermont Supreme Court power to set fees.)
<b>Virginia</b>	X			State funded	X	X		Public defender or court appointed - VIDC oversees	\$90/hour for in court and out of court work, determined by Va. Supreme Court. Per-case caps of \$120 for misdemeanors in district or juvenile, \$158 for misdemeanors in circuit, \$445 for felonies less than 20 years, \$1235 for over 20 years. Maximum waivable. Va. Code Ann. § 19.2-163.



<b>Washington</b>			X	Counties primarily with some contribution by state	X	X	X	County determines system to use - public defender, assigned counsel, contract attorneys	Varies from \$40-80/hour. (2002 fees.) Maximum varies, waivability varies. Authority granted to court pursuant to Wash. Rev. Code Ann. § 36.26.090.
<b>West Virginia</b>	X			State funded	X	X		27 counties use public defender corporations; other 28 counties use assigned counsel	\$45/hour out of court; \$65/hour in court. Maximum \$3000, waivable. (2002 fees.) Reasonable fees as set by local court pursuant to W.V. Code Ann. § 29-21-13a.
<b>Wisconsin</b>	X			State funded	X	X	X	State Public Defender - staff handled 54%, certified private attorneys handled 38% (based on fixed hourly rate), and contract attorneys handled 7%	\$40/hour out of court, plus \$25/hour for travel; \$40/hour in court. No maximum. Wis. Stat. Ann. § 977.08(4m).
<b>Wyoming</b>			X	State funds 85% of the costs, counties fund 15%	X			Public defender	Varies \$40-45/hour. No maximum. (2005 fees.) Determined by the local courts. W.S. § 7-6-109.

<sup>1</sup> 50 State and County Expenditures for Indigent Defense Services Fiscal Year 2005, available at [http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL\\_FY\\_2005\\_Expenditure\\_Table.pdf](http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL_FY_2005_Expenditure_Table.pdf)

<sup>2</sup> Most of the information for funding and structure was derived from *State and County Expenditures for Indigent Defense Services in Fiscal Year 2005*, Dec. 2006, available at [http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL\\_REPORT\\_FY\\_2005\\_Expenditure\\_Report.pdf](http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL_REPORT_FY_2005_Expenditure_Report.pdf)

<sup>3</sup> Most of the information for fees was derived from *Rates of Compensation paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview*, Aug. 2003, with updated information as of Aug. 2005 for selected states, available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/compratesappcnslnoncapfelony03-05.pdf>. Information was verified through review of current statutes.