



Virginia Indigent Defense Commission

Annual Report 2009

In memoriam

Robert E. Shepherd, Jr.

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FY09 - Commission Members and (Appointing Authorities)

Chairman (July 2008-December 2008)
Robert E. Shepherd, Jr. (Virginia State Bar)

Vice Chairman (July 2008-December 2008), Acting Chairman (December 2008-June 2009),
Chairman (July 2009 – Present)
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)
John G. Douglass (Virginia State Bar, January 2009 – Present)
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

Office	Localities Served	Year Established
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.¹

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.

The initial qualification requirements as well as the requalification requirements for attorneys seeking to represent indigents accused in criminal cases are provided in Virginia Code §19.2-163.03, a copy of which can be found on the VIDC website at www.indigentdefense.virginia.gov. Applications for initial certification and certification renewal are also available on the website. Staff of the Training and Certification Department of the VIDC receive applications for certification and recertification for review and determine whether the qualification or requalification requirements have been met.

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 2006. Revisions are made to the courses annually. Certification trainings have been provided monthly during 2009 at the administrative offices in Richmond at no cost to the participants. In addition, the VIDC partners with several local law libraries, including Alexandria and Roanoke County to provide regular video replays of the certification training program at no cost and about two dozen local Bar Associations throughout the Commonwealth have requested and received copies of the courses on DVD.

In addition to providing training programs, the VIDC reviews and certifies legal education courses provided by other entities to determine whether the courses satisfy the continuing education requirements for attorneys to maintain their court appointment eligibility. A current list of MCLE approved courses is provided on the VIDC website and is updated as new courses are 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.

In 2005, the VIDC developed the Certified Assigned Attorney Process (CAAP) to maintain an updated electronic list of the names of certified attorneys eligible for indigent defense court appointment. The CAPP is accessible through the VIDC website and 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. As of June 30, 2009, the number of attorney certifications by case type was as follows:

Case Type	Number of Certified Attorneys 6/30/08	Number of Certified Attorneys 6/30/09	Annual Change
Capital Appellate	56	61	+5
Capital Habeas	42	49	+7
Capital Trial Co-Counsel	169	184	+15
Capital Trial Lead Counsel	107	114	+7
Juvenile	1184	1336	+152
Misdemeanor	1825	2076	+251
Felony	1583	1762	+179

- 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 working committee to develop the official Standards of Practice for Indigent Defense Counsel. 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 representation at the trial level, for appellate criminal defense representation and for juvenile defense representation 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 also published on the VIDC website.

To address the requirement to develop guidelines for the removal of an attorney from the certified list when it finds the attorney violated the Standards of Practice, the VIDC formed a working committee. 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 and the procedures by which to enforce the guidelines were adopted by the VIDC in August of 2007. An informational brochure describing the Enforcement Procedures and a Complaint Form were created and a copy of the each is available on the VIDC website. No founded complaints have been filed.

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 and expand training and development opportunities for private court appointed counsel and public defender office attorneys, investigators, sentencing

advocates and support staff. Grant funding provided in FY08 by the Virginia Department of Criminal Justice Services enabled the VIDC to purchase recording equipment for its training room. The equipment is being used to record quality programs on DVDs, which the VIDC makes available to the public defender offices, local bar associations and law libraries and other organizations to administer free trainings to court appointed attorneys.

In addition to the certification training programs, the VIDC provides Trial Advocacy Workshops (TAWS) and the Lunchtime /Late Day Lecture Series. The TAWS program provides a half-day or full day training focused on sharpening the trial skills of court appointed attorneys. TAWS programs in FY09 included, Everything You Ever Wanted to Know About 46.2 But Were Afraid To Ask, and 16.1 or 18.2? That is the Question. The Lunchtime/Late Day Lectures are hour long lectures held monthly on specialized criminal defense practice topics. Some of the FY09 Lectures included: None for the Road – DUI Cases in VA, Criminal Convictions and Immigration Consequences, Let the Record Reflect: Objections and the Preservation of Issues for Appeal, and Mums the Word: Speaking with Parents/Guardians in Juvenile Representation. The TAWS and Late Day Lecture programs are free of charge to court appointed attorneys and qualify for both Continuing Legal Education (CLE) credit and certification renewal credit.

During FY09, due to budgetary constraints, the Annual Public Defender Conference was canceled. As an alternative, the VIDC was able to partner with some of the most respected minds in forensic science to provide a high quality, day long Forensics CLE program in May 2009. DVDs of the program were produced and provided to each public defender office for use as a training program. Additionally, video replays will be made available free of charge to law libraries and local bar associations.

In an effort to provide each of the public defender attorneys with all of the necessary CLE and certification/recertification credit hours, each public defender office was provided with copies of the certification training program, the Trial Advocacy Workshops, the Lunchtime/Late Day Lectures and the Forensics CLE program and encouraged to provide in-house training sessions for the attorneys.

Additional training programs provided to attorneys in Public Defender offices included the weeklong 6th Trial Skills Bootcamp, a New Attorney Training program, 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 37 attorneys in attendance.

The VIDC also entered into a Memorandum of Agreement with the Department of Human Resource Management in FY09 for the development and use of a site on the Commonwealth Learning Management System's Knowledge Center. The Knowledge Center (KC) serves as an Intranet for the VIDC, and can also be used to provide online training for attorneys and staff. The first training provided through the KC was the mandatory Information Technology Cyber Security Awareness training. The VIDC is developing additional training programs in the KC for use in FY10.

The VIDC continues to partner with other groups on programs to provide training programs 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 FY09 totaled 107,153, which is a 3.5% increase from the 103,518 cases handled in FY08. The VIDC counts

cases by the number of clients represented, rather than the number of charges defended.

(Appendix A, VIDC FY09 Caseload Data).

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

The VIDC 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. The policies are accessible electronically on the Internet to all employees via the Knowledge Center of the VIDC.

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.

2. Background Information.

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.² The ABA report further indicated that Virginia ranked 49th in the nation based on its compensation for court-appointed counsel.³

These reports, and specifically the ranking, sparked debate in Virginia, the result of which was an added requirement on the VIDC to report on Virginia’s ranking among the fifty states for compensation of court appointed counsel. 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 B, State Comparisons Chart**). As a result it may be more useful to note the efforts Virginia has taken to improve its indigent defense system and the funding provided for public defender offices and court appointed counsel since the 2005 ABA Report was published. 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 and funding were 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.⁴

Language was also inserted which requires 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, and the full amount appropriated for fee cap waivers was not expended. Based on the level of requests for waivers and the budget difficulties, the amount appropriated to fund waiver requests was subsequently reduced.

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. Of the new positions allocated, three remain vacant in order to generate savings toward the VIDC's portion of statewide budget reductions.

The steps taken by the General Assembly and the Governor seem to have assisted the public defender offices in recruitment and retention of attorneys and staff prior to the economic downturn. During FY09 the annual rate of turnover was 16 %, reflecting a decrease of 2% in the annual turnover rate from the previous fiscal year. These lower annual rates translate into an overall decrease in turnover of 41% since 2007 when the salary increases were allocated. Additionally, the number of cases handled by the public defender system has increased each year.

The tightening of the job market occasioned with the current economic difficulties may have also aided the VIDC with retention. However it will take some time to realize the longer term affects of both the economic downturn and the 2007 efforts to improve the turnover and vacancy challenges of the VIDC.

¹ U.S. Const. Amend. VI

² 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)

³ Id. at 9

⁴ House Bill 2361 and Senate Bill 1168 of the 2007 Virginia General Assembly session.

APPENDIX A- VIDC FY09 Caseload Data

FY09 ANNUAL REPORT: CASES BY OFFICE														
OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TOTAL ADULT CASES	JUV FEL.	JUV MISD	JUV. APPEAL	TOTAL JUV CASES	ACTUAL ATTNYS	CASES/ ATTY	BUD/ ATTY	CASES/ BUDATTY
Alexandria	3417		913	2225	112	3250	29	124	14	167	10.72	318.8	11.0	311
Arlington	2046	0	446	1243	0	1689	112	245	0	357	12.82	159.6	14.5	141
Bedford	1260		412	787	0	1199	13	48	0	61	4.00	315.0	4.0	315
Charlottesville	2826	0	1064	1631	40	2735	19	69	3	91	7.50	376.8	7.5	377
Chesapeake	5075		1437	3065	187	4689	155	229	2	386	12.13	418.4	13.0	390
Danville	2046		799	1058	32	1889	26	130	1	157	5.00	409.2	5.0	409
Fairfax	4995		2131	2041	42	4214	329	452	0	781	21.48	232.5	22.5	222
Franklin	1453	0	650	704	19	1373	36	43	1	80	6.00	242.2	6.0	242
Fredericksburg	7365	0	2527	4194	48	6769	154	442	0	596	17.00	433.2	17.0	433
Halifax	2178	0	704	1273	21	1998	42	138	0	180	6.80	320.3	7.0	311
Hampton	4070	0	1555	1920	75	3550	149	370	1	520	13.96	291.5	14.0	291
Leesburg	5281	0	1537	3012	90	4639	108	529	5	642	15.00	352.1	15.0	352
Lynchburg	3416		1071	2203	17	3291	28	94	3	125	8.77	389.5	9.0	380
Martinsville	2008	0	654	1222	25	1901	47	60	0	107	6.55	306.6	7.0	287
Newport News	7283	0	2277	4347	63	6687	197	398	1	596	16.85	432.2	17.0	428
Norfolk	6662		2437	3593	151	6181	157	323	1	481	22.81	292.1	23.0	290
Petersburg	2184		963	1084	11	2058	59	67	0	126	7.73	282.5	8.0	273
Portsmouth	4908		1360	2821	376	4557	117	229	5	351	15.91	308.5	16.0	307
Pulaski	2429	0	988	1331	5	2324	18	87	0	105	6.64	365.8	7.0	347
Richmond	11539	0	4351	6560	58	10969	216	352	2	570	25.93	445.0	27.0	427
Roanoke	5068	0	1916	2695	97	4708	124	224	12	360	11.97	423.4	12.0	422
Staunton	4174	0	1306	2490	70	3866	36	266	6	308	8.87	470.6	9.0	464
Suffolk	1914	0	680	1022	56	1758	61	93	2	156	6.88	278.2	7.0	273
VA Beach	10289	0	2856	6090	513	9459	317	473	40	830	22.81	451.1	24.0	429
Winchester	3256	0	1094	1858	154	3106	35	114	1	150	10.00	325.6	10.0	326
Public Defender	107,142	0	36128	60469	2262	98859	2584	5599	100	8283	304.13	352.3	312.5	343

Capital Defender	9	9				9								
Central	4	4				4							3	
Northern	0	0				0							3	
Southeastern	2	2				2							3	
Southwestern	3	3				3							3	
Appellate	2	0	0	0	135	135							4.85	
PD Offices*					133									
Non-PD Office					2									
COMMISSION	107153	9	36128	60469	2264	98870	2584	5599	100	8283			329.35	
* Not counted in Commission Totals since already accounted for in originating PD Office.														

Appendix B, State Comparisons Chart

	Funding Source ¹				Atty Type				
State	State	Local	Mix	Funding Description ²	PD	Appt	Contract	Structure ²	How Ct App Counsel Paid
Alabama	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. Also, counsel can recover about \$30/hr in overhead. Maximums range from \$1500-3500 and are waivable. Cases where life without parole or the death sentence are possible penalties have no maximums. Ala. Code § 15-12-21 (1975).
Alaska	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	Hourly rate varies from \$50 to \$100 depending on the experience of the attorney and whether he was appointed or contracted. Maximums range from \$350-4000 and are waivable. (Alaska Admin. Code tit. 2 § 60.10 (1986).
Arizona			X	99% provided by counties, 1% from a general fund appropriation. Partially funded by penalties levied on court fines.	X	X	X	Mix of public defenders, contract attorneys, and assigned counsel	Varies. Authority granted to local courts for determination. Ariz Rev. Stat. Ann. § 13-4013(a).
Arkansas			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	Ark. Code Ann. § 16-87-211 authorizes the PD Comm to set the rates. Varies between \$60-110. No maximum for capital defense cases.

California			X	Primarily county funded. However, all appellate and post-conviction offices are funded by the state.	X	X	X	All large counties except San Mateo have Public Defender; others are mixed between public defender, assigned counsel or contract defender; for conflicts, counties contract and/or create second public defender; 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.
Colorado	X			State funded	X	X		Colorado State Public Defender; appointed counsel for conflicts	Rates set by Chief Justice Directive. \$47-51/hour for PD, \$56-60 for appointed attorneys. Maximums vary from \$2500-15,000, and are waivable. Colorado Revised Statutes § 21-2-105.
Connecticut	X			State funded	X		X	Connecticut Division of Public Defender Services makes policy decisions and has the authority to appoint; contracted attorneys are appointed for conflicts	Contractual attorneys earn \$65/hour. Public Defenders earn between \$325 and \$1k depending on the court where the case is heard. Max is waivable. For Capital cases, attorneys make \$75 an hr. Determined by Chief Public Defender, C.G.S. § 51-291(12).
Delaware	X			State funded	X		X	Delaware State Public Defender; pool of contracted attorneys for conflicts	Delaware Rule 44 of Criminal Procedure sets rate of \$60 per hr. However, contract attorneys handle cases the PD cannot take (they do so for a flat rate of \$54k a yr). 15k max per case.

District of Columbia				Federal funds	X	X		Public Defender Services; Under the Criminal Justice Act, many cases handled by court appointment (some felonies, many misdemeanors, traffic).	\$65/hour. Maximum \$3600, waivable. Also, no attorney can earn more than \$135,200 annually from court appointments. D.C. Code Ann. § 11-2604(a).
Florida	X			State funded since 2004	X	X		Public Defender; circuit indigent defense services committees oversee conflicts. Court appoints counsel in limited circumstances.	Generally, attorneys are awarded an amount determined to be reasonable by the local jurisdiction. However, the salaries of the Public Defenders are set by the general appropriations act (FL Stat. 27.5301). Maximums: misdemeanors and juveniles - \$1000; capital, non-life felonies - \$2500; life felonies - \$3000; capital felonies - \$15,000. Maximums are waivable in limited circumstances. Flat fees for court appointed counsel are not to exceed amounts as delegated in Fla. Stat. § 27.5304.
Georgia			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 and direct appeals from these 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; \$95 for capital cases. No maximum. Georgia Code Ann. § 17-12-8(b)(9) grants authority to Georgia Public Defender Standards Council.

Hawaii	X			State funded	X	X		Office of the Public Defender; court appointed for conflicts	* \$90/hour for in court and out of court work. Maximum \$6k, Waivable. H.R.S. § 802-5(b).
Idaho			X	County funded trial level; state funded appellate level	X	X	X	Public defender, assigned counsel, contract or a mix - chosen by the county; State-Funded Appellate Defender handles criminal appeals	Varies; typical fee is \$40-50/hour. No maximum. Authority granted to local judge pursuant to Idaho Code § 19-860(b).
Illinois			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 (but most counties have one anyways); 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. The statutory rate only applies to counties over 200k in population, of which there is one. Maximum \$1250, waivable. 725 I.L.C.S. 5/113-3. For capital cases attorneys are paid about \$145 an hr.
Indiana			X	State funded Indiana Public Defender Commission assists in capital cases; counties are reimbursed up to 40% on non-capital cases and juvenile delinquency matters through state funding	X	X		State Public Defender of Indiana represents indigent defendants in post-conviction proceedings and appeals at state level;	\$60/hour for counties that meet State Public Defender Standards; capital cases: \$101/hour. No maximum. Ind. Code § 33-9-13-3.
Iowa			X	Primarily state - counties contribute on juvenile defense cases	X	X	X	Mixed - state public defender offices, contract attorneys, and court appointed	\$65 an hr for Class A Felonies, \$60 an hour for all other felonies. State Public Defender sets per case maximums pursuant to Iowa Code 13B.4.

Kansas			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	\$80/hr; \$150/hr for capital cases. Maximum \$5000 (no max for capital cases). Max is waivable. Set by Kansas Board of Indigents' Defense Services pursuant to K.S.A. 22-4501.
Kentucky			X	Primarily state - counties that choose their own structure must 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. K.R.S. Ann. 31.017(4). (For Capital Cases: \$75 an hr or \$30k max).
Louisiana			X	Predominantly county-funded (via fines for traffic and misdemeanor offenses), but greater portion now being state-funded as of 2007	X	X	X	As of 2007, Louisiana Indigent Defense Assistance Board (LIDAB) oversees statewide public defense. Local public defender offices are given authority to function as they see fit.	Louisiana Public Defender Board has authority to set contract rates pursuant to L.S.A. Rev. Stat. 15 § 147. The average rate is \$42 an hour for in-court and out of court work. No per case maximum. Attorneys who contract with the state to handle felony cases earn \$40k a year.
Maine	X			State funded		X		Assigned counsel	\$50/hour. Maximum \$1250-2500, waivable. Maine Rev. Stat. Ann. 15 § 810 grants authority for reasonable fees to be set by the Superior Court.
Maryland	X			State funded	X	X		Maryland State Public Defender; conflicts are court appointed	\$50/hour. Maximum \$750-3000, waivable. These fees are set from time to time by the Public Defender, pursuant to Ann. Code of Maryland Art. 27 § 6(d).

Massachusetts	X			State funded	X	X		Mix of "Bar Advocates" (2,400 private attorneys) and public counsel division (110 staff attorneys). Bar Advocates handle the majority of the cases.	\$100 an hour for homicide cases, \$60 an hour for non-homicide Superior Court cases, and \$50 an hour for all other cases. No maximum set. M.G.L. Ch. 211D § 11.
Michigan			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. Appellate level - mix of Public Defender and private assignment.	Hourly rates and per case maximum vary widely. M.C.L. § 775.16 grants authority to local judge to set rates.
Minnesota	X			Fully state funded;	X		X	Minnesota State Board of Public Defense; conflicts primarily handled by part-time public defenders with private offices	\$50/hour. No maximum. Rates established by public defender. Hourly rates are rarely used since they only apply to Public Defenders and contract attorneys are typically used.
Mississippi			X	Non-capital trial level cases are county funded; capital trials and appeals are state level through special fund agencies or general fund agencies (much of this \$ is derived from fines)	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	Hourly rate varies (up to \$90 an hr). Maximum \$1000, (\$2000 for capital cases) plus \$25/hour overhead expenses. Not waivable. (Miss. Code Ann. § 99-15-17.)
Missouri	X			State funded	X			Missouri State Public Defender; most conflict of interest given to other state regional office	Hourly rates are rarely used. No maximum. Authority granted to State Public Defender Mo. Rev. Stat. § 600.017. Contracted attorneys earn between \$500-\$700 per case, waivable.

Montana	X			State funded	X		X	Montana Public Defender Act 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 (\$120 for capital cases). No maximum. Montana Code Ann. 46-8-201(1) grants authority to local judge.
Nebraska			X	Most county funded; Nebraska Commission on Public Advocacy provides some funding for capital litigation	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 but typically \$60/hour; Typically no maximum. If there is a max, it is waivable. Nebraska Code 29-1804.12 grants authority to a local judge to set the rates.
Nevada			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	Any county with a population over 100k must have a public defender office. Counties that do not accept the state system use flat-fee or low-bid contract programs.	\$100/hour; \$125/hour for death penalty cases. Maximum \$12,000 for life w/o parole; \$20k for capital cases, \$2500 remainder. Waivable. N.R.S. § 7.125.
New Hampshire	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 (\$15k for capital cases), waivable. New Hampshire Constitution, part 2, art. 73A, grants authority to State Supreme Court.
New Jersey			X	State funded. However, misdemeanors are tried in municipals court (Attorneys in these cases are funded by municipalities).	X	X		New Jersey State Public Defender; court appointed for conflicts	\$50/hour out of court; \$60/hour in court; \$75 for capital cases. No maximum. N.J.S.A. § 2A:158A-7 grants authority to N.J. Public Defender.

New Mexico	X			State funded	X		X	Public Defender Department. Trial level - about half of counties have access to public defenders; remaining counties contract attorneys.	Hourly rate is rarely used. Chief Public Defender formulates fee schedule pursuant to N.M. Stat. Ann. § 31-15-7(11). Max for death penalty case is \$24,500 for lead counsel, \$12,500 for co-counsel, and is waivable
New York			X	Primarily county funded; Indigent Legal Services Fund provides full funding for children in dependency and delinquency cases and some other help to counties.	X	X	X	Counties choose between public defender, private legal aid society, and/or assigned counsel	\$75/hour (except for capital cases where the attorney can earn up to \$125 an hour or \$24,500 max). Maximum \$4400 for non-capital cases, waivable. Art. 18-B of the County Law § 722-b.
North Carolina	X			State funded	X	X	X	13 counties use public defender. Remaining counties use assigned counsel or contract attorneys. All counties coordinated through Indigent Defense Services	\$65/hour (except for capital cases where attorneys earn \$85 or \$95 an hr). No maximum. Office of Indigent Defense Services determines amount pursuant to N.C. Gen. Stat. § 7A-498.5.
North Dakota	X			State funded	X	X	X	In transition - Commission on Legal Counsel now overseeing defense; mix of public defenders; assigned and contract attorneys	Hourly rate varies but typical \$60-85/hour. No maximum. S.B. 2027 (Apr. 2005) grants authority to the Commission on Legal Counsel for Indigents to set fee.

Ohio			X	County funds and state reimbursement through Public Defender Commission (rate of reimbursement fluctuates).	X	X	X	Ohio Public Defender contracts with 10 counties to provide indigent services - which contracts with local attorneys. Also, limited direct representation through Ohio Public Defender. However, Ohio counties may select their own delivery model.	Hourly rate varies but \$50/hour out of court; \$60/hour in court; \$95 for capital are recommended (but study reveals these attorneys only made \$39/hr in 2005).. Also maximums ranging from \$2500-10,000 are recommended (75k for capital). Max is waivable. Ohio Rev. Code Ann. § 120.33 gives local board of commissioners authority to set rates.
Oklahoma			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; OJD 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. For capital cases, attorneys can earn up to \$80/hr or 20k max.
Oregon	X			State funded	X	X	X	Office of Public Defense Services - counties may choose public defenders, contract attorneys, or court appointed system	\$40/hour; \$55/hr for capital cases. No maximum. (2002 fee.) O.R.S. § 151.216(f)(C) grants authority to Public Defense Services Commission.
Pennsylvania		X		County funding	X			Public defender is the only option allowable by statute.	Varies. (2002 fees: \$40-75/hour.) Some counties have a max, some do not. Decisions are left to the local judge. Penn. Stat. Ann. art. 13A § 9960.7.

Rhode Island	X			State funded	X	X		Public defender generally, but court appointed counsel represents when there is a conflict of interests.	Murder cases \$100/hour; >10 years \$90/hour; <10 years \$60/hour. Maximum murder \$15k; >10 years \$10k; <10 years \$5k. Waivable. 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.
South Carolina			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; \$50 out of court for capital; \$75 in court for capital. Maximum \$3500 (\$25k for capital), waivable. Code of Law of S.C. Ann. § 17-3-50.
South Dakota			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 but, some use public defender. There are three state public defender offices.	Counsel must be paid a value that is "reasonable" and "just". No maximum. S.D.C.L. § 23A-40-8.
Tennessee			X	Primarily state funded - exceptions are Shelby and Davidson county which use a mix of state and local funding	X			Elected public defender overseas his judicial district	\$40/hour out of court; \$50/hour in court (for capital cases: \$75 out of court; \$100 in court). Maximum \$1000; waivable to maximum of \$3000, which is waivable to limitless value if undue hardship would result otherwise. Supreme Court Rule 13.
Texas			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 \$30-175/hour. Maximum varies widely. Authority granted to local judge pursuant to Tex. Stat. Ann. art. 26.05.

Utah		X		County funded (one of only two states that provide no state funding, the other is PA).	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	Hourly rate varies. Utah Code Ann. § 72-32-3(3) grants authority to district court.
Vermont	X			State funded	X		X	Public defender - staff attorneys handle 75%, contract counsel provide remaining	\$50/hour. Maximums: life or death penalty: \$25,000; major felony \$5000; minor felony \$2000. Waivable. Contract attorneys are paid 103k a year. 13 V.S.A. § 5205(a) grants the Vermont Supreme Court power to set fees.
Virginia	X			State funded	X	X		Public defender or court appointed - VIDC oversees	In District Court: \$120 for most cases, or \$650 if a juvenile and crime would be a felony if committed by an adult and punishable by more than 20 years, or a probation violation offense, or another amount if provided for by the law. In Circuit Court: if death - a reasonable amount determined by the court, for felonies that could be punished by more than 20 years - \$1235, \$445 for other felonies, for misdemeanors - \$158 Maximum waivable. Va. Code Ann. § 19.2-163.
Washington			X	Primarily funded by the counties with little contribution by state (5.2%) if the county meets the standards endorsed by the State Bar, or for training purposes	X	X	X	County determines system to use - public defender, assigned counsel, or contract attorneys	Lots of discrepancy among jurisdictions. Varies from \$40-80/hour (State Bar recommends \$125 for capital cases). Maximum varies. Waivability varies. Authority granted to court pursuant to Wash. Rev. Code Ann. § 36.26.090.

West Virginia	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 unless punishment could be life without parole, waivable. W.V. Code Ann. § 29-21-13a.
Wisconsin	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%	\$45/hour in court, \$35 an hour out of court, plus \$25/hour for travel. No maximum. Wis. Stat. Ann. § 977.08(4m).
Wyoming			X	State funds 85% of the costs, counties fund 15%	X			Public defender. The State Public Defender is appointed by and serves at the pleasure of the governor.	Varies \$35-100/hour. No maximum. Determined by the local courts. Wyoming Rules of Criminal Procedure, Rule 44(e) sets range.

¹ The Spangenburg Group, *50 State and County Expenditures for Indigent Defense Services Fiscal Year 2005* (2006), available at http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL_FY_2005_Expenditure_Table.pdf.

² Most of the information for funding and structure was derived from *State and County Expenditures for Indigent Defense Services in Fiscal Year 2005* (2006), available at http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL_REPORT_FY_2005_Expenditure_Report.pdf

³ 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>. . Augmented with information from *Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview June 2007*, and *Rates of Compensation for Court-Appointed Counsel in Capital Cases at Trial: A State-by-State Overview, June 2007*, Information was verified through review of current statutes