

# VIRGINIA INDIGENT DEFENSE COMMISSION

## **COMMISSION MEMBERS**

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*David R. Lett*  
*David D. Walker*  
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*September 23, 2010*

**DAVID J. JOHNSON**  
*Executive Director*

**DJ GEIGER**  
*Deputy Director*

**CARLOS L. HOPKINS**  
*Training & Attorney Certification Director*

**EDWARD ERNOUF, III**  
*Information Systems Director*

**AMY WILLIAMS**  
*Human Resources Director*

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: 2010 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 2010 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 or comments you have concerning this report.

Sincerely,



David J. Johnson



# Virginia Indigent Defense Commission

Annual Report 2010

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## **FY10 - Commission Members and (Appointing Authorities)**

Chairman (July 2009 – Present)

The Honorable Alan E. Rosenblatt (ret.) (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)

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)

Kristen Howard, (Crime Commission, designee)

Maria D. Jankowski (Speaker of the House)

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, ISO

D. J. Geiger

Director, Information Systems

Edward Ernouf III

Director, Training & Attorney Certification

Carlos L. Hopkins

Director, Human Resources

Amy Williams

Director, Budget and Finance

Vacant

Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
Alexandria	City of Alexandria	1987
Appellate	as appointed	
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.<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 quality and cost effectiveness.

## **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](http://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 2010 at the administrative offices in Richmond at no cost to the participants. In addition, the VIDC partners with local law libraries and bar associations, including the Alexandria Law Library and Roanoke/Salem Bar Association to establish satellite sites to provide regular video replays of the certification training program at no cost. In addition to the two satellite locations, the training department has provided initial certification and other training DVDs to nearly two dozen public defender offices and bar associations throughout the Commonwealth.

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 CAAP 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 quarterly advising of attorneys who have not been recertified or who have been removed from the certified list for other reasons. As of June 30, 2010, the number of attorney certifications by case type was as follows:

<b>Case Type</b>	<b>Number of Certified Attorneys 6/30/09</b>	<b>Number of Certified Attorneys 6/30/10</b>	<b>Annual Change</b>
Capital Appellate	61	57	-4
Capital Habeas	49	42	-7
Capital Trial Co-Counsel	184	168	-16
Capital Trial Lead Counsel	114	110	-4
Juvenile	1336	1148	-188
Misdemeanor	2076	2014	-62
Felony	1762	1714	-48

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. Two 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 regularly 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 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 FY10 included, Avoiding the Potholes in Traffic Court, and Babysteps: Opening Statements, Closing Statements & Great Direct & Cross Examinations.

Late Day Lectures are hour long seminars held monthly on specialized criminal defense practice topics. Some of the FY10 Lectures included: Melendez-Diaz v. Massachusetts: A Case Study & Its Implications; The Art of the Deal: Plea Offers v. Your Client's Needs; Virginia Is For Lovers: Defense of Domestic Violence Cases from A-Z; and It's Too Late to Apologize: Winning Your Probation Violation Cases. 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 FY10, the Annual Public Defender Conference was reinstated. This year's conference provided attendees with eight (8) CLE hours including one (1) hour of ethics credit.

The conference provided public defenders with valuable information on a number of hot topics in criminal law. Among these topics was a session discussing the recent United States Supreme Court decision in *Padilla v. Kentucky*, No. 08-651, 2010 U.S. LEXIS 2928 (Mar. 31, 2010). Attendees were also instructed on how to attack faulty forensic science reports following the recent report on forensic science in the U.S. by the National Academy of Sciences. There were also sessions on defending domestic violence cases, handling potential false confessions, changes to the Exclusionary Rule, and ethical concerns in the digital age.

Additional training programs provided to attorneys in Public Defender offices included the weeklong 7<sup>th</sup> Trial Skills Boot Camp, and the Public Defender Management Training. The Trial Skills Boot Camp for new attorneys was held at the TC Williams School of Law at the University of Richmond, with 30 attorneys in attendance.

The VIDC continues its Memorandum of Agreement with the Department of Human Resource Management for the 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 VIDC is developing additional training programs in the KC for use in FY11.

The VIDC continues to partner with other groups to provide training Programs, including the 15<sup>th</sup> Robert E. Shepherd, Jr. Juvenile Law and Education Conference, held at the University of Richmond on May 14, 2010. The Conference is named for the late Professor Robert Shepherd, Jr., a former Commission Chairman and tireless advocate for the legal rights of children. The Conference provides training and information to children's advocates from all disciplines and is co-sponsored with 7 other organizations. The VIDC continues to play a key role in the planning and organization of this important program.

After a two year absence, the VIDC organized a training conference for its Investigators and Sentencing Advocates. The program brought the two groups together for several plenary sessions to cover areas of mutual interest then divided into breakout sessions to address topics specific to the individual groups. Some of the areas covered during the two day conference included maintaining client confidentiality in the digital age; recognizing and providing services to clients with mental health challenges; testifying techniques; preparing dispositional and investigative reports; and handling witness interviews.

**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 FY10 totaled 103,575, which is approximately a 3.5% decrease from the 107,153 cases handled in FY09. The VIDC counts cases by the number of clients represented, rather than by the number of charges defended. This decrease is consistent with a similar decrease in the number of new criminal cases opened in the general district, juvenile and circuit courts from FY08 and FY09. Court data for FY10 criminal cases was unavailable at the time of the publication of this report. (See **Appendix A, VIDC FY10 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.<sup>2</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>3</sup>

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 published which rank the 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**).

The economic downturn has resulted in budgetary reductions across the nation for the last two and a half years. No state or state agency has been immunized against these cuts. Just before the downturn, Virginia had taken several steps to improve its indigent defense system.

During the 2007 Virginia made multiple efforts toward improving both public defender and private court appointed indigent defense funding and services.

Private court appointed counsel fees. Legislation and funding were approved in 2007 allowing for payments 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>4</sup> The legislation required the collection and maintenance of more detailed information to determine the cost of the complete elimination of the fee caps. The Supreme Court of Virginia developed guidelines to determine which waiver requests met the criteria contained in the statute. The \$4.2 million appropriated has been expended each year, and the funding has remained level despite subsequent severe budget cuts across many state agencies.

Public defender offices. In 2007 efforts were made to address some of the challenges facing the public defender offices, including an annual turnover and vacancy rate of 27%. Salary increases over the 4% state employee raises and additional positions were approved.

Budget Cuts. During fiscal year 2009, the Governor and the General Assembly were faced with severe revenue shortfalls forcing reductions to nearly all state funded agencies. The appropriations for the VIDC are contained within the Judicial Department portion of the budget. The Judicial Department was instructed by the Governor to propose cuts totaling \$5 million over the biennium. The end result for FY09 was a \$5 million Judicial Reversion, which requires a return of funds to the General Fund. The Reversion allowed the agencies under the Judicial Department to determine where cuts or savings would be made within their budgets. The VIDC's portion of the reversion was \$450,000 per year.

During the General Assembly session, the Judicial Reversion amount was increased. This resulted in an additional reversion of \$94,000 from the VIDC, for a total of \$544,000, per year.

Unfortunately three of the new positions allocated to the capital defender offices in 2007 have remained vacant in order to generate savings toward the payment of the Reversion.

In addition part time positions, one each in the Arlington and Fairfax Public Defender offices, were frozen, and a 90 day hiring delay on all positions has been implemented.

Reductions made in FY10 resulted in an additional Judicial Reversion amount of \$2.3 million. The VIDC portion of this Reversion is \$400,000 per year. The total reversion amounts now total \$944,000 per year, or approximately 2.2% of the total VIDC appropriation. While the reduction percentage seems small comparatively, the impact is significant. For example, in FY10 95% of the expenditures made by the VIDC were for the payment of personnel and rent costs.

The steps taken in 2007 coupled with a weak job market for the legal community and thousands of new law school graduates entering the job market each year have assisted the public defender offices in recruitment and retention of attorneys. During FY10, the annual rate of turnover was 13%. The annual rate of turnover for FY09 was 16 %. These numbers are promising and have brought more stability to the offices. However it will take some time to realize the longer term affects of the economic downturn, including the lack of state employee raises for three years, hiring delays and frozen positions.

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

<sup>2</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>3</sup> Id. at 9

<sup>4</sup> House Bill 2361 and Senate Bill 1168 of the 2007 Virginia General Assembly session.



### APPENDIX A- VIDC FY10 Caseload Data

FY10 ANNUAL REPORT: CASES BY OFFICE												
OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TOTAL ADULT CASES	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TOTAL JUV CASES	BUDGETED ATTY	CASES/BUD. ATTY
Alexandria	3122		849	2083	19	2951	36	129	6	171	11.0	284
Arlington	1904	0	345	1234	0	1579	83	242	0	325	11.0	173
Bedford	1185		348	769	4	1121	13	51		64	4.0	296
Charlottesville	2813	0	1012	1678	43	2733	28	51	1	80	7.5	375
Chesapeake	4583		1304	2673	203	4180	139	262	2	403	13.0	353
Danville	2164	1	845	1127	32	2005	26	133		159	5.0	433
Fairfax	3983		1567	1697	43	3307	292	382	2	676	22.0	181
Franklin	1278	0	564	628	15	1207	30	41	0	71	6.0	213
Fredericksburg	7424	0	2728	4132	83	6943	134	347	0	481	17.0	437
Halifax	2247	0	753	1348	17	2118	27	102	0	129	7.0	321
Hampton	4167		1469	2199	54	3722	111	331	3	445	14.0	298
Leesburg	5008	0	1491	2815	89	4395	116	488	9	613	15.0	334
Lynchburg	3084		1020	1929	18	2967	34	83	0	117	9.0	343
Martinsville	2071	0	658	1302	25	1985	35	51	0	86	7.0	296
Newport News	7412		2194	4670	58	6922	165	325	0	490	17.0	436
Norfolk	6616		2135	3943	64	6142	141	330	3	474	23.0	288
Petersburg	2284		908	1274	10	2192	35	57	0	92	8.0	286
Portsmouth	5510		1360	3476	411	5247	93	162	8	263	16.0	344
Pulaski	2389	0	913	1306	7	2226	29	134	0	163	7.0	341
Richmond	11113	0	3827	6795	39	10661	139	311	2	452	27.0	412
Roanoke	4563		1724	2461	105	4290	73	184	16	273	12.0	380
Staunton	3624	0	1096	2185	67	3348	35	239	2	276	9.0	403
Suffolk	2142		614	1326	47	1987	66	89	0	155	7.0	306
VA Beach	9600		2661	5764	488	8913	265	407	15	687	24.0	400
Winchester	3282	0	1170	1797	165	3132	37	110	3	150	10.0	328
Public Defender	103,568	1	33555	60611	2106	96273	2182	5041	72	7295	308.5	336

Capital Defender	7	7				7						
Central	0	0				0					3	
Northern	2	2				2					3	
Southeastern	1	1				1					3	
Southwestern	4	4				4					3	
Appellate	0	0	0	0	0	0					4	
COMMISSION	103575	8	33555	60611	2106	96280	2182	5041	72	7295	324.5	

### Appendix B, 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. 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).
<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	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).
<b>Arizona</b>			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).
<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	Ark. Code Ann. § 16-87-211 authorizes the PD Comm to set the rates. Varies between \$60-110. No maximum for capital defense cases.

<b>California</b>			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.
<b>Colorado</b>	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.
<b>Connecticut</b>	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).
<b>Delaware</b>	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.

<b>District of Columbia</b>				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).
<b>Florida</b>	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.
<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 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.

<b>Hawaii</b>	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).
<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; 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).
<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 (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.
<b>Indiana</b>			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.
<b>Iowa</b>			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.

<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	\$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.
<b>Kentucky</b>			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).
<b>Louisiana</b>			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.
<b>Maine</b>	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.
<b>Maryland</b>	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).

<b>Massachusetts</b>	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.
<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. 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.
<b>Minnesota</b>	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.
<b>Mississippi</b>			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.)
<b>Missouri</b>	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.



<b>Montana</b>	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.
<b>Nebraska</b>			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.
<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	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.
<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 (\$15k for capital cases), waivable. New Hampshire Constitution, part 2, art. 73A, grants authority to State Supreme Court.
<b>New Jersey</b>			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.

<b>New Mexico</b>	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
<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.	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.
<b>North Carolina</b>	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.
<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	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.

<b>Ohio</b>			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.
<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. For capital cases, attorneys can earn up to \$80/hr or 20k max.
<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; \$55/hr for capital cases. 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 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.

<b>Rhode Island</b>	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.
<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; \$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.
<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 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.
<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 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.
<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 \$30-175/hour. Maximum varies widely. Authority granted to local judge pursuant to Tex. Stat. Ann. art. 26.05.

<b>Utah</b>		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.
<b>Vermont</b>	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.
<b>Virginia</b>	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.
<b>Washington</b>			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.

<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 unless punishment could be life without parole, waivable. 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%	\$45/hour in court, \$35 an hour out of court, plus \$25/hour for travel. No maximum. Wis. Stat. Ann. § 977.08(4m).
<b>Wyoming</b>			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.

<sup>1</sup> 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](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* (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>. . 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