

VIRGINIA INDIGENT DEFENSE COMMISSION

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September 26, 2011

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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: 2011 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 2011 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 2011

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FY11 - 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

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)

Kent Smith (Governor)

David D. Walker (Speaker of the House)

Carmen B. Williams (Speaker of the House)

Kristi A. Wooten (Governor)

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

Office	Localities Served	Year Established
Alexandria	City of Alexandria	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, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003

Public Defender Offices

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

Public Defender Offices

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

VIRGINIA INDIGENT DEFENSE COMMISSION

A. BACKGROUND

The Virginia Indigent Defense Commission (VIDC), in conjunction with court appointed private attorneys, provides legal representation for indigent people accused of crimes for which the possible punishment is incarceration or death.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 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 list of the qualification requirements 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. The Training and Certification Department of the VIDC receives applications for certification and recertification for review and determines 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 2011 at the administrative offices in Richmond at no cost to the participants. The VIDC partners with the Roanoke/Salem Bar Association, to provide regular video replays of the initial certification training program at no cost to attendees. The Training Department has also provided initial certification and other training DVDs to more than two dozen public defender offices and bar associations throughout the Commonwealth.

The VIDC reviews and certifies legal education courses provided by other organizations to determine whether the courses satisfy the continuing legal education requirements for attorneys to maintain their eligibility for court appointments. A current list of MCLE approved courses is provided on the VIDC website and is updated as new courses are approved.

By statute attorneys maintain their eligibility for court appointments for a period of two years from the date of their initial certification. Prior to the expiration of each two year period, attorneys receive multiple recertification notifications informing them how to maintain their eligibility for court appointments. Attorneys wishing to maintain certification for court appointed work are required to complete the one page recertification form. Attorneys must include on the form the information verifying their 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. During Fiscal Year 2011, the VIDC updated and replaced the CAAP with the Attorney Certification System (ACeS). ACeS is an online system that allows attorneys to apply, renew and modify their certification status via the VIDC website. ACeS also provides court personnel access to the website for easy retrieval of certification information by jurisdiction and or case type. 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, 2011, the number of certified attorneys was 1,955 and the attorneys certified by case type were as follows:

Case Type	Number of Certified Attorneys 6/30/10	Number of Certified Attorneys 6/30/11	Annual Change
Capital Appellate	57	49	-8
Capital Habeas	42	36	-6
Capital Trial Co-Counsel	168	147	-21
Capital Trial Lead Counsel	110	94	-16
Juvenile	1148	1051	-97
Misdemeanor	2014	1905	-109
Felony	1714	1619	-95

- 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 identify opportunities to provide training for private court appointed counsel and public defender office attorneys, investigators, sentencing advocates and support staff.

In addition to the certification training programs, the VIDC provided a Trial Practice Series consisting of one hour courses focused on sharpening the trial skills of court appointed attorneys. Courses in FY11 included Pleading the Affirmative Defense and Interpreting the Results of the PERK in Sexual Assault Cases.

The 2011 Annual Public Defender Conference provided all public defender attorneys with the opportunity to attend and earn more than half of the required Continuing Legal Education credit. It was held on September 21 and 22 in Richmond. Topics included appellate advocacy, defense of gang cases, traffic crimes and offenses, ethics, immigration, stress management for lawyers, challenging police investigations and an update on case law relative to the Confrontation Clause.

Additional training programs provided to attorneys in Public Defender offices included the week long Trial Skills Boot Camp, an Appellate Practice Training, and the Chief Public Defender Management Training.

The 8th Annual Trial Skills Boot Camp for new public defender attorneys was held in Richmond with 40 attorneys in attendance. Attendees were provided with one hour lectures on Voir Dire, Discovery, Ethics, Opening Statements, Experts, Laying Foundations, Closing Arguments, Plea Negotiations, Direct and Cross Examinations and Bifurcated Trials. Each day the attorneys participated in several small group sessions led by experienced public defender

attorneys, during which they performed work on the sample case file provided in their materials. The purpose of the small group sessions was to assist the attorneys in their preparations for the jury trials held on the last day of the training. The attorneys also participated in workshops on Opening Statements, Closing Arguments, Direct and Cross Examinations and Laying Foundations. The Workshops and Small Group sessions provided the opportunity for hands on training and immediate, direct feedback from senior attorneys within the Public Defender system. Mock trials were held on the last day of the training program. Sitting judges, substitute judges and experienced criminal defense lawyers served as the judges for the trials. The juries were comprised of members of the local community, including law school, college and high school students and other citizens. Both the judges and the jurors provided feedback to the participants.

This year, attorneys who attended the Boot Camp will attend a follow up Appellate Boot Camp in December. The attorneys will be informed that they lost their cases at trial and must now appeal the decision. They will be subject to all of the appellate rules and deadlines just as they would be in a real case, including tracking their appeal in the case management system. Upon completion and submission of their briefs, they will travel to a regional location to present their oral argument before the “appellate court”, a panel consisting of senior appellate coordinators from offices in their respective regions. The coordinators will then provide feedback and training on the appellate process and the attorney’s submitted work. The area of appellate practice was and will continue to be a focus in the training programs for public defender attorneys.

The Appellate Practice Training was a two day training held in March in Richmond for the designated Appellate Supervisors in each Public Defender office. In an effort to improve the

quality of appellate work within the Public Defender system and to eliminate the instances of appellate defaults, the VIDC required each office to designate an Appellate Supervisor and a lead appellate support staff member.

The training program included the following topics: Role of the Appellate Supervisor, Persuasive Oral Argument, Changes in Appellate Rules/ VIDC Policy, Preparing for Oral Argument, Cases You Must Know, Mooting the Oral Arguments in Your Office (Demonstration), Preserving Issues for Appeal/Framing the Outline for the Petition for Appeal, and Troubleshooting Best Practices (Missed Deadlines, Missing Transcripts, Anders Petitions, 40-day Letters, etc). Job descriptions were developed for and reviewed with the Appellate Supervisors and the Chief Defenders.

The Chief Public Defender Management Training program was a two day program held in Richmond during which the chief managing attorneys in each public and capital defender office were provided an in-depth explanation of their evolving management responsibilities. The training included a thorough review of their revised Employee Work Profile and the performance expectations for each of the listed job responsibilities. In addition, attendees were provided with tools and training to assist them in the areas of Recruitment, Selection and Hiring of new employees, Performance Management procedures, and the responsibilities and expectations of the Office Manager positions in the field offices.

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. Currently, the VIDC utilizes the KC to administer the mandatory annual Cyber Security training and guidance on

VIDC Travel Voucher completion. Management training programs will continue to be a focus in FY12 with courses being developed for use via the KC in the areas of Performance Management, Recruitment and Selection, Workplace Harassment, and the VIDC Grievance Procedure.

The VIDC continues to partner with other groups to provide training programs, including the 16th Annual Robert E. Shepherd, Jr. Juvenile Law and Education Conference, held at the University of Richmond on June 17, 2011. 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 8 other organizations. The VIDC continues to play a key role in the planning and organization of this important program.

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 FY11 totaled 99,555, which is approximately a 4% decrease from the 103,575 cases handled in FY10. The VIDC counts cases by the number of clients represented, rather than by the number of charges defended. (See Appendix A, VIDC FY11 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 updated as necessary, but no less than 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.**

a. 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 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.

b. Ranking Analysis.

Determinative 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 or client; others pay by the charge. States fully fund public defender and court appointed work, use a combination of funding from the state and local levels or leave the funding responsibility entirely to the localities. (**Appendix B, State Comparisons Chart**).

The economic downturn has resulted in budgetary reductions across the nation for several years. No state or state agency has been immunized against these cuts. During the 2007 General Assembly session just before the economic downturn, Virginia took several steps to improve

both public defender and private court appointed indigent defense funding and services.

c. Private court appointed counsel fees.

Legislation and funding 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 were approved.⁴ 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 toward the fee cap waiver has been expended each year. Funding has remained level despite subsequent severe budget cuts across state agencies.

d. Public defender offices.

Additionally 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.

e. The economy.

As they approached the budget development and adoption for fiscal year 2009, the Governor and the General Assembly faced 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 Governor proposed a \$5 million Judicial Reversion, which required 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. The VIDC's portion of the proposed reversion was \$450,000 per year.

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

Unfortunately some of the new positions allocated to the capital defender offices in 2007 remained vacant in order to generate savings toward the payment of the Reversion. In addition positions in the Arlington and Fairfax Public Defender offices were frozen, and a 90 day hiring delay on all positions was implemented.

Further need for budget reductions 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 reversion amounts in place through FY12 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 approximately 95% of the expenditures made by the VIDC were for the payment of personnel and rent costs.

The Appellate Defender Office, which had been funded by the VIDC for years from excess turnover and vacancy savings, handled approximately 10% of the appeals generated by the Public Defender offices. The Appellate Office was closed at the end of FY10 due to concerns with the ability to continue to fund the office, pay the Judicial Reversion Amounts and the possibility of additional budget reductions. Two positions, a Senior Appellate Coordinator and Appellate Coordinator, were salvaged from the office and moved to the Administrative office. The Senior Appellate Coordinator position serves as a resource to the public defender offices (i) by providing a help desk (via email and telephone), (ii) by assisting the Appellate Supervisors with specific questions on case law, appellate procedures and rule interpretation, (iii) by

developing training programs and materials, and (iv) through the observation and provision of feedback on the implementation of the appellate procedures by the public defender offices. The Appellate Coordinator position, proposed to be filled in FY12, will assist in providing these services and will work to develop and maintain a resource and brief bank for use by the field offices.

The VIDC has taken many steps in an effort to reduce expenses. These steps in addition to the absence of further budget reductions in FY11 and the closure of the Appellate Defender Office have enabled the VIDC to lift the 90 day hiring delay and to unfreeze and reallocate the positions that had been held vacant for nearly 3 years. Utilizing the tools developed in conjunction with the Caseload Study performed by the National Center for State Courts, the VIDC was able to initially determine the offices that consistently carried the lowest caseloads in the system. It was from those offices that positions were frozen. Using the same Caseload Study, the VIDC reallocated the much needed positions to the offices whose caseloads were consistently in the top five of all public defender offices. Each of these offices received one additional attorney position. The Capital Defender office positions previously frozen were returned to those offices as well.

The VIDC will monitor its funds closely and in the event necessary to ensure payment of the judicial reversion amounts, may reinstate the hiring delay. However every effort will be taken to avoid freezing positions.

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 seem to have assisted the public defender offices in recruitment and retention of attorneys. During FY11, the annual rate of turnover was 14%. The annual rate of turnover for FY10 was 13 % and FY09 was 16%.

The reduction in turnover and vacancy has brought more stability to the offices. However it has also brought new challenges.

Currently the Public Defender offices have a limited number of attorney position classifications coupled with a limited number of allocated positions per office. Lower turnover rates have resulted in attorneys staying with the offices for 3-5 years instead of 1-3 years as was experienced in the years prior to the economic decline. The longer retention period, limited number of position classifications, and lack of state employee raises have resulted in compression for some employees.

The VIDC anticipates that as the economy continues to slowly improve, the job market for experienced attorneys will open up and the turnover rate will begin once again to increase. In an effort to prevent a return to turnover rates in excess of 18%, the VIDC has developed exit surveys for departing employees. The VIDC will also undertake a study of its compensation structure to determine the options available to it in its effort to retain the most experienced and dedicated attorneys in the system and to continue to raise the level of quality representation to our clients.

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 FY11 Caseload Data

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TOTAL ADULT CASES	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TOTAL JUV CASES	ACTUAL ATTNYS	BUD. ATTY	CASES/BUD. ATTY
Alexandria	2799	0	772	1841	10	2623	36	138	2	176		11.0	254
Arlington	1830	0	334	1229	4	1567	54	209	0	263		10.0	183
Bedford	1272	0	358	827	2	1187	16	69	0	85		4.0	318
Charlottesville	2250	0	733	1407	28	2168	29	53	0	82		7.5	300
Chesapeake	4247	0	1348	2382	195	3925	126	196	0	322		13.0	327
Danville	2175	0	933	1020	29	1982	34	157	2	193		5.0	435
Fairfax	3320	0	1276	1330	41	2647	281	391	1	673		21.0	158
Franklin	1241	0	572	571	26	1169	42	30	0	72		6.0	207
Fredericksburg	6921	0	2702	3702	88	6492	106	323	0	429		17.0	407
Halifax	2057	0	741	1200	12	1953	23	81	0	104		7.0	294
Hampton	3978	0	1471	1878	55	3404	118	445	11	574		14.0	284
Leesburg	4648	0	1436	2567	100	4103	102	432	11	545		15.0	310
Lynchburg	3335	0	1141	2096	15	3252	30	53	0	83		9.0	371
Martinsville	2112	0	750	1258	11	2019	30	63	0	93		7.0	302
Newport News	7343	0	2089	4743	85	6917	147	279	0	426		17.0	432
Norfolk	6473	0	2097	3815	73	5985	154	332	2	488		23.0	281
Petersburg	2310	0	832	1334	8	2174	36	100	0	136		8.0	289
Portsmouth	5329	0	1240	3356	451	5047	108	165	9	282		16.0	333
Pulaski	2216	0	913	1134	4	2051	20	145	0	165		7.0	317
Richmond	11311	0	3839	7047	32	10918	120	273	0	393		27.0	419
Roanoke	4018	0	1677	2077	96	3850	62	103	3	168		12.0	335
Staunton	3346	0	1030	2084	29	3143	33	170	0	203		9.0	372
Suffolk	1975	0	675	1113	48	1836	46	91	2	139		7.0	282
VA Beach	9754	0	2705	5814	460	8979	271	485	19	775		24.0	406
Winchester	3295	0	1134	1780	205	3119	31	140	5	176		10.0	330
Public Defender	99,555	0	32798	57605	2107	92510	2055	4923	67	7045		306.5	325

Capital Defender	15	15				15							
Central	4	4				4						3	
Northern	2	2				2						3	
Southeastern	3	3				3						3	
Southwestern	6	6				6						3	
COMMISSION	99570	15	32798	57605	2107	92525	2055	4923	67	7045		318.5	

Appendix B, State Comparisons Chart

State	Funding Source ¹			Funding Description ²	Atty Type			Structure ²	How Ct App Counsel Paid
	State	Local	Mix		PD	Appt	Contract		
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; 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.
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

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