

# VIRGINIA INDIGENT DEFENSE COMMISSION

## COMMISSION MEMBERS

Judge Alan E. Rosenblatt (ret.), Chair

Steven D. Benjamin

John G. Douglass

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Kristen Howard

Maria D. Jankowski

David R. Lett

Delegate J. Randall Minchew

Kent Smith

Senator Richard H. Stuart

David D. Walker

Carmen B. Williams

Kristi A. Wooten

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September 20, 2012

**DAVID J. JOHNSON**

Executive Director

**DJ GEIGER**

Deputy Director

**EDWARD ERNOUF, III**

Information Systems Director

**AMY WILLIAMS**

Human Resources Director

**JEWELL HUDSON**

Budget and Finance 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: 2012 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 2012 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 2012

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## **FY12 - 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, Human Resources

Amy Williams

Director, Budget and Finance

Janice Johnson

Public Defender Offices

<u>Office</u>	<u>Localities Served</u>	<u>Year Established</u>
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.<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 list of the qualification requirements 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. The Standards of Practice Enforcement Attorney 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 certification trainings have been provided monthly during 2012 at the administrative office in Richmond and at the Roanoke/Salem Bar Association at no cost to the participants. 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 current initial certification training was recorded in 2010 and several updates and edits have been made to the manual. In order to create an up-to-date and improved initial certification training course for release in mid-2013, the VIDC has created two panels of public defenders with varying degrees of experience.

The first panel will help determine the contents of the six hours of training on misdemeanor and felony practice. The second panel will help shape the four hours of training on representing juveniles. The panels were created to decide the scope and content of the training that will best provide the information needed by attorneys who are new to the criminal defense practice.

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 Commission and MCLE-approved courses is provided on the VIDC website at [www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov) 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 Commission and MCLE-approved continuing legal education 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.**

ACeS (Attorney Certification System) is an online system that allows attorneys to apply, renew and modify their certification status via the VIDC website. ACeS updates the certified counsel list located on the VIDC website and is accessible by court personnel to retrieve the names of certified attorneys by case type and judicial circuit/district. 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. The most recent list of ineligible attorneys was provided on June 1, 2012.

As of June 30, 2012, the number of certified attorneys totaled 2,172 and the total attorneys certified by case type were as follows:

<b>Case Type</b>	<b>Number of Certified Attorneys 6/30/11</b>	<b>Number of Certified Attorneys 6/30/12</b>	<b>Annual Change</b>
Capital Appellate	49	56	+ 14.3%
Capital Habeas	36	43	+ 19.4%
Capital Trial Co-Counsel	147	180	+ 22.4%
Capital Trial Lead Counsel	94	111	+ 18.1%
Juvenile	1051	1281	+ 21.9%
Misdemeanor	1905	2122	+ 11.4%
Felony	1619	1870	+ 15.5%

**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 Standards of Practice for Indigent Defense Counsel in non-capital cases are located on the VIDC website. The Standards of Practice complaint process and the complaint form are also located on the website.

Appellate Standard 10.3.1, Petition and Brief Preparation, was amended during the March 15, 2012 Commission meeting to reflect the current Rules of Supreme Court of Virginia. The changes were effective immediately.

Additionally, the complaint form was revised to include clearer instructions for the complainant and more questions to facilitate the investigation by the Standards of Practice Enforcement Attorney (SOPEA). The new complaint form was uploaded to the VIDC website in April 2012. There have been no founded complaints in FY 2012.

Efforts to raise awareness of the Standards and the enforcement thereof have included announcements by the SOPEA at the beginning of each certification training emphasizing the mandatory nature of the Standards and how they are enforced and the mailing of copies of the Standards to several correctional centers to increase awareness among inmates that were represented by court-appointed counsel or public defenders. Previously training programs provided by the VIDC did not always include specific references to the Standards. However future VIDC training programs will incorporate the Standards of Practice whenever applicable.

**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 develops and presents training programs for private court appointed counsel and public defender office attorneys, investigators, sentencing advocates and support staff.

The 2012 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 12 and 13 in Virginia Beach. Topics included: Current Issues in Ethics, Fixing Trial Errors with Post-trial Motions, Cell Phone Forensic Evidence, Creating a Trial Notebook in Complex Cases, Improving Communication with Clients, Using Education Records to Defend Your Client, Recent Developments in Case Law, How to Write Like an Appellate Lawyer, The Psychology of the American Jury, Shaken Baby Science Debunked, Coming to Terms with a New Kind of Evidence, Understanding and Avoiding Juvenile Transfer and Certification, Cross-Examining and Discrediting Snitches, Competency and Insanity, Understanding Evidence in Sexual Assault Cases Through the Eyes of A SANE Nurse, Crafting Non-Model Jury Instructions to the Theory of the Defense, and Recognizing and Identifying Different Types of Firearms.

The 9<sup>th</sup> Annual Trial Skills Boot Camp for new public defender attorneys was held in Richmond from July 30 – August 2, 2012 with 40 attorneys in attendance. Attendees were provided with one hour lectures on Building Positive Client Relationships, Pre-Trial Investigation and Discovery, Direct Examinations, Laying Foundations, Objections and Making a Record, Competency and Sanity, Effective Voir Dire, and Bifurcated Trials. 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 correlating to the lecture topics. 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. 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.

Appellate practice continues to be a focus in the training programs for public defender attorneys. In 2011, the VIDC developed and presented its first Appellate Boot Camp. Attorneys who attended the Trial Skills Boot Camp attended a follow up Appellate Boot Camp in December. The attorneys were informed that they had lost their cases at trial and were required to appeal the decision. They were required to follow all of the appellate rules and deadlines just as they would have in a real case, including tracking their appeal in the case management system. Upon completion and submission of their briefs, they presented their oral argument before the “appellate court”, a panel consisting of senior appellate coordinators from offices in their respective regions. The coordinators provided feedback and training on the appellate process and on the attorney’s submitted work.

In an effort to provide continuing management training to all supervisors within the Public and Capital Defender offices, the VIDC developed its first Management Training for all supervising attorneys. The management program focused on a specific session for Chief Public and Capital Defenders, highlighting best practices within the offices and techniques to address performance management issues in the offices. The program also included several workshops

featuring topics such as Workplace Harassment, Effective Communication for Supervisors, Employment Law Overview, Recruitment and Selection, and a VIDC Policy Update.

The VIDC continues to partner with other groups to provide training programs, including the 17<sup>th</sup> Annual Robert E. Shepherd, Jr. Juvenile Law and Education Conference, held at the University of Richmond on May 11, 2012. 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 FY12 totaled 102,333, which is approximately a 3% increase from the 99,555 cases handled in FY11. The VIDC counts cases by the number of clients represented, rather than by the number of charges defended. (See Appendix A, VIDC FY12 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.<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>

This report 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. Further, 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**).

During the 2007 General Assembly session just before the economic downturn, Virginia took several steps to improve public defender and private court appointed indigent defense funding and services. 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.

c. Private court appointed counsel fees.

Since the 2005 ABA Report, Virginia approved legislation and funding 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 \$4.2 million appropriated toward the fee cap waiver has been expended each year and funding has remained level despite subsequent severe budget cuts across state agencies.

d. 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.

e. The economy.

In Fiscal Year 2009, the Governor and the General Assembly faced severe revenue shortfalls forcing reductions to nearly all state funded agencies. The Judicial Department, which includes the VIDC, was instructed to propose cuts totaling \$5 million over the biennium. A Judicial Reversion, was approved requiring a return of \$5 million to the General Fund. The Reversion allowed the agencies under the Judicial Department to determine where cuts or savings could be made. The VIDC's portion of the proposed reversion was \$450,000 per year.

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

To generate savings toward the payment of the Reversion several of the new positions allocated to the capital defender offices in 2007 and positions in the Arlington and Fairfax Public Defender offices were frozen, and a 90 day hiring delay on all positions was implemented.

Fiscal Year 2012 resulted in an additional Judicial Reversion amount of \$2.3 million. The VIDC portion of this Reversion was \$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 FY11 approximately 95% of the expenditures made by the VIDC were for the payment of personnel and rent costs.

The Appellate Defender Office, funded by the VIDC for years from turnover and vacancy savings, 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, was reconfigured as a Legal Resource Attorney and filled in FY12. The position will assist the field offices by developing and maintaining resources and a brief bank and will assist with the development of training programs.

In Fiscal Year 12, due to efforts to further reduce expenses, and the closure of the Appellate Defender Office the VIDC was able 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 budget approved for Fiscal Year 2013 brought excellent news in the elimination of the Judicial Reversion. The VIDC re-allocated the funds back into the budget focusing on a desktop equipment refresh, replacement of a soon to be out of support operating system, and training.

f. Turnover.

The steps taken by the General Assembly 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 the recruitment and retention of attorneys. During FY12, the annual rate of turnover was 13.44%. This is just slightly lower than the FY11 turnover rate of 14%, and continues a 4 year trend of lower turnover rates. (The annual rate in FY10 was 13 % and FY09 was 16%). This is far from the peak of 27% attorney turnover in 2006. However, the decrease in turnover has resulted in other challenges for the VIDC.

The Public Defender offices have a limited number of attorney position classifications (i.e. APD I, APDII, Senior APD, Deputy APD and Chief Defender) coupled with a limited number of allocated positions per office. Lower turnover rates have resulted in attorneys staying with the offices for three to five years instead of one to three 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 salary compression for many 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 worked to develop training and other meaningful career growth opportunities to increase retention. The VIDC has developed exit interview surveys to analyze the reasons employees leave employment with the agency. The VIDC plans to 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.

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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 FY12 Caseload Data**

OFFICE	TOTAL CASES	CAPITAL	FELONY	MISD	APPEAL	TOTAL ADULT	JUV. FEL.	JUV. MISD.	JUV. APPEAL	TOTAL JUV	BUD. ATTY	CASES/BUD. ATTY
Alexandria	2721	0	791	1790	12	2593	20	108	0	128	11.0	247
Arlington	1725	0	344	1159	6	1509	37	179	0	216	10.0	173
Bedford	1333		370	871	1	1242	21	70	0	91	4.0	333
Charlottesville	2158	0	761	1279	47	2087	13	57	1	71	7.5	288
Chesapeake	4668		1408	2657	269	4334	124	210		334	13.0	359
Danville	2009		964	858	25	1847	15	147		162	5.0	402
Fairfax	5841		1730	3370	23	5123	276	440	2	718	21.0	278
Franklin	1148	0	488	592	11	1091	29	27	1	57	6.0	191
Fredericksburg	7064	0	2833	3677	81	6591	125	348	0	473	18.0	392
Halifax	1853	0	629	1105	17	1751	17	84	1	102	7.0	265
Hampton	4047		1470	1984	34	3488	98	456	5	559	14.0	289
Leesburg	4790	0	1452	2702	145	4299	103	379	9	491	15.0	319
Lynchburg	3483		1087	2298	26	3411	20	52		72	9.0	387
Martinsville	2179	0	784	1321	7	2112	33	34	0	67	7.0	311
Newport News	6729		1905	4182	206	6293	128	308	0	436	18.0	374
Norfolk	6026		1915	3608	42	5565	136	325	0	461	23.0	262
Petersburg	2569		880	1575	9	2464	44	61	0	105	8.0	321
Portsmouth	5454	0	1363	3429	438	5230	80	130	14	224	16.0	341
Pulaski	2301	0	909	1237	3	2149	31	121	0	152	7.0	329
Richmond	10709	0	3374	6842	42	10258	147	304	0	451	28.0	382
Roanoke	4211	0	1630	2259	87	3976	84	142	9	235	13.0	324
Staunton	3531	0	1172	2105	18	3295	44	190	2	236	9.0	392
Suffolk	2263		756	1352	42	2150	52	61	0	113	7.0	323
VA Beach	9933		2920	5699	505	9124	287	496	26	809	25.0	397
Winchester	3581	0	1206	1955	219	3380	31	164	6	201	10.0	358
Public Defender	102,326	0	33141	59906	2315	95362	1995	4893	76	6964	311.5	328
Capital Defender	7	7	0	0	0	7						
Central	0	0				0					4	
Northern	1	1				1					4	
Southeastern	3	3				3					4	
Southwestern	3	3				3					4	
COMMISSION	102333	7	33141	59906	2315	95369	1995	4893	76	6964	327.5	328

### 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	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, \$30/hr overhead. Maximums are waivable (Class A Felony -\$4,000, Class B, \$3,000, Class C, \$2,000, Juvenile, \$2,500, all others, \$1,500.. Life without parole or death penalty cases \$70/hr, no maximum. Ala. Code § 15-12-21 (2012).
<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	\$60/hr in court, \$50/hr out of court, Maximums: Misdemeanor: guilty plea, nolo contendere or dismissal, \$400, Mis. Trial, \$800, Felony: guilty plea, nolo cont, or dismissal, \$2,000, Fel. Trial, \$4,000. Maximums are waivable. 2 AAC 60.010
<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. Death penalty cases: \$90-110/hr, Y Felony, \$70-90.hr., Felony, \$60-80/hr, Dist. Court & Juvenile: \$50-80/hr. 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; contract and appointed counsel for conflicts	Rates set by Chief Justice Directive. \$65/hr. Maximums 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	Determined by Chief Public Defender, C.G.S. § 51-291(12). \$75/hr felony and serious juvenile cases, \$50/hr misdemeanors, \$100/hr capital cases. Contract flat rates: Judicial District, \$1,000/case, Geographical, \$350/case, Juvenile, \$350/case.
<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. Maximums; \$2,000 per attorney in case with one or more felonies, \$1,000 for misdemeanor. Waivable.

<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).	\$90/hr. Tied to federal reimbursement rates, 18 USC 3006A(d)(2). Waivable D.C. Code Ann. § 11-2604(a) (2012).
<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.	Maximums: misdemeanors and juveniles - \$1000; non-capital, non-life felonies - \$2500; life felonies - \$3000; capital felonies - \$15,000. Maximums are waivable in limited circumstances, requires an evidentiary hearing. (FL Stat. 27.5301).
<b>Georgia</b>			X	State funded according to judicial circuit since 2005	X			Public defender offices based on judicial circuit. City and county governments may opt out (6 opted out) but must maintain state standard -15 regional conflict defender offices for conflicts and overloads	Georgia Code Ann. § 17-12-8(b)(9) grants authority to Georgia Public Defender Standards Council to contract with private attorneys (annual contracts). In circuits not funded by the state, discretion is left to the courts. OCGA 17-12-1.
<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: Felony, \$6k, Misdemeanor/ jury trial, \$3k, Misdemeanor /jury waived, \$1,500, petty misdemeanor, \$900. 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	\$40-50/hour. No maximum. Authority granted to local judge pursuant to Idaho Code § 19-860(b) (2012).
<b>Illinois</b>			X	County funded primarily; state provided some funding for public defenders in FY2007, full funding for public defenders was requested for FY2008 budget*	X	X	X	Counties over 35,000 required to have public defender. other counties use either contract or assigned counsel; in conflicts, court appointed and judge sets fee	Varies; Capital crimes are state funded by the Capital Litigation Trust Fund – The statutory rate applies to counties with over 2 million in population, of which there is one. \$40/hr in court, \$30/hr out of court, not exceed \$150 for misdemeanor, \$1,250 for felony. Waivable. 725 I.L.C.S. 5/113-3.
<b>Indiana</b>			X	State funded Indiana Public Defender Commission assists in capital cases; counties are reimbursed up to 40% on non-capital cases 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;	For counties that meet State Public Defender Standards reimbursement made to county for % of costs. Courts determine reasonable compensation.; capital cases: \$101/hour. No maximum. Ind. Code § 33-40-7-9.
<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	\$70/hr for Class A Felonies, \$65/hr class B, \$60/hr for all other cases. Iowa Code §815.7. State Public Defender sets per case maximums pursuant to Iowa Code 13B.4. Class A felony, \$18,000, Class B, \$3,600, Agg. Mis. And Class C Fel, \$1,200, serious Mis., \$600, simple mis., \$300.

<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. 22-4522 (2011)..
<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. Dept. of Public Advocacy sets prevailing max fee/hourly rate. K.R.S. 31.235 (2012) (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	Louisiana Public Defender Board oversees statewide public defense.	Louisiana Public Defender Board has authority to set contract rates pursuant to La. R.S. 15:147.
<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 \$3000, waivable. These fees are set from time to time by the Public Defender, pursuant to Ann. Code of Maryland, 16-207 (2012).



<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/hr for homicide, \$60/hr for non-homicide & Superior Ct cases, and \$50/hr for all other cases. Annual cap on billable hours of 1,650. A.L.M. GL Ch 211D §11 (2012).
<b>Michigan</b>			X	Trial level - county funding; appellate: State Appellate Defender Office; and Michigan Appellate Assigned Counsel System - state funds admin. 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.	M.C.L. § 775.16 (2012) 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. Minn. Stat. 611.27 (2012).
<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: up to \$90. Maximum \$1000 for case originating in circuit ct; \$200 if originates in court not of record, \$2000 for capital cases plus \$25/hour overhead expenses. Not waivable. Miss. Code Ann. § 99-15-17 (2011)
<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 to set fee schedule granted to State Public Defender Mo. Rev. Stat. § 600.017 (2012). Maximums: \$10,000 for 1 <sup>st</sup> degree murder, \$2,000 for AB Felony (sex), \$1,500 for AB Felony (other), \$750 for drug case, \$375 for misdemeanor, \$500-700 for juvenile case.

<b>Montana</b>	X			State funded	X		X	Montana Public Defender Act enacted in 2005 created a state managed system of public defenders and contract attorneys	Varies; typically \$60/hour (\$120 for capital cases). No maximum. Montana Code Ann. 46-8-201(2) 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 §29-3905 (2012) Rev. Stat. of Nebraska Annotated 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 \$20,000 for life w/o parole, other felonies, gross misdemeanors, \$2500, \$750 misdemeanors. Waivable. N.R.S. § 7.125 (2012).
<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, paralegal rate \$35/hr. Maximums: \$20,000 homicides, \$4,100 felony, \$1,400 misdemeanor, NH. Sup. Ct. Rule 47 (2012). 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; Full day per diem, \$252. No maximum. N.J.S.A. § 2A:158A-7 (2012) 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 authorized to formulate fee schedule. N.M. Stat. Ann. § 31-15-7(11). Uses RFP process to select Pool Attorneys under contract.
<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	Misdemeanor/no felony, \$60/hr, up to \$2,400., \$75/hr all other cases up to \$4400. Waivable. Art. 18-B of the County Law § 722-b (2012).
<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	Office of Indigent Defense Services issues RFP on 2 year contract basis. 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	§54-61-02 (2012) grants authority to the Commission on Legal Counsel for Indigents to set fee. Contract attorneys are selected through an RFP process.

<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. §120.04(B)(8) sets maximum amounts at: \$1,000 for mis., \$2,500 for felony 4, 5, \$3,000 for felony 1-3, \$5,000 for murder or felony w/life, \$75k for capital. Max is waivable. Ohio Rev. Code Ann. § 120.33 (2012) gives county board of commissioners who do not use county or joint county PD office under §120.16 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	Contracts awarded on Fiscal Year basis. Off Contract: \$800 for juvenile, traffic and misdemeanors, \$3,500 for felony. Maximum waivable O.S. 22 § 1355.8 (2012).
<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	\$45/hour; \$60/hr for lead cap counsel, \$45 for co capl counsel, capped at 300 hours in capital case, 150 for all others. Max waivable. O.R.S. § 151.216(f)(C) grants authority to Public Defense Services Commission.
<b>Pennsylvania</b>		X		County funding	X			Public defender unless for cause on motion of court or application of PD or defendant.	Decisions are left to the local judge. Reasonable compensation. 16 PS §9960.7 (2012).

<b>Rhode Island</b>	X			State funded	X	X		Public defender generally, but court appointed counsel represents when there is a conflict of interests.	Superior Ct., Fel/Murder \$50/hr to \$5,000, Class 2 fel., \$35/hr to \$2,500, dist. Court mis. Or mis appeal, \$30/hr to \$750. Waivable. Authority granted to Chief Justice. Supreme Court Executive Order No. 2000-02 (2009) 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. §16-3-26. Maximum \$3500, fel. \$1,000, mis., \$25k for capital, waivable. Code of Law of S.C. Ann. § 17-3-50 (2012).
<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 oversees his judicial district	\$40/hr out of court; \$50/hr in court (for capital cases: \$75 out of court; \$100 in court). Maximum \$1500, fel., \$1,000, prelim fel, mis, prob. Rev., juvenile,; Waivable. 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 Authority granted to county courts pursuant to Tex. Stat. Ann. art. 26.05 (2012).

<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. § 77-32-304.5 (2012) grants authority to district court if county doesn't establish rate guidelines. Max: \$3,500 fel., \$1,000 mis.
<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, mis. \$1000. Waivable. Contract attorneys are paid 103k a year. 13 V.S.A. § 5205 (2012) grants the Vermont Supreme Court power to set fees. V.T.A.O. 4 §6 (2012).
<b>Virginia</b>	X			State funded	X	X		Public defender or court appointed - VIDC oversees PD offices, certifies court appointed counsel.	Dist. Ct: \$120, waive to addtl \$120, \$650 (waive to addtl \$650) if juvenile and crime would be felony w/penalty of >20 years if committed by an adult, or prob. violation. Circuit Ct: if death - determined by the court; felonies that could be punished by more than 20 years - \$1235 (waive to addtl \$850), \$445 (waive to addtl \$155) for other felonies, for misdemeanors - \$158. Max. with waivers, are waivable. Va.Code §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. (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. § 29-21-13 (2012).
<b>Wisconsin</b>	X			State funded	X	X	X	State Public Defender – staff, certified private attorneys, and contract attorneys.	\$40/hr on case, \$25.travel,. Maximum can't exceed amounts paid to contract attorneys for same case type. 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.	100/hr in court, \$35-\$60 out of court. 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