

# VIRGINIA INDIGENT DEFENSE COMMISSION

## COMMISSION MEMBERS

*Judge Alan E. Rosenblatt (ret.), Chair*  
*Steven D. Benjamin*  
*Thomas R. Chaffe*  
*John G. Douglass*  
*Karl R. Hade*  
*Judge Edward W. Hanson, Jr.*  
*Kristen Howard*  
*Maria D. Jankowski*  
*David R. Lett*  
*Delegate J. Randall Minchew*  
*Senator Richard H. Stuart*  
*David D. Walker*  
*Carmen B. Williams*  
*Kristi A. Wooten*

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September 16, 2013

**DAVID J. JOHNSON**

*Executive Director*

**DJ GEIGER**

*Deputy Director*

**EDWARD ERNOUF, III**

*Information Systems Director*

**AMY WILLIAMS**

*Human Resources and Training 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: 2013 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 2013 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 2013

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## **FY13 - Commission Members and (Appointing Authorities)**

Chairman (July 2009 – Present)

The Honorable Alan E. Rosenblatt (ret.) (Senate of Virginia)

Steven D. Benjamin (Senate of Virginia)

John G. Douglass (Virginia State Bar)

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)

The Honorable J. Randall Minchew, (Virginia House of Delegates)

Kent Smith (Governor)

The Honorable Richard H. Stuart, (Senate of Virginia)

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 and Training

Amy Williams

Director, Budget and Finance

Jewell Hudson

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, in response to a two-year study assessing the then existing methods for providing indigent defense in Virginia, including quality and cost effectiveness, 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.

## **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 re-certification 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 2013 at the VIDC in Richmond and at the Roanoke County Courthouse at no cost to the participants. The Training Department has also provided initial certification and other training DVDs to 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 2012, in order to create an up-to-date and improved initial certification training course, the VIDC created two panels of public defenders with varying degrees of experience.

The first panel helped determine the contents of the six hours of training on misdemeanor and felony practice. The second panel helped 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.

Based on input from the panels, the new certification training has been developed and recorded. The six hours of training on misdemeanor and felony practice focuses on the initial interview and building the client relationship, traffic court, misdemeanor and felony representation, sentencing advocacy and probation violations, and the basics of appeals. Juvenile certification training consists of four and one half hours of training focused on the juvenile court system, competency, special education, collateral consequences, and juvenile depositions. The new certification was released in September 2013.

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 retain their eligibility for court appointments for a period of two years from the date of their initial certification or most recent re-certification. Prior to the expiration of each two year period, attorneys receive multiple re-certification notifications informing them how to maintain their eligibility for court appointments. Attorneys wishing to maintain certification for court appointed work are required to verify 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 statuses 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 re-certified or who have been removed from the certified list for other reasons. The most recent list of ineligible attorneys was provided on June 7, 2013.

As of June 30, 2013, the number of certified attorneys totaled 2,222 and the total attorneys certified by case type were as follows:

Case Type	Number of Certified Attorneys 6/30/12	Number of Certified Attorneys 6/30/13	Annual Change
Capital Appellate	56	60	+7.14%
Capital Habeas	43	46	+6.98%
Capital Trial Co-Counsel	180	202	+12.22
Capital Trial Lead Counsel	111	110	-0.90%
Juvenile	1281	1192	-6.95%
Misdemeanor	2122	2197	+3.53%
Felony	1870	1849	-1.12%

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. In FY2013, three Standards of Practice complaints were found to be qualified and were referred to the Informal Resolution Panel.

Previously implemented efforts to raise awareness of the Standards and the enforcement thereof have continued. Currently all VIDC training programs 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 2013 Annual Public Defender Conference held September 11-12 in Hampton, Virginia provided all public defender attorneys with the opportunity to attend and earn more than

half of the required Continuing Legal Education credit. Some of the topics included: a plenary session, Drug Trends and Legal Highs, by a nationally recognized drug expert, Science is Not the Enemy: the Enemy is the Lack of Science, Representing a Juvenile Charged with a Sex Offense, The Way You Say It: Strategic Communication Tools for Public Defenders, Collateral Consequences of a Criminal Conviction, Life and Death of a Bar Complaint, I Will Never Forget His Face (Eyewitness Identification), False Confessions and Wrongful Convictions, The Constitution and the Car, Understanding and Identifying Juvenile Mental Health Issues, Preparing Yourself, the Court and Your Client for Sentencing, and Funding an Expert for Indigent Defense.

In 2013, the VIDC both revamped its Boot Camp program for new attorneys, and began offering the Boot Camp program twice annually, in May and December. Providing Boot Camp programs biannually prevents the lag time of nearly a year before new attorneys receive the basic training. The 10<sup>th</sup> Annual Boot Camp program for new public defender attorneys was held in Richmond from May 14 – 17, 2013 with 33 attorneys in attendance. Attendees were provided with one hour lectures on Client- Centered Communication, Maneuvering Through General District Court, Preparation and Strategies for the Preliminary Hearing, Cross Examination and Impeachment, Appeals, Foundations, and Sentencing and Probation Violations. The attorneys participated in workshops related to the lecture topics. The workshops were led by experienced public defender attorneys and provided the opportunity for hands on training and immediate, direct feedback from senior attorneys within the Public Defender system.

Appellate practice continues to be a focus in the training programs for public defender attorneys. Attorneys who attended the Trial Skills Boot Camp in July 2012 attended a follow up regional Appellate Boot Camp between January and February of 2013. 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.

The VIDC remains committed to providing ongoing management training to all supervisors within the Public and Capital Defender offices. In January 2013, the VIDC provided its second Management Training conference for all supervising attorneys. Chief Public and Capital Defenders were provided an opportunity to participate in breakout sessions based on office size. Each group discussed ways that the administrative office could improve its support services to the field. The groups were facilitated by a member of the administrative management team. The program also included presentations on Stress Management, Generations in the Workplace, and Budgeting, as well as an Employment Law Update

The VIDC continues to partner with other groups to provide training programs, including the 18<sup>th</sup> Annual Robert E. Shepherd, Jr. Juvenile Law and Education Conference, held at the University of Richmond on May 17, 2013. The Conference named for the late Professor Robert Shepherd, Jr., a former Commission Chairman and tireless advocate for the legal rights of children, 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.**

During Fiscal Year 2013, the VIDC made changes to and upgraded its Case Management System (CMS), moving it from server driven individual databases, to a web enabled system. Some changes were made to the way data is captured and categorized. Going forward the changes will allow the VIDC to more specifically review, analyze, and report the workload of the public defender offices. Unfortunately, because of the differences in the way data was captured in the two systems, and because the conversion of offices from the former system to the new system took place over several months, comparisons of some data from FY12 to FY13 would likely be incongruent. As a result, the caseloads for FY13 in this report are based on the revisions to the CMS, without comparison to the FY12 data.

The number of newly filed cases, not including appeals to the Virginia appellate courts, handled by the VIDC public defender offices in FY13 totaled 98,432. This includes 14 new capital case assignments to the four Capital Defender offices.

The new case management system does not currently capture data on appeals as new cases. For FY14, staff will work on identifying the types of events that should be used to identify and accurately calculate the number of appeals to the Court of Appeals of Virginia and the Virginia Supreme Court, as well as the programmatic changes needed to the system to do so.

The VIDC counts cases by the number of clients represented, rather than by the number of charges defended. (See **Appendix A, VIDC FY13 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 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 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**).

c. Private court appointed counsel fees.

Since the 2005 ABA Report, Virginia approved legislation and funding for payments to private court appointed counsel above 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. Turnover.

A weak job market for the legal community and thousands of new law school graduates entering the job market each year seems to have assisted the public defender offices in the recruitment and retention of attorneys from 2008 into 2013. However, during FY13, the system saw an increase in the annual rate of turnover. The FY13 rate of turnover was 19.24%. This is an increase from the FY12 turnover rate of 13.44%. (The annual rate in FY11 was 14%, FY10 was 13 % and FY09 was 16%). While the increase to 19.24% is concerning, it is far from the peak of 27% attorney turnover in 2006. The spike in the turnover rate could be due to several factors including a marginal amount of recovery in the economy, the lack of state employee salary increases for 5 years, and the absence of a bonus tied to a retention period.

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. It is unknown whether the 2% raise and efforts to address compression for employees with more than 5 years of services, both taking effect in FY14, will positively affect the turnover rate.

The VIDC has worked to develop and improve the quality of training and to identify other meaningful career growth opportunities in order 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.

e. Capital Defender Offices.

The economic recovery remains slow and inconsistent. The General Assembly continues to look for sources of funding for competing priorities. As a result, agency programs are scrutinized more closely, and no agency is immune to such review.

During the 2013 General Assembly session one budget amendment proposed the elimination of 12 positions (2 attorney positions and one support staff position from each regional capital defender office) and a reduction of \$500,000 in the VIDC General Fund appropriation. The Commission had serious concerns about the proposal as it would have cut the number of positions in the Capital Defender Offices by more than a third, decimating their ability to handle the current workload. Efforts undertaken to defeat the proposed amendment were not entirely successful.



The final budget adopted by the 2013 General Assembly imposed two requirements on the VIDC:

1. On or before June 30, 2014, payment of a reversion to the General Fund in the amount of \$200,000, representing savings generated by the VIDC, and
2. Review of the current organizational structure and workload of the capital defense offices, and development of a plan to restructure the offices based on current and projected workload, and reallocate positions, as may be appropriate, to those public defender offices with the greatest workload in relation to their staffing.

During its required review of the Capital Defender Offices, staff of the VIDC has gathered data and information from the Office of the Executive Secretary of the Supreme Court, the Sentencing Commission, and the Capital Defender Offices. A presentation and recommendations will be made to the Commission members during one of the remaining 2013 scheduled meetings.

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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 - FY13 Caseload Numbers\*\***

OFFICE	ADULT										ADULT		JUV									
	TOTAL	CAP	MUR	VF	NVF	FPV	MISD	MPV	INFR	TOTAL	CAP	MUR	VF	NVF	FPV	MISD	MPV	INFR	TOTAL	Case/Atty		
Alexandria	2310	0	0	11	675	23	1465	16	1	2191	0	0	1	36	0	82	0	0	119	210		
Arlington	2133	0	1	7	468	14	1470	1	5	1966	0	0	0	28	0	139	0	0	167	213		
Bedford	1387	0	0	26	372	10	864	10	16	1298	0	0	2	16	0	71	0	0	89	347		
Charlottesv	2037	0	0	28	729	7	1214	4	0	1982	0	0	2	16	0	37	0	0	55	272		
Chesapeake	4013	0	1	62	1269	4	2383	3	0	3722	0	0	7	104	0	180	0	0	291	309		
Danville	2130	0	1	42	936	50	946	2	1	1978	0	0	0	30	0	122	0	0	152	426		
Fairfax	6448	0	2	59	2390	189	3207	6	2	5855	0	0	5	223	34	331	0	0	593	307		
Franklin	1295	0	2	60	546	3	614	3	0	1228	0	0	1	29	0	36	1	0	67	216		
Fredericksb	6809	0	4	82	2594	143	3583	21	6	6433	0	0	6	109	0	260	1	0	376	378		
Halifax	2065	0	3	49	770	31	1106	5	1	1965	0	1	0	28	1	70	0	0	100	295		
Hampton	3364	0	2	51	1274	33	1509	23	2	2894	0	0	7	111	0	352	0	0	470	240		
Leesburg	4661	0	2	37	1453	18	2669	19	3	4201	0	0	8	108	1	342	1	0	460	311		
Lynchburg	3406	0	0	84	1070	43	2183	5	0	3385	0	0	1	9	0	11	0	0	21	378		
Martinsville	2300	0	0	50	749	40	1384	7	8	2238	0	0	2	21	0	39	0	0	62	329		
Newport N	6131	0	2	92	1567	212	3828	7	17	5725	0	0	8	116	30	252	0	0	406	341		
Norfolk	5965	0	1	143	1783	62	3483	12	0	5484	0	0	14	149	0	318	0	0	481	259		
Petersburg	2304	0	1	56	812	15	1326	2	0	2212	0	0	5	43	0	44	0	0	92	288		
Portsmouth	4788	1	1	57	1258	22	3248	4	0	4591	0	0	3	81	0	113	0	0	197	299		
Pulaski	2103	0	2	48	812	25	1123	4	1	2015	0	0	0	13	0	75	0	0	88	300		
Richmond	10704	0	6	226	3287	30	6694	37	2	10282	0	0	8	148	0	266	0	0	422	382		
Roanoke	4036	0	2	102	1403	0	2299	4	0	3810	0	0	8	64	0	154	0	0	226	310		
Staunton	3551	0	4	45	1106	37	2148	7	3	3350	0	0	6	31	0	164	0	0	201	395		
Suffolk	2172	0	0	26	655	161	1240	2	0	2084	0	0	2	39	1	46	0	0	88	310		
VA Beach	9182	0	8	125	2636	195	5434	32	2	8432	0	0	20	267	0	463	0	0	750	367		
Winchester	3124	0	1	47	1104	47	1708	33	4	2944	0	0	2	34	0	144	0	0	180	312		
<b>Public Defenders</b>	<b>98418</b>	<b>1</b>	<b>46</b>	<b>1615</b>	<b>31718</b>	<b>1414</b>	<b>57128</b>	<b>269</b>	<b>74</b>	<b>92265</b>	<b>0</b>	<b>1</b>	<b>118</b>	<b>1853</b>	<b>67</b>	<b>4111</b>	<b>3</b>	<b>0</b>	<b>6153</b>			
Capital Defenders	14	14								14									0			
Central	4	4								4									0			
Eastern	3	3								3									0			
Northern	3	3								3									0			
Western	4	4								4									0			
<b>Agency Total</b>	<b>98432</b>	<b>15</b>	<b>46</b>	<b>1615</b>	<b>31718</b>	<b>1414</b>	<b>57128</b>	<b>269</b>	<b>74</b>	<b>92279</b>	<b>0</b>	<b>1</b>	<b>118</b>	<b>1853</b>	<b>67</b>	<b>4111</b>	<b>3</b>	<b>0</b>	<b>6153</b>			

**APPENDIX A - FY13 Caseload Numbers\*\***

<b>LEGEND:</b>																			
	CAP	Capital Murder																	
	MUR	Murder																	
	VF	Violent Felony																	
	NVF	Non Violent Felony						MISD	Misdemeanor										
	FPV	Felony Probation Violation						MPV	Misd Probation violation										
	INFR	Infraction																	
	<b>**Does not include appeals to VA Supreme Court or VA Court of Appeals.</b>																		

### Appendix B, State Comparisons Chart

State	Funding Source			Funding Description	Atty Type			Structure	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	6/67 counties have Public Defender, 26 have contract system, and 35 use appointed counsel	Assigned counsel: \$70/hour. Maximums are waivable (Class A Felony -\$4,000, Class B, \$3,000, Class C, \$2,000, Juvenile, \$2,500, all others, \$1,500, appeals \$2,500. Life without parole or death penalty cases \$70/hr, no maximum. Ala. Code § 15-12-21 (2011).
<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 \$50 per hr. Maximums; \$1,000 per attorney for cases in Court of Common Pleas. 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).	\$60 in court, \$40 out of court, waivable to \$75/hr. Max \$7,000 for felony, \$2,000 for misdemeanor. Waivable. Tied to federal reimbursement rates, 18 USC 3006A(d)(2). 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;	If counties meet State Public Defender Standards. reimbursement made for % of costs. Courts determine reasonable compensation, min. hourly rate \$70; capital cases: \$113/hour. No maximum. Ind. Code § 33- 40-7-9, Ind. Pub. Def. Comm.
<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. Compensation categorized as tried or non-tried cases, and based on severity of the offense charged. Ranges from \$320 to \$8,000. Max is waivable in exceptional cases with extreme complexity. 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	Mainly county-funded (via fines for traffic and misdemeanor offenses), but greater portion being state-funded as of 2007	X	X	X	Louisiana Public Defender Board oversees statewide public defense.	Louisiana Public Defender Board has authority to enter into contracts pursuant to La. R.S. 15:147. There are no assigned counsel systems.
<b>Maine</b>	X			State funded		X		Assigned counsel	Maine Rev. Stat. Ann. 15 § 810 grants authority for reasonable fees to be set by the Superior Court, but, 4. M.R.S. §1804 authorizes Maine Comm on Indigent Leg. Serv. to set comp. 2013 rates: \$50/hour. Maximum \$450-2500 depending on charge, waivable.
<b>Maryland</b>	X			State funded	X	X		Maryland State Public Defender; conflicts are court appointed	\$50/hour. Maximum of \$750 for most mis. and \$3000/felony. Waivable. 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	State and county funded; in 2012, state took over funding of items and services contained in original budgets of district public defender offices as of 1/1/1990.	X		X	Minnesota State Board of Public Defense; conflicts primarily handled by part-time public defenders with private offices	Rates established by Board of Public Defense based on appropriations. 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 (2013)
<b>Missouri</b>	X			State funded	X			Missouri State Public Defender; most conflict of interest given to other state regional office	State Public Defender has authority to set fee schedule 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. Add'l fees for case that go to trial.

<b>Montana</b>	X			State funded	X			Montana Public Defender Act enacted in 2005 created a state managed system of public defenders and contract attorneys	Montana Public Defender Commission contracts with attorneys to provide services, fee is \$60/hour (\$120 for capital cases). No maximum. Montana Code Ann. 47-1-104, 47-1-216 (2012).
<b>Nebraska</b>	X		X	Most county funded; Judicially created PD offices funded via appropriations through Gov's office. Nebraska Coms. on Public Advocacy provides some funding for capital litigation	X	X	X	Courts can determined need for PD, appoint and set salary w/concurrence of Gov.	Courts appt. PD if available. 29-3909 Rev. Stat. of Nebraska Ann. §29-3905 (2012) Rev. grants authority to court to determine compensation for ct app counsel.
<b>Nevada</b>	X		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 (2013).
<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.	Chief Public Defender authorized to formulate fee schedule. N.M. Stat. Ann. § 31-15-7(11). Uses RFP to select Pool Attys under contract. 2012 Contract rates: \$5400/1 <sup>st</sup> degree murder, \$540-700 fel, \$180/ mis., \$250/juv.
<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. 2012 Contract Rates: \$70/hr felony, \$60/hr non felony in superior court, \$55/hr district court. \$85/hr capital cases.
<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 several counties to provide indigent services - which contracts with local attorneys. Also, limited direct representation through Ohio Public Defender. Ohio counties may select their own delivery model.	Hourly rate \$50/hour out of court; \$60/hour in court; \$95 for capital. §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 comms. who do not contract w/ joint county or state PD office under §120.16 authority to set rates.
<b>Oklahoma</b>	X		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 chp. 25, §1355.8 (2012).
<b>Oregon</b>	X		X	Some state, some county systems.	X	X	X	Office of Public Defense Services contracts with attorneys, counties may contract w/attorneys.	O.R.S.14, § 151.216(f)(C) grants authority to Public Defense Services Commission. O.R.S.14, 151.020 provides authority for Counties to contract for pd services.
<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 Chp. 4, Art. XIII A, §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., Murder \$100/hr to \$15,000, Class 1 fel., \$90/hr to \$10,000, Class 2 fel., \$60/hr to \$5,000, dist. Court mis. Or mis appeal, \$50/hr to \$1,500. 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 and operates a Division of Appellate Defense.	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	X		Elected public defender oversees his judicial district, court can also appoint counsel.	\$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., Code of Crim. Proc. Of 1965, Title 1, art. 26.05 (2012).

<b>Utah</b>		X		County funded.	X	X	X	A few counties have public defender offices, remainder use contract or assigned counsel; Most 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. Waivable.
<b>Vermont</b>	X			State funded	X		X	Public defender - staff attorneys and contract attorneys handle nearly all cases. Assigned counsel used rarely.	\$50/hour. Maximums: life or death: \$25,000; major fel. \$5000; minor felony or juv. \$2000, mis. \$1000. Waivable. Pub. Def. Gen. contracts w/ private attys. Assigned counsel only if conflict w/PD and contract attys. 13 V.S.A. § 5205 (2012) the Vermont Supreme Ct sets 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 juv. and would be fel. w/penalty of >20 years if committed by adult, or prob. violation. Cir. Ct: if death - determined by the court; fels. that could be punished by more than 20 years - \$1235 (waive to addtl \$850), \$445 (waive to addtl \$155) for other fels., for mis - \$158. Max. w/waivers, are waivable. Va.Code §19.2-163.
<b>Washington</b>			X	Primarily funded by the counties with little contribution by state 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		About half of the counties use public defender corporations, which are set up as non-profits; 1/2 use assigned counsel. Several new PD corps are planned.	\$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 paid to contract attorneys can't exceed amounts under statute. Wis. Stat. Ann. § 977.08(4m).
<b>Wyoming</b>			X	State funds majority of costs.	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.