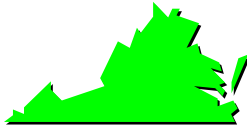


Virginia



Primary Indigent Defense Delivery System: Public Defender/Assigned Counsel*

Population in 2002: 7,293,542**

**Percentage of State Plus County Expenditures in FY 2002 Attributable to State vs. Counties:
100% from State****

*Source: "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," by the ABA Standing Committee on Legal Aid and Indigent Defendants, at page 5 (December 2004), available at <http://www.indigentdefense.org/brokenpromise/fullreport.pdf>.

**Source: "State and County Expenditures for Indigent Defense Services in Fiscal Year 2002," by The Spangenberg Group (on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants), at 4 and Table (September 2003), available at <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/indigentdefexpend2003.pdf>.

During the 40th anniversary year of the U.S. Supreme Court's decision in *Gideon v. Wainwright*, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (ABA SCLCID) in 2003 held a series of public hearings to examine the implementation of the right to counsel in state court proceedings for poor persons accused of crimes. In January 2005, ABA SCLCID published its final report based on the testimony provided at the hearings, entitled "Gideon's Broken Promise: America's Continuing Quest for Equal Justice." This information sheet contains a short summary of the "Problems in Indigent Defense" that were reported by one of the hearing witnesses, as well as "Recent Reform Efforts" in Virginia. For the complete information regarding each of the statements listed below (including references to hearing transcripts, reports, and other supporting materials), please see "Gideon's Broken Promise: America's Continuing Quest for Equal Justice," available at <http://www.indigentdefense.org/brokenpromise>.

Problems in Indigent Defense

The following problems were reported by the hearing witness:

- National standards recommend that indigent defense attorneys receive reasonable compensation for reasons of fairness and to encourage vigorous representation; specifically, the standards maintain that assigned counsel should be paid a reasonable hourly fee in addition to actual overhead and expenses. Yet, as one witness remarked, "Virginia's current maximum rate of compensation for court-appointed counsel is \$90 an hour. It sounds pretty good. However, it is subject to the lowest unwaivable fee cap in the country. For example, in a complicated case involving three or more appearances, a felony delinquency case in juvenile court, private assigned counsel can only receive a total of \$112, or 1.25 hours of pay, for representing the client."
- In Virginia and many states, unlike prosecutors, neither public defenders nor assigned counsel have access to expert assistance, except by demonstration of need. However, in Virginia judges usually require such demonstration in open court, unfairly forcing defense counsel to disclose defense strategies to the prosecution.
- National standards recognize the duty of defense counsel to maintain regular contact with the client, seek to establish a relationship of confidence and trust with the client, and adhere to ethical confidentiality rules. Yet in Virginia, some lawyers meet their clients at the last

minute in court, and since many courthouses have no private place for these meetings, the last-minute contact is not a confidential conversation between attorney and client.

- High caseloads in Virginia discourage both assigned counsel and public defenders from spending sufficient time investigating and preparing cases and meeting with their clients.

In addition, the hearing witness reported that:

- problems resulting from funding and resource inadequacies were exacerbated during 2003 due to the state's enormous budget deficit;
- compensation and support for public defenders in Virginia lag far behind their prosecution counterparts;
- indigent defense representation frequently is provided by attorneys who are inexperienced in the practice of criminal law or straight out of law school; and
- traditionally, there has been a lack of statewide oversight and structure for indigent defense services, resulting in a hodgepodge of local systems that are unsupervised and vary greatly in their effectiveness.

Recent Reform Efforts

- In the summer of 2004, Virginia enacted legislation establishing a new Virginia Indigent Defense Commission, which will oversee both assigned counsel and public defender programs throughout the state beginning in July 2005. Prior to this legislation, although public defender offices served 48 of 134 judicial districts and assigned counsel provided representation throughout the state, Virginia maintained a regulatory agency that supervised and supported only public defenders. Among its other duties, the Virginia Indigent Defense Commission is charged with setting caseload limits and establishing and enforcing qualification and performance standards for indigent defense representation. Virginia's 2004 legislation is by no means a panacea for all that ails that state's indigent defense system, but it is an important step on the road to real improvements. Among its deficiencies, the legislation provides no additional funding for indigent defense services, although the inadequacy of state funding has been well documented. For example, Virginia has the distinction of having the lowest, non-waiveable statutory fee caps in the nation on the amount that can be paid to assigned counsel.
- Bills to establish the Virginia Indigent Defense Commission resulted from recommendations made by the Virginia State Crime Commission following a two-year study.
- The legislation also closely adhered to one of the main recommendations of an ABA report released in February 2004, which documented severe deficiencies in Virginia's indigent defense system. The comprehensive study was conducted on behalf of ABA SCLAD by The Spangenberg Group and supported by contributions from the Open Society Institute, the National Association of Criminal Defense Lawyers, and the law firm of Covington & Burling. The report concluded that "Virginia's indigent defense system fails to adequately protect the rights of poor persons who are accused of committing crimes" and recommended the creation of a statewide commission with oversight of both assigned counsel and public defenders. The release of this report garnered significant national and local media attention, which in all likelihood aided in passing the reform legislation.

- Following the release of the ABA report, the Bar Council of the Virginia State Bar adopted the *ABA Ten Principles of a Public Defense Delivery System* and established a task force to recommend further indigent defense improvements for consideration by the newly-created Virginia Indigent Defense Commission and the General Assembly.
- In August 2004, the Virginia Bar Association weighed in on the issue with a series of articles in its official publication, including an article by the bar association's president critiquing the current system and calling upon all Virginia lawyers to join in the fight for reform.
- During the past several years, the Virginia Indigent Defense Coalition (VIDC) also has played an important role in achieving indigent defense reform in Virginia. Aided by the National Association of Criminal Defense Lawyers and a grant from ABA SCLAIID's *Gideon Initiative*, the VIDC was formed in 2001 by a group of Virginia defense lawyers who realized that the success of any reform effort would depend upon support from the entire community. Thus, citizen groups and community organizations were recruited to form a broad-based coalition in order to raise public awareness of Virginia's indigent defense crisis. VIDC public and media education projects have included a report card grading Virginia's indigent defense system based on the *ABA Ten Principles of a Public Defense Delivery System*. Since its inception, the VIDC also has met with state policymakers and judges, submitted a report to the Virginia Crime Commission, and drafted and secured passage of a legislative joint resolution establishing a study committee to examine whether Virginia should have a statewide indigent defense commission.