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VIRGINIA'S PILOT PUBLIC DEFENDER PROGRAM

REPORT OF THE

VIRGINIA PUBLIC DEFENDER COMMISSION

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

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## **VIRGINIA PUBLIC DEFENDER COMMISSION**

### **MEMBERS OF THE COMMISSION**

**William W. Sweeney, Chairman**

**C. Wynne Tolbert, Vice-Chairman**

**Rondle E. Edwards**

**Henry D. Garnett**

**D. Nelson Sutton, Jr.**

### **STAFF**

**Overton P. Pollard, Executive Director**

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## I. INTRODUCTION

The Virginia Public Defender Commission was created pursuant to Chapter 2.1, Acts of Assembly, effective April 10, 1972, as enacted by the 1972 Session of the General Assembly of Virginia. The Virginia Code Commission assigned Code Sections 19.1-32.2 to 19.1-32.5.

Pursuant to Section 19.1-32.2, the five members of the Commission were appointed in May, 1972 by the Speaker of the House of Delegates, in consultation with the Chairmen of the Courts of Justice Committees of the House of Delegates and the Senate of Virginia. All of the initial members, except Waldo G. Miles, Esquire, deceased, currently remain on the Commission. The members must include two active Judges of Courts of Record in Virginia, two active members of the Virginia State Bar who have practiced law in the Commonwealth for ten or more years immediately preceding their appointment, and one public member who is neither an active nor retired Judge and has never been a licensed lawyer.

Members of the Commission are: Henry D. Garnett, Judge, Seventh Judicial Circuit; William W. Sweeney, Judge, Twenty-Fourth Judicial Circuit; C. Wynne Tolbert, Attorney-at-Law, Arlington, Virginia; D. Nelson Sutton, Jr., Attorney-at-Law, West Point, Virginia (who replaced Waldo G. Miles, Attorney-at-Law, of Bristol, Virginia, deceased); and Dr. Rondle E. Edwards, Assistant Superintendent, Richmond Public Schools, Richmond, Virginia. Judge Garnett served as Chairman from 1972 through the Commission meeting of April 29, 1974, at which time Judge Sweeney was elected, and continues to serve, as Chairman. Mr. Tolbert currently serves as Vice-Chairman of the Commission, having succeeded Judge Sweeney in that capacity on April 29, 1974.

The Commission takes pleasure in submitting this Report on its activities, including the operations, experience and evaluations of its pilot programs, and its recommendations, in accordance with Section 19.1-32.2 of the Code of Virginia of 1950, as amended.

The full text of Code Sections 19.1-32.2 through 19.1-32.5, which relate to this Commission, its powers and duties, can be found in the Appendix, Page 22.

## II. PUBLIC DEFENDER PROGRAMS: AN OVERVIEW

Historically, Virginia has shown her leadership in developing laws which insure justice for the poor and the rich alike. As long ago as 1849, Virginia had enacted legislation giving the Courts discretion to appoint attorneys to defend indigent persons accused of crimes, or even in civil cases.<sup>1</sup>

The State of Oklahoma in 1911 and the City of Los Angeles in

1914 pioneered in establishing the first Public Defender offices in this country.<sup>2</sup>

A Public Defender System was first authorized in the Commonwealth of Virginia by a 1920 statute permitting such a system in localities with over 100,000 population.<sup>3</sup> The apparent snag in this legislation, however, which provided that a criminal court could appoint a Public Defender, was the lack of compensation unless the City Council appropriated money for his salary. No City Council has ever made such an appropriation. This legislation was expanded in 1940, 1958, 1964 and 1966 but was not utilized.

Eleven years ago, in the landmark case of Gideon v Wainwright,<sup>4</sup> the United States Supreme Court took the first major step towards placing indigent defendants on an equal footing with those able to hire counsel by requiring that states provide indigents with the assistance of counsel in serious criminal prosecutions.

In the long march of decisions that followed, the states have been required to provide counsel for indigent defendants virtually from the time of arrest to their release. Then, in 1972, the principle was established by the United States Supreme Court, in Argersinger v Hamlin,<sup>5</sup> that no person can be deprived of his liberty as a result of any criminal prosecution without being afforded the right to the representation of counsel. This decision required Virginia and her sister states to provide and pay for legal counsel in misdemeanor as well as felony cases. Thus, the right to counsel has undergone an enormous expansion necessitating today the provision of counsel for over half of the eight million persons accused of crime each year in these United States.

A multitude of diverse systems for providing counsel has sprung up across the country as states and local communities have searched for solutions to the problem of complying with the mandates of the United States Supreme Court.

The historically prevalent system in Virginia, even today, is the "Assigned Counsel System" under which different attorneys in private practice within a community are appointed by the Court to represent indigent defendants on a per case basis, with compensation ceilings set by statutes for such representation.

According to data collected in a 1973 study by the National Legal Aid and Defender Association, there are 2,227 counties in the United States (of a total of 3,110) in which the method of providing counsel to indigent criminal defendants is by Assigned Counsel, and 883 counties in which some form of "Public Defender System" exists.<sup>6</sup> "Defender Systems", as defined in this study, are those which provide indigent defense services through one or more attorneys who, through a contractual arrangement or as public employees, provide legal representation for indigent criminal defendants on a regular basis, as contrasted with court appointment and compensation on a case-by-case basis.

In 1961, Defender Systems existed in only 3 per cent of the counties serving approximately a quarter of the country's population. Only 32 states compensated Assigned Counsel in non-

capital cases and in 1,182 counties indigent defendants were either unrepresented by counsel or were provided with lawyers who were obliged to serve without either fee or expense money.<sup>7</sup> Today, 650 Defender Systems provide indigent defense services in 883 counties (28%) throughout the United States. These Defenders serve almost two-thirds of the nation's population.<sup>8</sup>

Approximately one-third of the states have undertaken the primary obligation of providing indigent defense services by organizing and funding Defender services at the state level: Alaska, Colorado, Connecticut, Delaware, Florida, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Mexico, New Jersey, Rhode Island and Vermont. In an equal number of states, statewide Defender legislation is either pending or under consideration. Thus, about two-thirds of the states currently either have an operational Defender system, are experimenting with a System, or are considering establishment of a system.

Statewide Defender Systems vary considerably in both structure and operation. For example, all counties are not covered under the state plan in Colorado, Minnesota and Missouri. Some systems utilize parttime defenders, while others are full time. Kentucky has a variety of different defense systems, including assigned counsel plans, and in Florida, Defenders, although state funded, are autonomous, being locally elected. Five states, Illinois, Indiana, Michigan, Oregon and Wisconsin, have statewide appellate Defender programs.

In 1969, the North Carolina legislature established Public Defender Offices in two judicial districts in order to study the function of both the Defender System and the Assigned Counsel System in ascertaining how best to answer the problem of providing counsel for criminal defendants determined to be indigent.<sup>9</sup>

### **III. THE PUBLIC DEFENDER IN VIRGINIA: HISTORY AND REASONS FOR LEGISLATION**

In 1965, the cost to Virginia taxpayers in providing court assigned counsel for indigents came to \$491,101, including \$34,810 in the City of Richmond alone. In fiscal 1971, just prior to completion of the study that led to the legislation establishing this Commission, the statewide total had risen to \$1,655,788.64, including \$243,267.95 in the City of Richmond, representing better than a threefold increase in costs statewide and almost a sevenfold increase in Richmond alone, over a six-year period. Statewide costs continued to spiral upward to \$1,920,070.14 in fiscal 1972, and to \$2,140,622.40 in fiscal 1973.<sup>10</sup>

The latest statewide total, for providing court assigned counsel for indigents in Courts of Record and Courts not of Record during the fiscal year ending on June 30, 1974 showed the first decrease<sup>11</sup> in at least 10 years but still came to \$1,883,190.50. This amount does not include the sums expended for defense services provided by the Public

Defender pilot programs in Virginia Beach, Augusta County and the Cities of Staunton and Waynesboro. The same exception is applicable for a portion of fiscal 1973, since the Waynesboro-Staunton-Augusta County Defender office commenced operations on November 1, 1972 and the Virginia Beach Defender Office commenced operations on January 15, 1973.

The number of defendants, cases and appointments of counsel represented in the above statewide costs was not readily available nor was it possible to extrapolate the precise impact, by cost or caseload, of the Argersinger decision. Provisions for state compensation of court appointed attorneys in misdemeanor cases (as a result of Argersinger) were made in legislation enacted by the 1973 Session of the General Assembly.<sup>12</sup>

Cost was only one of the major concerns that led the Board of Governors of the Criminal Law Section of the Virginia State Bar, in July 1970 to undertake its study of the adequacy and efficiency of the varied systems of providing court appointed counsel for indigent persons charged with felonies or juvenile offenses in Virginia.

The Study Project of the Criminal Law Board of Governors was financed in 1970 and 1971 through grants totaling \$9,805, provided by the Virginia Council on Criminal Justice and its Division of Justice and Crime Prevention (DJCP) from a Federal Block Grant made to Virginia under provisions of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Services of Virginia lawyers assisting in the study were donated.

In December 1971, the results of the study were presented in a forty-page Report to the Governor and to the General Assembly of Virginia, entitled "A Study of the Defense of Indigents in Virginia and the Feasibility of a Public Defender System".<sup>13</sup>

There were concerns with the adequacy of state compensation schedules for court appointed attorneys. Additionally court appointed practice often was criticized as a classroom for newly-graduated young lawyers or a mass-practice, little-preparation sustainer for the general practitioner who relied on this built-in criminal practice to supplement his modest civil clientele, and with reported instances of allegations of inadequacy of counsel.<sup>14</sup>

The Report recommended that pilot Public Defender Offices be established in three different areas of the Commonwealth to determine whether improved and more efficient criminal justice would result through this method of providing legal representation and defense services for indigent persons accused of crimes.

The recommendations of the Report were translated into legislation by the 1972 Session of the General Assembly. Accordingly, the Commission was created and charged with selecting three areas for establishment of Public Defender Programs. The legislation set forth the criteria for selection of those three areas as follows:

- i) A city with a population in excess of one hundred seventy

thousand;

- ii) A city with a population of at least eighty-five thousand and not more than one hundred twenty-five thousand or a county of a population of at least one hundred sixty thousand;
- iii) An urban-rural area to be identical with that served by a regional juvenile and domestic relations court.<sup>15</sup>

Additionally, duties of the Commission included the appointment of Public Defenders for each of these areas (said Public Defenders to devote full time to their duties and not to be allowed to engage in the private practice of law). While the legislation provided for the Public Defenders to employ parttime assistants, the Commission was charged with approving the salaries of the assistants as well as authorization of necessary other staff, office supplies and the like.

#### IV. FUNDING

The General Assembly provided no specific appropriations for the Public Defender offices, other than expenses for the Commission (Commission members receive no salaries, only necessary expenses). Accordingly, funding was sought from monies provided Virginia for criminal justice improvement efforts by the Law Enforcement Assistance Administration (LEAA), U. S. Department of Justice, through the Virginia Division of Justice and Crime Prevention pursuant to provisions of the Federal Omnibus Crime Control and Safe Streets Act of 1968, as amended.

In order to comply with certain funding procedures of DJCP existing at the time, it was necessary that the Action Grant Applications be filed by the City of Waynesboro and the City of Virginia Beach to obtain initial funding of the programs in those respective areas. The procedures have since been changed, with the two Public Defender Offices now being operated through an Action Grant Award made directly to the Public Defender Commission.

The Public Defender Offices in Waynesboro and Virginia Beach were awarded grants totaling \$185,351 from November 1, 1972 through June 30, 1974. State appropriations totaling \$66,871 have been provided, making \$252,222 the total amount budgeted through June 30, 1974. No local monies were involved.

On June 6, 1974, the Council on Criminal Justice and DJCP approved a Grant for \$149,787 (Grant Number 73-A2277), made directly to the Commission for continuation of the two present Public Defender Offices. DJCP has added to this Grant the sum of \$16,514 from its General Fund Appropriation, making \$166,301 the total amount budgeted for fiscal year July 1, 1974 through June 30, 1975.<sup>16</sup>

The initial budget for operation of the Waynesboro Defender Office (the Fourth Regional Juvenile and Domestic Relations Court

area) was revised downward shortly after operations began, since the Public Defender, Coy M. Kiser, Jr., was unable to obtain the services of an investigator for several months, reducing the DJCP share to \$28,183 and the General Fund and Local share to \$9,394. The amounts actually spent totaled \$31,021.60 through June 30, 1973 for this office.

Expenditures in the Virginia Beach Defender office through June 30, 1973 totaled \$40,330.34, resulting in a return of \$9,549.66. Thus, the initial cost through June 30, 1973 of the two Public Defender programs was \$71,351.94.

For the fiscal year July 1, 1973 through June 30, 1974, the Waynesboro Defender office actually exceeded the budgeted amount of \$64,155, making the total cost for that office \$64,647.41. Of the total amount of \$88,820 appropriated for the Virginia Beach Defender program during that fiscal year, actual sums expended totaled \$83,403.59.

Currently, the Public Defenders<sup>17</sup> have salaries of \$22,500 annually. The investigators receive annual salaries, respectively, of \$12,000 and \$13,650, based on experience. The five lawyer-assistants, employed parttime, receive annual compensation ranging from \$6,500 to \$12,500, and secretarial help averages \$5,200 per employee. Additionally, it is anticipated that approximately \$15,000 will be expended for the parttime services of the Executive Director to the Commission, his secretarial-bookkeeping expenses and his travel expenses.

## V. COMMISSION ACTIVITIES AND STAFFING

All members of the Virginia Public Defender Commission were present for its initial meeting, held on June 27, 1972 at the State Capitol in Richmond. At its second meeting, on September 8, 1972, the Commission selected Coy M. Kiser, Jr., a Waynesboro lawyer, as Public Defender for the Fourth Regional Juvenile Court Area (Augusta County and the Cities of Waynesboro and Staunton),<sup>18</sup> which was selected at the same meeting as the regional juvenile and domestic relations court area in which to establish a pilot program pursuant to the Defender legislation.

A preliminary canvass had shown both the Bar and the Bench in this area receptive to such a program. Other factors favoring these choices included the proximity of Judge Sweeney, a member of the Commission, to the program area, Mr. Kiser's experience and his availability for and interest in the Public Defender System.

Also, on September 8, 1972, the Commission selected Virginia Beach as a second pilot program area meeting the population criterion of the Legislation. Again, the selection was preceded by contacts with the Judiciary in the area and members of the Bar. Its proximity to more populous urban areas was an additional factor given consideration. Local government officials were subsequently contacted, and they submitted the initial Grant Application to DJCP.

The Commission further decided at this point that it would need administrative and technical assistance if it was to effectively discharge its duties and also provide necessary supervision and accounting for the activities and funding of the pilot programs to the Commission, DJCP and the Commonwealth of Virginia. Consequently, Overton P. Pollard, a Richmond attorney who had participated in the original Public Defender Study conducted by the Board of Governors of the Criminal Law Section of the Virginia State Bar, was employed on a parttime basis as Executive Director, effective September 8, 1972.

On October 17, 1972, the Commission interviewed various applicants interested in the position of full time Public Defender for the City of Virginia Beach. Peter T. Legler was subsequently selected as Public Defender for this pilot program, commencing his activities as of January 15, 1973.

At its meeting of October 17, 1972, the Commission also selected Fairfax County as the third pilot program area (a county of a population of at least one hundred sixty thousand), based on earlier indications of receptiveness, and Mr. Pollard was direced to publicize this fact in the Fairfax area and to screen applicants for selection as Public Defender in that program.

Several trips were made to Fairfax, a Public Defender was selected, and an Action Grant Application was submitted to DJCP for funding. However, local opposition developed and a program was not established in Fairfax (See VIII, this Report, at Page 13 for a detailed discussion of unsuccessful efforts to establish a proposed third pilot program in Fairfax and a number of other major urban areas).

To avoid further refusals of funding because of local opposition in areas selected for establishment of a third pilot program, it was subsequently decided that guidance was needed to determine the Commission's future course of action. Toward that end, Chairman Garnett, Vice-Chairman Sweeney and Mr. Pollard met with Del. John Warren Cooke, Speaker of the House of Delegates, Sen. William B. Parkerson, Chairman of the Senate Courts of Justice Committee and Del. George E. Allen, Jr., Chairman of the House Courts of Justice Committee, to discuss the possibility of amending the Public Defender legislation at the 1973 Session of the Virginia General Assembly, and possible consideration at that time of additional appropriations. However, it was decided at that time that the legislation should be left intact until this Report was submitted in 1974 and that the Commission would include in this Report its recommendations with reference to funding problems, problems in establishing Defender offices and possible modification of the legislation to extend eligibility to other areas of the State.

## VI. THE FIRST PILOT PROGRAM:

### FOURTH REGIONAL JUVENILE COURT AREA<sup>19</sup>

(Staunton - Waynesboro - Augusta County)

This Public Defender Office has been in operation since November 1, 1972. In addition to Mr. Kiser, employed as full time Public Defender, the Office is staffed by two parttime Assistant Public Defenders, one in Waynesboro and one in Staunton, a full time Investigator and a secretary. Both Assistant Public Defenders operate from their private law offices under the direction of the Public Defender.

The Public Defender Office is located in the City of Waynesboro. The Investigator, employed on April 1, 1973, occupies a small office in Staunton, due to the fact that the present Public Defender Office in Waynesboro is only adequate for one attorney and secretary. The Staunton office of the Investigator is convenient, however, since the Jail is located in Staunton and serves Augusta County and the cities of Staunton and Waynesboro.

Mr. Kiser has reported that it would be more convenient for the Public Defender and Investigator to occupy the same office facility in the future, if possible. The caseload would indicate to date that Staunton should be the logical location for the Public Defender Office, should a relocation be adjudged advisable.

The Public Defender Office is responsible for the defense of all criminal indigent cases that could result in confinement. This responsibility includes the Circuit Court, General District Court and Juvenile and Domestic Relations District Court in all three locations.

The Investigator has the primary duty of reporting to each of the Courts every day to determine if any matters have been referred to the Public Defender. When a matter has been so referred, there has already been an oath of indigency administered by the presiding Judge.

The Investigator determines the offense and obtains a taped interview with the defendant client, which is transcribed in the Public Defender Office. The client is then represented either by the Public Defender or an Assistant Public Defender.

The attorney assigned to the case after the initial interview usually represents the defendant through all stages of his trial. On occasion, however, there has been a change of attorney due to scheduling or personality conflicts, though these instances have been minimal. Each of the Assistant Public Defenders is required to periodically submit case status reports to the Public Defender.

According to Mr. Kiser,<sup>20</sup> the attitude of the Bench, the Bar and law enforcement agencies in this area has been ideal, and the success of his office was due to cooperation from all of these segments. Scheduling of cases has not been a problem, and Public Defender cases have been processed much faster than were the cases under the court appointed system. Though at one time the holding of felony preliminary hearings only one afternoon a week in the Augusta County General District Court posed somewhat of a problem, the situation has been alleviated by the retention of a full time Judge in that Court.

Mr. Kiser reports that the caseload for the Public Defender Office appears to be increasing, especially in the adult misdemeanor catagory.

Though it is almost an impossible task to compare the costs of the Public Defender Office with the court appointed system, given the reporting limitations of the Commonwealth in this area and the services in a Public Defender Office that are normally not available to the court appointed attorney, Mr. Kiser did provide the following comparative summary:

"Under the present Public Defender service, the salary of the investigator and secretary should be excluded as these are expenses not available to the court appointed attorney. The present budget for this Office (as of June 30, 1974) is approximately \$63,000. This figure averages out to approximately \$5,250.00 per month. Comparing the average costs under the court appointed system with the cases concluded by this Office, (for a 20 month period) the average fees to the court appointed counsel would have been as follows:

a) 200 Adult Felonies at \$200.00 each	= \$40,000.00
b) 307 Adult Misdemeanors at \$50.00 each	= 15,350.00
c) 25 Juvenile Felonies at \$225.00 each	= 5,625.00
d) 163 Juvenile Misdemeanors at \$75.00 each	= 12,225.00
Total Costs	\$73,200.00

"These figures represent average court appointed fees in the past. The above figures include a period of approximately three months when the Office was being organized and the System was not functioning at full capacity. There are other factors that cannot be totally equated over a long period of time. The time saved from arrest to trial is a savings that cannot be adequately represented in a twenty month trial period. It appears that the best comparison woud be to compare a court appointed system with approximately the same caseload and number of courts as are represented in the present Public Defender Office, if such caseload figures can be made available on Virginia's Assigned Counsel System or court appointments."

Mr. Kiser further reported that it was his experience that the present legislation providing that an Assistant Public Defender devote at least 25 hours per week was an unrealistic provision, though two assistants were needed by his Office because of case scheduling and the locations of the Courts to be served in such a region.

## VII. SECOND PILOT PROGRAM:

### CITY OF VIRGINIA BEACH

The Virginia Beach Public Defender Office began operations on January 15, 1973. In addition to Mr. Peter T. Legler, the full time Public Defender, the staff includes three parttime Assistant Public Defenders, a full time investigator and a secretary.

The Investigator for this Office conducts the financial interviews to determine eligibility for service, questions witnesses and visits the scenes of crimes, among other duties.

During the period of January 15, 1973 through June 30, 1974, this office was assigned to interview 1,496 would-be clients. Through use of a financial questionnaire (See sample, Appendix at Page 22), staff members were able to determine that 366 persons were able to afford their own attorneys and the Courts were so advised in compliance with Title 19.1-32.4(b), Code of Virginia.

The 1,130 clients accepted for representation by this office included 769 adults charged with 531 felony counts and 614 misdemeanor counts, in addition to 361 juveniles charged with 276 felony counts and 273 misdemeanor counts. Thus, this Office accepted 1,130 clients charged with a total of 807 felony counts and 887 misdemeanor counts, or a grand total of 1,694 counts in the period January 15, 1973 through June 30, 1974.

The Public Defender and his Assistants had completed a total of 1,471 counts as of June 30, 1974. Of those 1,471 counts, the Public Defender and his Assistants were able to achieve 297 acquittals (or 20 percent), 136 counts were nolle prossed (or 9 percent) and 168 counts were reduced to misdemeanor counts (or 11 percent).

"If one considers success in criminal practice in terms of the above results," said Mr. Legler, "we were able to achieve a favorable verdict in at least 40 percent of our cases. This does not include the felony counts where conviction was followed by probation, or the misdemeanor counts where conviction was followed by a suspended sentence. Of the numerous individuals we represented for capital offenses, only two were sentenced to serve life sentences."

"Additionally," he said, "we noted appeals in 40 misdemeanor cases in the lower Court and were able to achieve better results in almost all cases."

As with Mr. Kiser, Mr. Legler was outspoken in his praise of the experienced Investigator as one of the biggest advantages available through the Public Defender System in the representation of indigent criminal defendants.

Mr. Legler's Assistants averaged approximately 25 hours per week in their employment with his Office.

According to the records of the Virginia Beach Defender Office, the lawyers attached thereto had 15 jury trials, while several other jury requests resulted in plea bargains. Of the jury trials, five resulted in acquittals.

#### VIII. PROPOSED THIRD PROGRAM:

##### A MAJOR URBAN AREA

During the period from June 27, 1972 to October 17, 1972, representatives of the Judiciary and the Bar in several urban areas of Virginia were contacted by members of the Commission to determine their receptiveness to possible selection of their jurisdictions for operation of a pilot Public Defender program.

On June 27, 1972, the Commission met with the Judges of the Courts of Record for the City of Richmond at Richmond, being considered then for possible selection as the site of the program to be operated in a city with a population exceeding 170,000 persons.

The Richmond Judges felt, however, that their present Assigned Counsel program was operating satisfactorily at that time and should not be displaced by a pilot program of this nature without assurance of its permanence or ability to function with the large caseload existing in the capital city.

Contacts were also made during the summer of 1972 with representatives of the Judiciary and the Bar in the City of Roanoke (for the pilot program to be operated in a city with a population of at least 85,000 and not more than 125,000 or a county of a population of at least 160,000). Opposition subsequently developed within the Roanoke Bar and further consideration by the Commission of the similarities of Roanoke and the Fourth Regional Juvenile and Domestic Relations Court area resulted in the conclusion that a better test could be made in an urbanized county or city in Northern Virginia.

The City of Alexandria and the counties of Arlington and Fairfax were next considered. The reception to preliminary inquiries in Alexandria and Arlington was essentially the same as experienced in Richmond, i.e. the Judiciary was satisfied with its existing assigned counsel programs and did not wish changes made at that time.

At its meeting on October 17, 1972, the Commission selected Fairfax County as the site of its third pilot program. Mr. Pollard, the Commission's Executive Director, was directed to promptly communicate with the Fairfax County Bar Association and give adequate publicity to the fact that Fairfax had been so selected. Consequently, a notice was published in the Fairfax Bar News on December 14, 1972, which resulted in receipt of several inquiries and applications for the position of Fairfax Public Defender.

On January 23, 1973, the Vice Chairman of the Commission and Mr. Pollard met with the Chief Judge of the Circuit and the Commonwealth's Attorney, in Fairfax, to discuss the Public Defender System in general and some of the prospective applicants for Public Defender there, with no indication that the Commission would receive anything other than cooperation in its efforts. Four applicants for the position of Fairfax Public Defender were interviewed the same day in Fairfax. A subsequent conference was held with one of those applicants on February 21, 1973 in Richmond, with his selection as Fairfax Public Defender being approved that same date by the Commission.

Since the Division of Justice and Crime Prevention had advised that it was still necessary at that time to have the locality request funds for the pilot Defender program in its jurisdiction, a meeting was arranged with the proper Fairfax officials to present the Action Grant Application and ask that it be approved by the County Board of Supervisors.

On February 26, 1973, Mr. Pollard went to Fairfax and talked with several officials. As a result, the Grant Application was referred to a citizens' advisory group, the Criminal Justice Coordinating Council, where it remained for several months.

Consequently, several telephone conferences were initiated with people in Fairfax and with the Division of Justice and Crime Prevention, and the Director of that Division made a trip to Fairfax. A meeting was held between DJCP staff and the Chairman of the Commission on May 7th, where it was decided that a meeting would be arranged with the Fairfax Criminal Justice Coordinating Council. That meeting was held on June 6, 1973, at which time the Council indicated that it was not inclined to recommend approval of the Grant Application to the Board of Supervisors because it didn't feel that the Commission could adequately staff the Fairfax program with the budget as proposed, even though it called for a full time Public Defender and five Assistant Public Defenders.

It was subsequently decided that the Commission would seek direct funding from DJCP, upon the advice of DJCP that it was then proper for a State agency to request such funds in fiscal 1973-74.

An application was submitted to DJCP, revised for change of form per DJCP and resubmitted, with consideration for approval coming at the August 2, 1973 meeting of the Council on Criminal Justice. At that meeting, the Fairfax County Commonwealth's Attorney appeared and expressed strong opposition to the granting of funds for the project. Two members of that Council then expressed concern over establishment of the office in Fairfax because of opposition in that area. Accordingly, the Council on Criminal Justice voted to disapprove the funding request.

## IX. OUTSIDE EVALUATION

During July, 1974, in contemplation of this Report, the Commission sought individual evaluations via questionnaires on the two operating Public Defender programs from all seven Circuit Court Judges, six of the eight Juvenile and Domestic Relations and General District Court Judges,<sup>21</sup> four Circuit Court Clerks, three District Court Clerks, all four Commonwealth's Attorneys, four Probation Officers, two Sheriffs and three Chiefs of Police in the program areas of Virginia Beach and Staunton-Waynesboro-Augusta County.

Responses were received from all of the Circuit Court Judges, the six District Court Judges, three of the four Commonwealth's Attorneys, all of the Circuit Court Clerks, two of the three District Court Clerks, the four Probation Officers, the three Chiefs of Police

and the two Sheriffs.

Virtually all of those responding to the evaluation survey felt that the Public Defender systems in their respective localities were better than the court appointed counsel (Assigned Counsel) system, that the adversary system was not weakened by the representation of indigent defendants by a full time Public Defender, and that the Public Defender office was providing quality representation for indigent defendants in their respective jurisdictions.

An overwhelming majority of the Judges further felt that the Public Defender System substantially aided in the processing of criminal cases in their Courts through the preparation, availability and accessibility of the Public Defender and his assistants.

A majority of those responding also said that in their judgment the quality of representation with the Public Defender System was consistently better, that the assistance of the Public Defender Office in determinations of indigency was very helpful, and that, "unquestionably", the investigative services provided the Defender Offices had improved the quality of defense services afforded indigent criminal defendants, in some instances necessitating additional hours of preparation by the prosecution.

Most of the responding Judges and Commonwealth's Attorneys were opposed to limiting the Public Defender's caseload to a certain percentage of felony and misdemeanor cases or to certain types of crimes, nor did they favor using pool attorneys drawn from private practitioners except in conflicting situations, where they were inclined to continue their present practice of allowing the Courts to appoint counsel.

Those queried also advised that no more persons were requesting the services of the Public Defender Offices than would normally occur on an assigned counsel basis. One Virginia Beach District Court Judge did say that more persons were requesting the Public Defender's services but that the indigency screening process used by the Public Defender also eliminated more of those requests to the end that there was no significant increase in those obtaining such representation over what normally would have been a caseload for court appointments.

Both the Judges and Commonwealth's Attorneys, by a majority, said that they would favor state legislation providing for the assessment of costs (for Defender Services) against indigents convicted of crimes.

Asked for additional comments or criticism, all four Circuit Court Judges in Virginia Beach said they favored employing lawyer assistants for the Public Defender on a full time basis in the future and providing appropriate salary levels for such assistants. It is felt that full time defense attorneys for indigents charged with crime are better able to specialize in criminal law and criminal trial practice than the private practitioner appointed on a rotating, case-by-case, basis. This suggestion did not appear in the questionnaires returned by the Circuit Court Judges in the Staunton-Waynesboro-Augusta

County area.

All of the responding Judges, both at the Circuit and District levels, said that they fully support the Public Defender System, with the Circuit Court Judges in Virginia Beach specifically expressing their pleasure at having their City selected for this pilot program.

At least two of the Judges, in unsolicited comments, said that they felt that the Public Defender System should be expanded to additional areas in Virginia, with one of those favoring adoption statewide by the 1975 Session of the Virginia General Assembly.

One Commonwealth's Attorney did state that he felt that the loss of this training experience opportunity for young attorneys who otherwise could obtain court appointments in criminal cases was a disadvantage of the Public Defender System.

A consensus of the responding Court Clerks revealed some decrease in their workload with the Public Defender System with one specific area cited as the filing of fewer payment vouchers with the Comptroller.

Some individual respondents indicated that they felt that the Public Defender and his assistants showed a greater interest in their clients than was generally observed with court appointed counsel. At least two respondents also said that there appeared to be more plea bargaining with the Public Defender, though no specific reason was cited, and another respondent said he noticed an increase in jury trials, again without any evidence of prosecution or defense causation that he could discern.

Though the Commission was obviously pleased with the sincere deliberation and comment accorded its two programs by those responding to its questionnaires, and with the strong favorable showing that emerged, it does wish to point out what has become almost self-evident in the operation of the two programs and their reception in specific Courts to date: that both the effectiveness and reception of such a program is to a substantial degree commensurate with the measure of the attorneys employed as Public Defenders and Assistant Public Defenders, their knowledge, ability, tact and personalities.

#### X. FINDINGS

- 1) The Commission's evaluation shows greater consistency in the quality of representation of the indigent is being provided by the Public Defender Offices.
- 2) The investigative resources are being used with successful results.
- 3) The Courts, especially at the District Court level, have responded favorably to the program, advising that there is greater efficiency in the processing of indigent cases.

- 4) Specialized expertise in criminal law has been substituted for the necessity of appointment of attorneys who may be unfamiliar with criminal practice.
- 5) To date there is no indication of any monetary savings to the State by use of the Public Defender System.
- 6) In order to provide a sound test of the Public Defender System, the Commission finds it is necessary that a pilot project be placed in a large urban area. In this regard, however, the Commission has experienced considerable difficulty in establishing such an office because of: (a) opposition of the Bench and Bar who feel the existing assigned counsel systems are functioning well, with an available supply of attorneys competent and willing to accept appointments; (b) that sufficient funds to adequately staff a Public Defender Office are not available; (c) that the salary scales are unrealistic and (d) reluctance to replace a system which appears to function satisfactorily with a new system that may be temporary with no assurance of its continuance even if successful.

## XI. RECOMMENDATIONS

- 1) Remove present population and judicial region categories in Sec. 19.1-32.3, Code of Virginia, 1950, as amended, to allow more flexibility in selection of pilot program areas.
- 2) Appoint a Joint Subcommittee of the Courts of Justice Committees of the Senate and the House of Delegates of Virginia to determine the feasibility of establishing legislative standards for determining indigency as it relates to eligibility for assigned counsel or Public Defender representation as provided by law.
- 3) Amend present legislation to allow employment by a Public Defender of parttime assistants from the private bar for fewer than 25 hours per week, where necessary.
- 4) If the Public Defender System is to be approached and considered for implementation on a statewide basis in Virginia, a pilot program must be installed in at least one major metropolitan area with sufficient funds assured to operate such project or projects including an adjustment of the salary scale where necessary. The Commission specifically requests the assistance of the General Assembly in this regard.
- 5) If the Public Defender System is to be approached on an optional basis, where a need is evident, it should be tested in several more areas for an additional period. One avenue of funding would be the diverting of appropriated criminal defense funds to the areas selected.
- 6) Enact legislation authorizing creation of additional Public Defender programs, and continuing the two existing programs and services of an Executive Director to the Commission.

- 7) Enact legislation providing for the assessment of costs (for attorneys fees) against convicted indigents represented by Public Defenders. (See Wicks v. City of Charlottesville, Va. Record # 740266, October 14, 1974)

## FOOTNOTES

1. Code of Virginia of 1849, p. 704, c. 185, Sec. 1.
2. Association of the Bar of the City of New York & National Legal Aid and Defender Ass'n., Equal Justice for the Accused 44 (1959)
3. Code of Virginia of 1920, as amended, Title 19, c. 1, Sec. 19.1-12
4. Gideon v Wainwright , 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)
5. Argersinger v Hamlin , 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (June 12, 1972)
6. The Other Face of Justice , A Report of the National Defender Survey conducted by the National Legal Aid and Defender Association, p. 8, NLADA (1973)
7. Ibid. at p. 13
8. Ibid.
9. The Public Defender office in Greensboro, North Carolina is currently staffed by a Public Defender, two investigators, seven full time assistants, and three secretaries. The courts served are in Greensboro and High Point, and in 1973, the office handled 1,825 cases (felonies, misdemeanors, post conviction hearings and habeas corpus), and in addition handled 221 judicial hospitalization matters. The budget for 1972-73 was \$110,617.53 and in 1973-74 the budget was approximately \$140,000.00. The 1974-75 budget will be considerably higher because the number of assistants was recently increased from five to seven. The average pay of the assistants in the office is \$17,500.00 and the Public Defender's salary is \$27,000.00.

The North Carolina legislation provides for appointment of the Public Defender by the Governor, upon recommendations of the Bar in a particular district, with the exception of the Asheville Office (the newest of the three Public Defender Offices) where the Bar recommends an applicant and the Senior Resident Judge makes the appointment.

10. Costs provided by State Comptroller's Office, Commonwealth of Virginia
11. This decrease can be attributed in part to the Public Defender Offices being separately funded
12. Code of Virginia of 1950, as amended, Sec. 14.1-184.1
13. Limited copies of this Report remain available from the Virginia State Bar office, Imperial Building, Fifth & Franklin Streets,

Richmond, Virginia 23219

14. Ibid. at p. 10
15. Code of Virginia, 1950, as amended, Sec. 19.1-32, et seq.
16. See Appendix, Page 30 .
17. Actually, at this time only Peter T. Legler of Virginia Beach is a full time Defender because of the resignation in August, 1974 of Mr. Kiser to accept appointment as a General District Court Judge for the Twenty-Fourth Judicial District.
18. The 1973 courts reorganization legislation has changed the geographical circuits so that the Fourth Regional Juvenile Court area no longer exists.
19. This office actually does not have a full time Public Defender at this time because of Mr. Kiser's appointment to a judgeship. This section is intended to show the general operation of the office when it was fully staffed.
20. Mr. Kiser was appointed a General District Court Judge of the Twenty-Fourth Judicial Circuit, assuming that office as of August 16, 1974. No replacement for him has been selected as yet.
21. Because of Judicial Re-Districting under Court Reorganization legislation, two Judges had not had a sufficient opportunity to become familiar with the Public Defender program in their area.

## Appendix

**PUBLIC DEFENDER'S OFFICE  
LARGE METROPOLITAN AREA**

	<u>COST</u>	<u>DJCP FUNDS</u>
	<u>BLOCK</u>	<u>GENERAL</u>
<b>A. PERSONNEL:</b>		
Public Defender - 40 hrs.	\$ 25,000	\$ 25,000
Assistant Public Defender (7) - 25 hours each	84,000	84,000
Secretary (2) - 40 hours	11,000	11,000
Investigator - 40 hours	13,500	\$ 13,500
	<u>\$133,500</u>	<u>\$120,000</u>
		<u>\$ 13,500</u>
<b>FRINGE BENEFITS:</b>		
FICA - 5.85% of first \$13,200 of salary	\$ 7,102	\$ 6,476
Blue Cross - 4 employees	735	662
Less: Portion of employee benefits not to be refunded to state	(73)	
	<u>\$ 7,764</u>	<u>\$ 7,138</u>
		<u>\$ 626</u>
<b>TOTAL PERSONNEL</b>	<b>\$141,264</b>	<b>\$127,138</b>
		<b>\$ 14,126</b>
<b>B. CONSULTANTS:</b>		
No expenditures planned for this category		
<b>C. TRAVEL:</b>		
Travel for Public Defender (Training, etc.)	\$ 1,500	\$ 1,350
Travel for Investigator (500 miles per month @ .12)	720	648
Auto Rental - \$87/month	<u>1,044</u>	<u>939</u>
<b>TOTAL TRAVEL</b>	<b>\$ 3,264</b>	<b>\$ 2,937</b>
		<b>\$ 327</b>

	DJCP FUNDS		
	COST	BLOCK	GENERAL
<b>D. EQUIPMENT:</b>			
(1) PURCHASE:			
Desks (4)	\$ 579	\$ 521	\$ 58
Chairs (6)	517	465	52
Typewriters (2) and duplicating machine	1,428	1,285	143
File cabinets (2)	172	155	17
Dictation equipment (1 dictating and 2 trans- scribing units)	1,484	1,336	148
Bookcase	84	76	8
	<hr/>	<hr/>	<hr/>
	\$ 4,264	\$ 3,838	\$ 426
(2) LEASE OR RENTAL:			
Xerox machine	\$ 720	\$ 648	\$ 72
	<hr/>	<hr/>	<hr/>
TOTAL EQUIPMENT	\$ 4,984	\$ 4,486	\$ 498
<b>E. CONSTRUCTION:</b>			
No expenditures planned for this category			
<b>F. SUPPLIES AND OTHER OPERATING EXPENSES:</b>			
Office Supplies	\$ 970	\$ 873	\$ 97
Books and Periodicals	1,513	1,362	151
Lettering on office, signs	115	104	11
Xerox supplies and service	146	131	15
Telephone (Service, \$185; Local service, \$23/month; Long distance, \$22/month)	1,248	1,123	125
Rent - \$350/month	4,200	3,780	420
Miscellaneous supplies and services	<hr/>	<hr/>	<hr/>
	3,506	3,155	351
TOTAL SUPPLIES AND OTHER EXPENSES			
	\$ 11,698	\$ 10,528	\$ 1,170
TOTAL PROJECTED EXPENDITURES			
	\$161,210	\$145,089	\$ 16,121

**PUBLIC DEFENDER'S OFFICE  
RURAL AREA**

	<u>COST</u>	<u>DJCP FUNDS</u>	
		<u>BLOCK</u>	<u>GENERAL</u>
<b>A. PERSONNEL:</b>			
Public Defender - 40 hours	\$ 20,000	\$ 20,000	
Secretary - 40 hours	5,200		\$ 5,200
Assistant Public Defender (2) - 25 hours	16,000	16,000	
Investigator - 40 hours	13,000	13,000	
	<u>\$ 54,200</u>	<u>\$ 49,000</u>	<u>\$ 5,200</u>
<b>FRINGE BENEFITS:</b>			
FICA - 5.85% of first \$13,200 of salary	\$ 2,773	\$ 2,226	\$ 547
Blue Cross - 3 employees	551	496	
Less: Portion of employee benefits not to be refunded to state	(55)		
	<u>\$ 3,269</u>	<u>\$ 2,722</u>	<u>\$ 547</u>
<b>TOTAL PERSONNEL</b>	<b>\$ 57,469</b>	<b>\$ 51,722</b>	<b>\$ 5,747</b>
<b>B. CONSULTANTS:</b>			
No expenditures planned for this category			
<b>C. TRAVEL:</b>			
Travel for Public Defender (Training, etc.)	\$ 1,500	\$ 1,350	\$ 150
Travel for Investigator (375 miles per month @ .12)	540	486	54
<b>TOTAL TRAVEL</b>	<b>\$ 2,040</b>	<b>\$ 1,836</b>	<b>\$ 204</b>

	DJCP FUNDS		
	COST	BLOCK	GENERAL
D. EQUIPMENT:			
(1) PURCHASE:			
Desks (3)	\$ 494	\$ 445	\$ 49
Chairs (6)	449	404	45
Typewriter (1)	621	559	62
File cabinet (1)	73	66	7
Dictation equipment (1 dictating and 1 trans- scribing unit)	731	658	73
Bookcase	84	75	9
	<u>\$ 2,452</u>	<u>\$ 2,207</u>	<u>\$ 245</u>
(2) LEASE OR RENTAL			
Xerox machine	<u>\$ 720</u>	<u>\$ 648</u>	<u>\$ 72</u>
TOTAL EQUIPMENT	<u>\$ 3,172</u>	<u>\$ 2,855</u>	<u>\$ 317</u>
E. CONSTRUCTION:			
No expenditures planned for this category			
F. SUPPLIES AND OTHER OPERATING EXPENSES:			
Office Supplies	\$ 644	\$ 580	\$ 64
Books and Periodicals	661	595	66
Lettering on office, signs	115	103	12
Xerox & other supplies and service	150	135	15
Telephone (Local service, \$21/ month; Long distance, \$39/ month; Service,other, \$2/month)	744	670	74
Rent - \$260/month	3,120	2,808	312
Miscellaneous supplies and expenses	<u>1,855</u>	<u>1,669</u>	<u>186</u>
TOTAL SUPPLIES AND OTHER EXPENSES	<u>\$ 7,289</u>	<u>\$ 6,560</u>	<u>\$ 729</u>
TOTAL PROJECTED EXPENDITURES	<u>\$ 69,970</u>	<u>\$ 62,973</u>	<u>\$ 6,997</u>

FISCAL YEAR JULY 1, 1972 - JUNE 30, 1973

WAYNESBORO

GRANT NO. 71-A1270

	<u>Grant Award</u>	<u>Total Spent</u>
Personnel	\$43,368.00	\$29,100.62
Travel	1,500.00	-0-
Equipment	2,500.00	-0-
Other Expenses	<u>2,000.00</u>	<u>1,920.98</u>
Total	\$49,368.00	\$31,021.60

VIRGINIA BEACH

GRANT NO. 71-A1364

Personnel	\$42,080.00	\$33,126.30
Consultant	1,000.00	-0-
Travel	1,250.00	.409.35
Equipment	3,550.00	2,757.05
Other Expenses	<u>2,000.00</u>	<u>4,037.64</u>
Total	\$49,880.00	\$40,330.34
Grand Total	\$99,248.00	\$71,351.94

FISCAL YEAR JULY 1, 1973 - JUNE 30, 1974

WAYNESBORO

GRANT NO. 72-A1758

	<u>Grant Award</u>	<u>Total Spent</u>
Personnel	\$55,592.00	\$54,702.04
Travel	2,600.00	165.90
Equipment	1,170.00	994.16
Other Expenses	<u>4,793.00</u>	<u>8,785.31</u>
Total	\$64,155.00	\$64,647.41

VIRGINIA BEACH

GRANT NO. 72-A1710

Personnel	\$80,305.00	\$72,656.08
Travel	3,000.00	1,748.08
Equipment	720.00	0
Other	<u>4,794.00</u>	<u>8,999.43</u>
Total	\$88,819.00	\$83,403.59
Grand Total	\$152,974.00	\$145,448.56

FISCAL YEAR JULY 1, 1974 - JUNE 30, 1975

GRANT NO. 73-A2277

	<u>DJCP Block</u>	<u>DJCP General</u>
Personnel	\$135,801	\$15,015
Travel	4,860	540
Equipment	1,296	144
Other	7,830	815
Total	\$149,787	\$16,514
Total Award		\$166,301

### Sample Questionnaire

(1) How does the present defense by the Public Defender Office compare with the court appointed system?

- (a) Better than court appointed system
- (b) Worse than court appointed system
- (c) Approximately the same

Comments:

(2) Do you feel that the adversary system is weakened by the representation of indigents by a full time Public Defender? If so, are there indications of increased plea bargaining?; too much state involvement?; difference in the attorney/client relationship from that of court assigned counsel?; too much contact (or coziness) with Commonwealth attorneys?

(3) Do you feel the Public Defender's Office is providing quality representation of indigent defendants in your jurisdiction?

(4) Do you feel the present Public Defender system aids or hinders the prompt processing of criminal cases? If so, in what way?

(5) What advantages and/or disadvantages of the Public Defender System have you noted?

(6) Do you feel the Public Defender and his assistants offer more consistent defense services than attorneys appointed on an individual case basis?

(7) Is the Public Defender office assisting with the determination of indigency in your jurisdiction? If so, does this give you more time for substantial matters, or is it a hinderance to you? What suggestions would you make to improve the determination of indigency?

(8) Do you feel the investigative services provided defender offices have improved the quality of defense services?

(9) Would you favor more participation by the private bar in providing defense services to indigents? If so, would you suggest:

- (a) Limiting the Public Defender's caseload to a certain percentage of felony and misdemeanor cases?

- (b) Limiting the Public Defender's cases to certain types of cases

- (c) Providing the Public Defender with a list of pool attorneys who could be assigned to cases by the Public Defender and still

have the advantage of investigative services and the supervision of the Public Defender?

- (10) Do you feel more people are requesting the services of the Public Defender's offices than would normally be the case with counsel being assigned on a case basis?
- (11) Would you favor legislation which would provide for the assessment of costs against indigents convicted of crimes (who are represented by full time Public Defenders)?
- (12) Additional criticisms or comments which you have noted:
- (13) What additional recommendations for the future would you suggest?

## **CHAPTER 2.1.**

### **Public Defenders.**

§ 19.1-32.2 Public Defender Commission to be appointed; membership; expenses; report to General Assembly.—There is hereby created a Public Defender Commission, which shall be composed of five citizens and residents of this Commonwealth. Members of the Commission shall be appointed by the Speaker of the House of Delegates in consultation with the Chairmen of the Courts of Justice Committees of the House of Delegates and the Senate. The Commission shall annually elect one of its members Chairman. The Commission shall consist of two members who are active judges of courts of record, two members who are active members of the Virginia State Bar and have practiced law in the State for ten or more years immediately preceding their appointment and one public member who shall not be an active or retired judge and shall never have been a licensed lawyer. Members of this Commission shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties, for which there is hereby appropriated from the general fund of the State treasury the sum of ten thousand dollars. The Commission shall report its actions to the General Assembly no later than November fifteen, nineteen hundred seventy-four.

§ 19.1-32.3 Commission to appoint public defenders in selected areas; compensation, assistants, offices, etc., of public defenders.—The duties of the Public Defender Commission hereinafter referred to as "the Commission" are:

(a) To select three areas wherein public defender offices are to be established in the following manner:

(i) A city with a population in excess of one hundred seventy thousand.

(ii) A city with a population of at least eighty-five thousand and not more than one hundred twenty-five thousand or a county of a population of at least one hundred sixty thousand.

(iii) An urban-rural area to be identical with that served by a regional juvenile and domestic relations court.

(b) Appoint a public defender for each of the above areas to serve at the pleasure of the Commission, who shall devote his full time to his duties and not engage in the private practice of law. The Commission shall fix his compensation.

(c) To authorize the public defender to employ such assistants as authorized by the Commission. Such assistants shall devote a minimum of twenty-five hours per week to their duties and may engage in the private practice of law. The Commission shall approve

the salaries to be paid said assistants.

(d) To authorize the public defender to employ the necessary staff, carry out the duties imposed upon him to include secretarial and investigative personnel and such other personnel as may be necessary.

(e) To authorize the public defender to secure such office space as needed and to purchase or rent such office equipment and purchase supplies and to incur such expenses as are necessary to carry out the duties imposed upon him.

(f) To receive and expend moneys appropriated by the General Assembly of Virginia and to receive other moneys as they be available to it and to expend the same in order to carry out the duties imposed upon it.

**§ 19.1-32.4 Duties of public defenders and assistants.—**Public defenders and their assistants shall carry out the following duties:

(a) To secure office space, to employ a staff, to fix salaries and to do such other things necessary to carry out the duties imposed upon him with the approval of the Commission.

(b) To represent indigent defendants charged with a crime when such defendants are entitled to be represented by law by court-appointed counsel in a court of record or a court not of record, and to verify the indigent status of such defendants.

(c) To represent indigent defendants who are entitled to be represented by court-appointed counsel in an appeal of their conviction to the Supreme Court of Virginia.

(d) To represent indigent prisoners when a habeas corpus proceeding is brought by such prisoners.

(e) To submit such reports as required by the Commission.

**§ 19.1-32.5 Application of §§ 14.1-183 and 14.1-184 where public defenders have been appointed.—**In counties and cities in which public defenders are appointed, the provisions of §§ 14.1-183 and 14.1-184 shall not apply unless the public defender is unable to represent the defendant or petitioner by reason of conflict of interest or otherwise, in which case the provisions of Secs. 14.1-183 and 14.1-184 shall be in full force and effect.

## CONFIDENTIAL FINANCIAL INQUIRY

V.L.  
NAME Kiss Xrs

Address \_\_\_\_\_

Phone \_\_\_\_\_ Age \_\_\_\_\_ DOB \_\_\_\_\_

MARITAL STATUS: Married [ ] Separated [ ] Widowed [ ]Spouse (full name) \_\_\_\_\_ Number of children  
(under 18 years) \_\_\_\_\_

Alimony (if applicable) Yes [ ] \$ \_\_\_\_\_ paid [ ] received [ ] Number of other dependents \_\_\_\_\_

Child support Yes [ ] \$ \_\_\_\_\_ paid [ ] received [ ] Total Dependents \_\_\_\_\_

No [ ] \$ \_\_\_\_\_ received [ ]

Remarks: \_\_\_\_\_

I. INCOME: Employer Name & address \_\_\_\_\_

Phone \_\_\_\_\_ Job Description \_\_\_\_\_ How Long \_\_\_\_\_ Salary (net) \$ \_\_\_\_\_

Spouse's Employer/ Name &amp; address \_\_\_\_\_

Phone \_\_\_\_\_ Job Description \_\_\_\_\_ How Long \_\_\_\_\_ Salary (net) \$ \_\_\_\_\_

Other income: Source \_\_\_\_\_ Amount \$ \_\_\_\_\_

Welfare? Yes [ ] No [ ] Where \_\_\_\_\_ Amount \$ \_\_\_\_\_

Total Monthly income \$ \_\_\_\_\_

Remarks: \_\_\_\_\_

ASSETS: Do you have: Currency on person when arrested-- Amount \$ \_\_\_\_\_

Checking Account? Yes [ ] No [ ] Bank \_\_\_\_\_ Amount \$ \_\_\_\_\_

Savings Account? Yes [ ] No [ ] Bank \_\_\_\_\_ Amount \$ \_\_\_\_\_

Stocks or bonds? Yes [ ] No [ ] Value \$ \_\_\_\_\_

Real Estate (other than your home)? Yes [ ] No [ ] Where \_\_\_\_\_ Value \$ \_\_\_\_\_

Remarks: \_\_\_\_\_

OBLIGATIONS: Home: Rent [ ] Own [ ] -Value \$ \_\_\_\_\_ or: \_\_\_\_\_ (person with whom you live)

Auto: Description: Lienholder: Purchase price: Balance: \_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_ \$ \_\_\_\_\_

Estimated total monthly obligations (rent, food, utilities, installments, etc.) \$ \_\_\_\_\_

Remarks: \_\_\_\_\_

CHARGE: AMOUNT OF BOND: DOCKET #:

\_\_\_\_\_ \$ \_\_\_\_\_ #

\_\_\_\_\_ \$ \_\_\_\_\_ #

\_\_\_\_\_ \$ \_\_\_\_\_ #

\_\_\_\_\_ \$ \_\_\_\_\_ #

Date of arrest: \_\_\_\_\_ Misdemeanor Trial/  
Initial Court Date: Preliminary Hearing  
Bonded? Yes [ ] Surety \_\_\_\_\_  
No [ ] by: \_\_\_\_\_ Property [ ] Date: \_\_\_\_\_  
Cash [ ]

Remarks: \_\_\_\_\_

I certify that the foregoing information, given by me, is correct.

SIGNATURE OF ACCUSED

WITNESS

Eligible/Ineligible

A BILL to amend and reenact § 19.1-32.2 of of the Code of Virginia, relating to Public Defender Commission to be appointed, membership, expenses, and report to General Assembly.

Be it enacted by the General Assembly of Virginia:

1. That § 19.1-32.2 of the Code of Virginia is amended and reenacted as follows:

§ 19.1-32.2 Public Defender Commission to be appointed; membership; expenses; report to General Assembly.—There is hereby created a Public Defender Commission, which shall be composed of five citizens and residents of this Commonwealth. Members of the Commission shall be appointed by the Speaker of the House of Delegates in consultation with the Chairmen of the Courts of Justice Committees of the House of Delegates and the Senate. The Commission shall annually elect one of its members Chairman. The Commission shall consist of two members who are active judges of courts of record, two members who are active members of the Virginia State Bar and have practiced law in the State for ten or more years immediately preceding their appointment and one public member who shall not be an active or retired judge and shall never have been a licensed lawyer. Members of this Commission shall receive no compensation for their services but shall be paid their reasonable and necessary expenses incurred in the performance of their duties, for which there is hereby appropriated from the general fund of the State treasury the sum of ten thousand dollars. The Commission shall report its actions to the General Assembly no later than November fifteen, nineteen hundred seventy-four *and shall file thereafter an additional report no later than June thirtieth, nineteen hundred seventy-six.*

2. That § 19.1-32.2 of the Code of Virginia is amended and reenacted as follows:

§ 19.1-32.3 Commission to appoint public defenders in selected areas; compensation, assistance, offices, etc., of public defenders. — The duties of the Public Defender Commission hereinafter referred to as "The Commission" are:

(a) To select *in its discretion* three six areas wherein public defender offices are to be established. in the following manner:

(1) A city with a population in excess of one hundred seventy thousand.

(11) A city with a population of at least eighty five thousand and not more than one hundred twenty-five thousand or a county of a population of at least one hundred sixty thousand.

(111) An urban rural area to be identical with that served by a regional Juvenile and Domestic Relations Court.

(b) Appoint a public defender for each of the above areas to

serve at the pleasure of the Commission, who shall devote his full time to his duties and not engage in the private practice of law: The Commission shall fix his compensation.

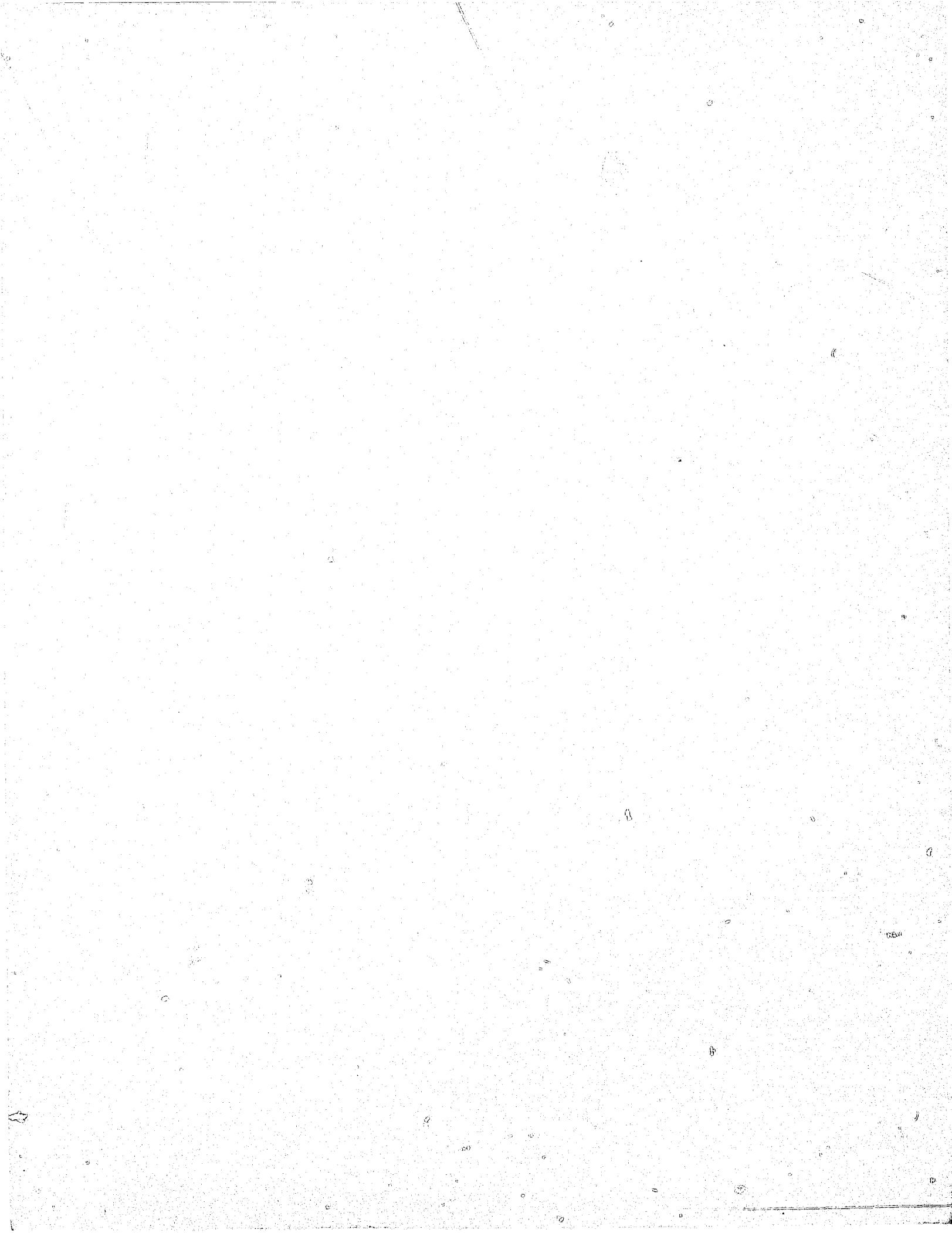
(c) To authorize the public defender to employ such assistants as authorized by the Commission. Such assistants shall devote *such time to the performance of their duties as may be required by the public defender or the Commission* a minimum of twenty five hours per week to their duties and may engage in the private practice of law. The Commission shall approve the salaries to be paid said assistants.

(d) To authorize the public defender to employ the necessary staff, carry out the duties imposed upon him to include secretarial and investigative personnel and such other personnel as may be necessary.

(e) To authorize the public defender to secure such office space as needed and to purchase or rent such office equipment and purchase supplies and to incur such expenses as are necessary to carry out the duties imposed upon him.

(f) To receive and expend moneys appropriated by the General Assembly of Virginia and to receive other moneys as they be available to it and to expend the same in order to carry out the duties imposed upon it.

(g) *In any case in which a public defender or his assistant represents a poor person charged with an offense and such person is convicted, such sum as would have been allowed a court-appointed attorney as compensation and as reasonable expenses shall be taxed against such individual as a part of the costs of the prosecution, and if collected, shall be paid to the Commonwealth. An abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by any circuit court taxing such costs.*



**END**