

A Comprehensive Review of Indigent Defense in Virginia

January 2004

Executive Summary

Prepared By The Spangenberg Group

On Behalf of the American Bar Association
Standing Committee on Legal Aid and Indigent Defendants



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EXECUTIVE SUMMARY

In 2003, The Spangenberg Group spent nine months conducting an in-depth study of the indigent defense system in Virginia. The study was conducted on behalf of the American Bar Association Standing Committee on Legal Aid and Indigent Defendants.

While numerous reports criticizing Virginia's indigent defense system have been produced over the past 30 years, very little has been done over that period to remedy the problems identified. This report is perhaps the most comprehensive review produced to date. The chief conclusion of the review is that Virginia's indigent defense system is deeply flawed and fails to provide indigent defendants the guarantees of effective assistance of counsel required by federal and state law. The report discusses in detail the individual shortcomings of the system that produce this overall failure to assure that the rights of poor people accused of crimes are protected.

Formed in 1985, The Spangenberg Group (TSG) has conducted research in all 50 states and provides consultative services to developing and developed countries that are reforming their legal aid delivery programs. For over 18 years, TSG has been under contract with the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants to provide support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. Including Virginia, TSG has conducted comprehensive statewide studies of indigent defense systems in 36 states.

The methodology for this study included: review of reports and data on Virginia's indigent defense system from numerous sources; on-site assessments of the indigent defense systems in 13 Virginia judicial circuits; analysis of the Supreme Court of Virginia Administrative Office database on assigned counsel; analysis of budget, caseload and other data provided by the Virginia Public Defender Commission; and collection and analysis of comparison information from other states' indigent defense systems.

The 13 circuits studied are representative of Virginia's 31 judicial circuits/districts, geography and population, and reflect a diversity of system types (three jurisdictions were served solely by court-appointed counsel while the other 10 used a public defender office and assigned counsel). In each of the 13 circuits/districts visited, we met with people who are involved with indigent defense services, including: circuit court judges, district court judges, juvenile and domestic relations court judges, court clerks, the Commonwealth's attorney and/or staff, Public Defender Commission staff and members, public defender and court-appointed attorneys, and the sheriff or a jailer familiar with indigent defense procedures. In addition to conducting professional interviews, we observed criminal court sessions in most sites and juvenile court sessions in a few sites. Site work was conducted between June and September 2003. In total, we spent 79 days in Virginia, conducting interviews with 370 individuals who work in more than 60 courts, observing sessions in 27 courts and visiting five jails.

Findings

Chapter 9 of this report includes The Spangenberg Group's overall findings of Virginia's indigent defense system. The black letter findings appear below: the full findings with explanation appear in Chapter 9. The findings are based on our review of indigent defense in Virginia and are also based on the perspective and experience The Spangenberg Group has gained studying the indigent defense systems of other states over the years.

OVERALL FINDINGS

- 1. Virginia's indigent defense system fails to adequately protect the rights of poor people who are accused of committing crimes.**
- 2. Two primary factors - inadequate resources and an absence of an oversight structure – form the basis of an indigent defense system that fails to provide lawyers with the tools, time and incentive to provide adequate representation to indigent defendants.**
- 3. In the past 30 years, numerous studies and reports have been conducted on Virginia's indigent defense system, most pointing out similar problems and calling for similar solutions.**
- 4. The deeply flawed system puts lawyers at substantial risk of violating professional rules of conduct when representing indigent defendants.**
- 5. There is no official state entity that effectively advocates for indigent defense needs in Virginia. No governmental entity serves as a voice for indigent defense: not the Public Defender Commission, not the State Bar, not the Supreme Court, not the Executive Branch and not the General Assembly.**
- 6. Because of a lack of response by elected officials, there has proven to be no meaningful way to seek redress for the problems with Virginia's indigent defense system.**
- 7. Court-appointed attorneys and public defenders make very limited use of expert witnesses and court-appointed lawyers make very little use of investigators, services that are essential to proper representation of clients in many cases.**
- 8. Substandard practice has become the accepted norm in Virginia's indigent defense system.**
- 9. Virginia ranks last in average indigent defendant cost per case among a group of 11 states for which such data was collected for FY 2002 (the states are Alabama, Colorado, Georgia, Iowa, Maryland, Massachusetts, Missouri, North Carolina, Ohio, Virginia and West Virginia).**

SPECIFIC FINDINGS PERTAINING TO VIRGINIA’S ASSIGNED COUNSEL SYSTEM

- 10. The unwaivable statutory fee caps for court-appointed counsel in Virginia are the lowest in the country.**
- 11. The unreasonably low statutory fee caps act as a disincentive to many assigned counsel from doing the work necessary to provide meaningful and effective representation to their indigent clients.**
- 12. In addition to the problems stemming from low pay, there are numerous systemic deficiencies with the assigned counsel system in Virginia that result in the failure of court-appointed lawyers to provide adequate representation to indigent defendants.**
- 13. The lack of oversight and administration permits a small number of attorneys to receive a disproportionate number of appointed cases, raising serious concerns over the quality of representation provided to their clients.**
- 14. The disparity in pay for court-appointed counsel representing parents in abuse and neglect cases and GALs who represent the best interests of children in these cases is unfair and illogical.**

SPECIFIC FINDINGS PERTAINING TO VIRGINIA’S PUBLIC DEFENDER SYSTEM

- 15. The Virginia public defender system is greatly over-burdened and substantially under-resourced.**
- 16. The entity that should be the advocate for adequate resources for public defender offices -- the Public Defender Commission -- has been more concerned with assuring the public and elected officials that public defenders can handle cases as cheaply as or cheaper than appointed counsel.**
- 17. There is great disparity in resources afforded to public defenders and Commonwealth’s attorneys.**

Recommendations

Chapter 10 of this report contains several major systemic changes that The Spangenberg Group recommends that Virginia undertake forthwith. These recommendations are as follows:

- (1) The Virginia General Assembly should fund indigent criminal defense services in cases requiring appointment of counsel at a level that assures that all indigent defendants receive effective and meaningful representation.
- (2) The state should establish a professionally independent statewide indigent defense commission to organize, supervise and assume overall responsibility of Virginia's indigent defense system.
- (3) The newly created commission on indigent defense should have broad power and responsibility for the delivery of indigent criminal defense services.
- (4) The indigent defense commission should adopt performance and qualification standards for both private assigned counsel and public defenders. The standards should address workload limits, training requirements, professional independence and other areas to ensure effective and meaningful representation.
- (5) A comprehensive data collection system designed to provide an accurate picture of the provision of indigent criminal services in Virginia should be established and implemented by the statewide commission.

The task ahead to reform the indigent defense system in Virginia is a daunting one. Much needs to be done, and these five recommendations should not be considered an exhaustive road map outlining all areas of needed improvement. However, we believe that the starting point to begin these efforts is creation of a new indigent defense commission and appropriation of substantial additional state funds during the 2004 legislative session of the General Assembly.