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*The Virginia Indigent Defense Coalition (VIDC) seeks to improve the quality of defense services for the poor by enhancing standards of representation and increasing resources and funding available to counsel for poor defendants in the juvenile and criminal justice systems in Virginia. The coalition's goal is to develop and implement a comprehensive public-awareness and education campaign that will highlight the problems in Virginia's indigent defense system and bring about reform to that system.*

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# PROGRESS REPORT

Virginia's Public Defense System

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The Virginia Public Defense System Progress Report was developed based on  
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the American Bar Association's Ten Principles of a Public Defense Delivery System.  
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PROGRESS REPORT

**1 The public defense function including the selection, funding and payment of defense counsel is independent. D**

**Comments:** There are two parts to Virginia's public defense delivery system. 1) Public Defender offices serve about half of Virginia's population in 21 locations and 2) a court appointed system (using private attorneys) serves the remainder of the state. Court appointed attorneys depend on local judges to appoint them and approve their fees. The appointment system compromises independence and gives the appearance that a lawyer's zealous advocacy on behalf of a client could result in a private lawyer's removal from the court appointed list. Public defender offices are managed by the Virginia Public Defender Commission, an independent state agency within the judicial branch. The commission sets policy for the hiring of all public defenders, including those involved in capital cases.

**2 Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar. D**

**Comments:** This principle requires the establishment of a statewide system for ensuring uniform quality. Virginia has no such system. In Public Defender jurisdictions there is a full-time administrator, but in court appointed jurisdictions administration is left up to localities. A full-time statewide administrator covering all indigent defense would improve the system and help ensure uniform quality.

**3 Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after client's arrest, detention, or request for counsel. B**

**Comments:** In Virginia, the court appoints a lawyer during the defendant's initial court appearance after arrest, but the client may not be able to meet with his lawyer until after the hearing. An improved system would allow for appointment of a lawyer and attorney-client contact before the initial hearing.

**4 Defense counsel is provided sufficient time and a confidential space within which to meet with the client. D**

**Comments:** Virginia's high caseloads and low fee caps may discourage court appointed lawyers from spending sufficient time with clients to prepare their cases. Similarly, in many public defender offices, high caseloads prevent lawyers from spending sufficient time with clients to prepare cases. In some Virginia jails and courthouses, there is no private place for lawyers to meet with their clients.

**5 Defense counsel's workload is controlled to permit the rendering of quality representation. D**

**Comments:** In 1990, the Virginia Department of Planning and Budget approved statewide caseload standards for Public Defender offices. Public defender caseloads remain unreasonably high because the Virginia General Assembly has never funded enough staff to meet those standards. For many court appointed lawyers, caseloads are similarly high, hampering their ability to provide quality representation. To improve under this principle, Virginia should implement a statewide plan for managing caseloads.

**6 Defense counsel's ability, training, and experience match the complexity of the case. C**

**Comments:** The Public Defender within each office is responsible for ensuring that the assistant public defender assigned to the case has the necessary ability, training and experience. However, because of high caseloads, sometimes attorneys lack sufficient training and experience for particular cases. Court appointed lawyers are appointed by individual trial judges who are responsible for ensuring that they assign lawyers who are qualified to handle the charges. However, often there is no attempt to match a case with a qualified lawyer.

**7 The same attorney continuously represents the client until completion of the case. A**

**Comments:** Most public defender offices assign a single attorney from intake through disposition. In some offices, special appellate attorneys take all cases on appeal. Virginia's Supreme Court requires all court appointed lawyers and public defenders to represent a defendant through completion of the case.

**8 There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. F**

**Comments:** There is no parity of resources in Virginia. Virginia's current maximum hourly rate for court appointed counsel (\$90/hour) is subject to the lowest unwaivable salary cap in the country. For example, in a complicated case involving three or more appearances in a District Court, a court appointed lawyer would receive a maximum of \$112 (or 1.25 hours of pay) for representing the client. Unlike prosecutors, neither Public Defenders nor court appointed lawyers have access to expert assistance, except by demonstration of need, which is made in open court. Public defender salaries are set by the state to be comparable to Commonwealth's Attorneys' state salaries, but unlike Commonwealth's Attorneys, there is no flexibility as to hiring level, no local salary supplements, no Career Defender Program, and no law school loan forgiveness.

**9 Defense counsel is provided with and required to attend continuing legal education. C**

**Comments:** Public defender offices provide their lawyers with the minimum general training to meet state-mandated attorney continuing legal education (CLE) requirements of 12 hours per year, including two hours of ethics. Most training is in criminal defense. Court appointed lawyers must pay for their continuing legal education and are required only to complete state-mandated general training. There is no requirement for court appointed lawyers to undergo criminal defense training.

**10 Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. D**

**Comments:** Public defenders receive yearly performance evaluations based on statewide standards provided by the Public Defender Commission. Virginia's evaluation criteria do not encompass nationally recognized standards. Court appointed lawyers are not required to meet any statewide qualifications or standards, nor is their performance evaluated. Attorneys who wish to represent defendants in capital cases must meet minimum statewide standards set by the Virginia Public Defender Commission, the Virginia State Bar, and the Supreme Court of Virginia.