

Virginia Indigent Defense Commission  
November 2007



**Report On the Response of the Virginia Indigent Defense Commission  
to the Impact of the Aging of Virginia's Population**

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Pursuant to legislation enacted by the General Assembly of Virginia, the Virginia Indigent Defense Commission submits this report of its progress in addressing the impact of the aging of Virginia's population.



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David Johnson, Executive Director

10/11/07

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Date Submitted

### **Executive Summary**

The Virginia Indigent Defense Commission provides legal representation to people charged with crimes that carry a potential penalty of incarceration or death and who have been determined indigent pursuant to state guidelines. The legal representation provided is governed by the Standards of Practice for Indigent Defense Counsel and the Rules of Professional Responsibility, which provides for uniform representation of all clients.

The Commission has reviewed information on its workforce, Crime in Virginia reports for the past four years, and the estimated number of clients aged 65 and older to determine the possible impacts of the aging Virginia population on its ability to serve its clients. The Commission does not foresee an impact on its ability to provide services to its clients based either specifically on the aging of its workforce or the aging of Virginia's population in general.

### **Overview of the Mission, Roles and Responsibilities of the Virginia Indigent Defense Commission**

The 2004 General Assembly created the Virginia Indigent Defense Commission to assist in fulfilling the Commonwealth's constitutional obligation to provide attorneys for indigent persons accused of crimes. (US Constitution, Amendment VI). Commission clients are persons charged with crimes that carry a potential penalty of incarceration or death and who have been determined indigent pursuant to state guidelines. In such cases, Virginia courts appoint public defender offices or members of the private bar certified by the Commission to provide legal representation.

In response to a two-year study of the feasibility of creating a state entity to effectively advocate for indigent defense needs in Virginia, the 2004 General Assembly created the Commission by adding a governing commission that is supervisory and by expanding the scope of responsibilities of and renaming the Virginia Public Defender Commission. Specific Statutory responsibilities include:

- § 19.2-163.01A(1) - Publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants.
- § 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.
- § 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.
- § 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 a non-compliant 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.
- § 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.
- § 19.2-163.01A(12) – Approve requests for appropriations and expend moneys appropriated by the General Assembly of Virginia and to receive other moneys as they become available to it and expend the same in order to carry out the duties imposed upon it.
- §19.2-163.01(B) – Commission shall adopt Rules and Procedures for the conduct of its business.

In FY07, the Public Defender offices of the Commission provided representation to a total of 94,325 indigent clients charged with criminal offenses for which there was a possible penalty of incarceration or death. This is a slight increase in the number of clients from FY06.

### Data Requested

1. The number of persons who have received services from the Commission in the past fiscal year who fell into the following age ranges:
  - a. 65-74. Estimates for FY07 are that approximately 177 clients in this age group were represented by Public Defender offices.
  - b. 75-84. Estimates for FY07 are that approximately 30 clients in this age group were represented by Public Defender offices.
  - c. 85 and older. Estimates for FY07 are that approximately 3 clients in this age group were represented by Public Defender offices.

2. Agency services that are utilized by senior citizens 65 and older in significant numbers.

The Virginia Indigent Defense Commission provides legal defense representation services to indigent criminal defendants. All clients receive legal representation in accordance with the Standards of Practice for Indigent Defense Counsel and the Rules of Professional Responsibility. Neither the Standards nor the Rules provide for age specific services.

3. Commission programs specifically designed to serve seniors 65 and older that fall into any of the following six categories: Health Care/Wellness; Education; Public Safety; Recreation; Financial Security; and Transportation.

The Commission has no such programs. All clients are represented in accordance with the Standards of Practice for Indigent Defense Counsel and the Rules of Professional Responsibility.

4. Consumer-oriented publications and websites online that are designed to be senior-friendly.

The Commission produces an Annual report and maintains a website containing general information about the Commission, training programs available to attorneys and statutorily mandated information. Age groups are not delineated in any of the information.

5. Describe the effect that the aging of the Commission's workforce will have on its ability to deliver services.

The impact of the aging population has not yet been seen in either the clients served by, or the employees of the Commission.

Employees. The Commission has a history of high turnover and vacancy. Historically, the turnover has been 20-24% and in calendar year 2006, was 27%. As a result, nearly two thirds of the attorneys employed by the Commission are within their first three years of service. Additionally, many of the attorneys are hired

immediately after their completion of law school. As a result, it is unlikely that the Commission will be affected by high numbers of retirees in the foreseeable future. Many of the public defenders have longer service with the Commonwealth. However, all of the public defender offices have deputy public defenders or have senior assistant public defender positions to assist them with the management and operations of the office. In the event that the public defender retires, the deputy or senior assistant has the knowledge and experience to continue the operations of the office during the search for a new public defender.

Clients. Clients of the Commission include persons accused of crimes for which the punishment is incarceration or death. According to the 2003, 2004, 2005 and 2006 reports entitled Crime in Virginia, compiled by the Uniform Crime Reporting Section of the Department of State Police; the percentage of citizens over the age of 65 who are charged with crimes has remained constant. The percentage of persons aged 65 or higher who are charged with Group A crimes, which include violent crimes and most property crimes for each of the four years of the Crime in Virginia report was 68/100 of one percent of the total number of persons so charged. During the same reporting years, the percentage of persons aged 65 or older charged Group B crimes, which include most alcohol related crimes as well as less serious offenses was 1.12% of the total number of persons so charged.

Of the number of persons over 65 charged with crimes, the percentage determined by the courts to be indigent and to qualify for a court appointed attorney is a fraction of the total number charged. Estimates from the public defender offices for FY07 indicate a low number of clients over the age of 65.

In each year of the Crime in Virginia report, statistics show a significant drop in the number of crimes committed as the age of the person increases. The largest number of persons charged is in the 25-29 year old age group. The number charged drops for every age group thereafter. Based on the information and statistics contained in the 2003-2006 Crime in Virginia Reports, at this time the Commission does not anticipate an increase in the number of future clients aged 65 or older.

6. Services or programs the Commission has implemented or plans to implement in the future to address the impact of aging on Virginia's population.

No programs are currently planned.