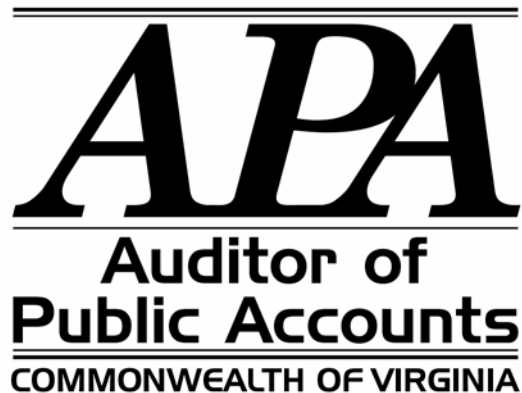


**INDIGENT DEFENSE COMMISSION**

**REPORT ON AUDIT**

**FOR THE PERIOD**

**JULY 1, 2002 THROUGH JUNE 30, 2005**



## **AUDIT SUMMARY**

Our audit of the Indigent Defense Commission for the period July 1, 2002 through June 30, 2005 found:

- proper recording and reporting of all transactions, in all material respects, the Commonwealth Accounting and Reporting System;
- matters involving internal control and the Commission's operations that we have communicated to management in the Audit Findings and Recommendations section of this report; and
- no instances of noncompliance with applicable laws and regulations.

We recommend that the Commission:

- develop agency-wide strategies, goals, and objectives;
- clarify the duties and responsibilities of the Commission and Executive Director;
- define the role of the Commission's chairman; and
- document operational policies and procedures.

- TABLE OF CONTENTS -

	<u>Pages</u>
AUDIT SUMMARY	
AUDIT FINDINGS AND RECOMMENDATIONS	1-3
AGENCY HIGHLIGHTS	3-4
INDEPENDENT AUDITOR'S REPORT	5-6
AGENCY RESPONSE	7-9
AGENCY OFFICIALS	10

## **AUDIT FINDINGS AND RECOMMENDATIONS**

### **Background**

Since its creation in 1972, the Indigent Defense Commission has grown from three offices to 25 public defender offices, one appellate office, four capital defender offices, and an administration office. The first office opened in 1972 with a maximum level of employment of 8.5, which did not include any administrative staff. The Commission can now employ up to 490 individuals including administrative staff and has an operating budget of more than \$30 million each fiscal year.

### **General Operations**

The Commission has focused on providing counsel for indigent persons charged with felonies or juvenile offenses and providing training to its legal staff; however, they have neglected to transition agency operations to reflect the Commission's growth. This is evident by the fact that it was not until fiscal year 2005 that the Commission achieved full implementation of agency-wide desktop Internet access through a wide area network, which required the replacement of 250 outdated computers.

Even though the Commission has grown significantly since its inception, the Commission continues to operate significant agency processes in the same manner as if they were a smaller agency. For example, the Commission develops and executes the agency's budget in excel spreadsheets and databases. If the Commission continues to grow, performing these functions in this manner could be inefficient and impractical. In addition to the labor intensity of this process, the Commission also continues to concentrate and direct its efforts toward individual offices. The Commission appears to operate as a funding and control mechanism over 30 independently operated offices; however, each office is not truly an independent office.

### **Develop Agency-wide Strategies, Goals, and Objectives**

The Commission needs to begin developing some long-term agency-wide strategies, goals, and objectives. The Commission and management need to recognize the size of the organization and that some issues require an agency-wide approach rather than one based on an individual office's needs. These agency-wide issues can provide opportunities to enhance individual office operations and provide long-term efficiencies agency-wide. Acquisition of hardware and software is one of these opportunities and by using the combined purchasing power of the state, it could also control costs and improve administrative functions.

As an example, the Commonwealth, through the Virginia Information Technologies Agency, has entered into an agreement to change the delivery of information technology services, which would allow the Commission to obtain standardized equipment, Internet access and other services, and equalize the cost over time. While initial costs may be higher, the long-term costs could be lower. Other efficiencies may also exist and as previously suggested, the Commission needs to evaluate the agency as a whole instead of as individual offices.

The items above are a partial list of items that the Commission may wish to consider and evaluate. None of these suggestions are a reflection of the current Commission or management, but are indications to the Commission that there is a need to reevaluate agency operations.

### **Clarify Duties and Responsibilities of the Commission and Executive Director**

The Commission has the same duties and responsibilities similar to Executive Branch organizations, which the Commonwealth refers to as supervisory boards. Supervisory boards employ their Executive Director and have responsibility over the use of state funding. In this capacity, the Commission assumes

some liability for the use and disposition of these funds. Further, the Commission, as the employer, assumes responsibility for the performance and duties of the Executive Director and anyone he employs.

The Commission has no formal governing policies and those policies we found were generally vague and without clear definition of specific roles and responsibilities. Also, these policies did not address the Commission's working relationship with the Executive Director and the Commission's delegation of authority to the Chairman or any of the Commission committees.

Underlying the Commission's current policies appears to be the assumption that staff will keep the Commission informed of major state statutes, rules, and policies governing the conduct of state business. We believe that in addition to clarifying the roles and responsibilities, the Commission should periodically receive an update on whether its policies comply with state statutes, rules, and policies and how they affect operations.

#### Define the Role of the Chairman

Under the Commission's statutory authority, the Chairman has the same duties and responsibilities as any other Commission member, except the responsibility to preside over meetings. While on many corporate and other supervisory boards, the Chairman may have additional duties and responsibilities; this is not the case in this circumstance. Since neither the Code of Virginia, nor the Commission's governing policies sets out additional responsibilities and duties for the Chairman, all Commission members should approve formal instructions to the Executive Director, unless the Commission agrees to a level of delegation. If the Commission wishes to delegate certain responsibilities to the Chairman or subcommittee to act on their behalf relative to specific matters, the Commission should describe and adopt this guidance as part of the Commission's governing policies. Collectively, the Commission should periodically review this delegation and relationship to ensure it stays within the Commission's statutory mandate.

#### Operational Policies and Procedures

As with its general operations, the Commission has not formalized its operating policies and procedures. The lack of formal documented policies and procedures increases risks and the likelihood that errors and improper payments could occur and go undetected. As stated in the Commonwealth Accounting Policies and Procedures Manual, part of management's responsibilities is having sound internal controls operating within the Agency. Documented policies and procedures helps to ensure proper accounting and administrative controls. The auditor reviewed unofficial documents that outline some of the Commission's procedures; however, there is no comprehensive document outlining the Commission's policies and procedures.

While the Commission should document all of its policies and procedures to ensure they are sufficient, at a minimum, they should address the following critical areas.

- Budget Development and Execution – The Commission's documentation of its budgeting process consists of memos, notes and other materials explaining the process. The Commission should document its procedures for providing all funding to the Public Defender Offices and the Administration Office. Procedures should describe how staff actually intends to perform the process and the expected outcome. Also, the documentation of budgeting policies and procedures should explain the design and purpose of control-related procedures to increase employee understanding of and support to controls.

- Human Resource and Payroll – The Commission spends over \$20 million annually on salaries and fringe benefits for its employees. Therefore, it is essential that the Commission document its procedures for managing the human resource and payroll functions. The Commission should have documented procedures that include the responsibilities for processing payroll, removing terminated employees from the payroll system, performing monthly reconciliations, and certifying payroll.

The Commission operates with limited administrative staff and the lack of formal policies and procedures causes several problems in addition to those already discussed. Having formally documented policies and procedures compensates for the loss of key personnel and will enable the Commission to operate efficiently with consistent process applications.

The Commission should have the policies and procedures readily available to all employees with relevant responsibilities. They should also delineate the authority and responsibility of all employees, especially the authority to authorize transactions and the responsibility for the safekeeping of assets and records. Likewise, the documentation should indicate which employees should perform specific procedures.

The Commission should also implement a policy to cross-train individuals in key administrative and accounting roles. Having documented policies and procedures is essential for crossing-training and having knowledgeable staff will ensure continuity of operations in the event of the loss of key personnel and when hiring new personnel.

Without policies and procedures, management uses their judgment when deciding what course of action is appropriate and whether their solution is in line with the Commission's goals and mission. Often, this places management in the position to later justify actions rather than citing public documents that demonstrate their decision followed established standards.

### **AGENCY HIGHLIGHTS**

The Commission provides attorneys for indigent people charged with felonies or juvenile offenses. The Commission consists of 12 members, five of whom must be attorneys. The Commission hires the Executive Director and authorizes the Executive Director to appoint a public or capital defender as the head of each public defender office. Currently, there are 25 public defender offices, one appellate office, four capital defender offices, and one administration office. The Commission employs over 400 full-time, part-time, and hourly employees, which include attorneys, investigators, sentencing advocates, and administrative staff.

General Fund appropriations are the Commission's primary funding source. As shown in the following Budget-Actual Funding and Expenditure Analysis chart, the Commission received an additional \$5.8 million in General Fund appropriations in fiscal year 2005. The increase funded the creation of four new public defender offices and provided additional funding for positions in existing offices.

### **Budget-Actual Funding and Expenditure Analysis**

#### **Fiscal Year Ending 2003**

	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual Funding</u>	<u>Expenses</u>
General fund appropriations	\$22,089,767	\$22,046,987	\$22,046,987	\$20,452,782
Special revenue funds	<u>-</u>	<u>9,772</u>	<u>9,773</u>	<u>9,772</u>
Total	<u>\$22,089,767</u>	<u>\$22,056,759</u>	<u>\$22,056,760</u>	<u>\$20,462,554</u>

#### **Fiscal Year Ending 2004**

	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual Funding</u>	<u>Expenses</u>
General fund appropriations	\$22,666,785	\$24,448,801	\$24,448,801	\$22,789,661
Special revenue funds	<u>-</u>	<u>8,577</u>	<u>8,408</u>	<u>8,408</u>
Total	<u>\$22,666,785</u>	<u>\$24,457,378</u>	<u>\$24,457,209</u>	<u>\$22,798,069</u>

#### **Fiscal Year Ending 2005**

	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual Funding</u>	<u>Expenses</u>
General fund appropriations	\$31,363,168	\$30,297,722	\$30,297,722	\$26,587,132
Special revenue funds	10,000	12,577	16,178	10,966
Federal funds	<u>-</u>	<u>42,691</u>	<u>42,691</u>	<u>27,052</u>
Total	<u>\$31,373,168</u>	<u>\$30,352,990</u>	<u>\$30,356,591</u>	<u>\$26,625,150</u>

Source: Commonwealth Accounting and Reporting System



# Commonwealth of Virginia

**Walter J. Kucharski, Auditor**

**Auditor of Public Accounts  
P.O. Box 1295  
Richmond, Virginia 23218**

March 15, 2006

The Honorable Timothy M. Kaine  
Governor of Virginia  
State Capital  
Richmond, Virginia

The Honorable Lacey E. Putney  
Chairman, Joint Legislative Audit  
and Review Commission  
General Assembly Building  
Richmond, Virginia

We have audited the financial records and operations of the **Indigent Defense Commission** for the period July 31, 2002 through June 30, 2005. We conducted our audit in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

## Audit Objectives

Our audit's primary objectives were to evaluate the accuracy of recorded financial transactions on the Commonwealth Accounting and Reporting System, review the adequacy of the Commission's internal controls, and test compliance with applicable laws and regulations.

## Audit Scope and Methodology

The Commission's management has responsibility for establishing and maintaining internal control and complying with applicable laws and regulations. Internal control is a process designed to provide reasonable, but not absolute, assurance regarding the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations.

We gained an understanding of the overall internal controls, both automated and manual, sufficient to plan the audit. We considered control risk in determining the nature and extent of our audit procedures. Our review encompassed controls over the following significant activities, classes of transactions, and account balances:

- Payroll expenses
- Budget development

We performed audit tests to determine whether the Commission's controls were adequate, had been placed in operation, and were being followed. Our audit also included tests of compliance with provisions of applicable laws and regulations. Our audit procedures included inquiries of appropriate personnel, inspection of documents, and records. We inspected documents including reconciliations, time sheets, and vouchers. We reviewed the appropriate sections of the Code of Virginia and the 2004 and 2005 Act of the Assembly. We tested transactions and performed analytical procedures, including budgetary and trend analyses.



## Conclusions

We found that the Commission properly stated, in all material respects, the amounts recorded and reported in the Commonwealth Accounting and Reporting System. The Commission records its financial transactions on the cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The financial information presented in this report came directly from the Commonwealth Accounting and Reporting System.

We noted certain matters involving internal control and its operation that require management's attention and corrective action. These matters are described in the section entitled "Audit Findings and Recommendations."

The results of our tests of compliance with applicable laws and regulations disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

## EXIT CONFERENCE

We discussed this report with management on March 27, 2006. Management's response has been included at the end of this report.

This report is intended for the information and use of the Governor and General Assembly, management, and the citizens of the Commonwealth of Virginia and is a public record.

AUDITOR OF PUBLIC ACCOUNTS

WHC/kva

# VIRGINIA INDIGENT DEFENSE COMMISSION

## COMMISSION MEMBERS

Jo-Ann Wallace, Chair

Professor Robert E. Shepherd, Jr., Vice Chair

Delegate David B. Albo

Christopher L. Anderson

Steven D. Benjamin

Karl R. Hade

Judge Edward W. Hanson, Jr.

Alexander N. Levey, Jr.

Senator Frederick W. Quayle

Senator Kenneth W. Stolle

David D. Walker

Carmen B. Williams

701 E. Franklin Street, Suite 1416  
Richmond, Virginia 23219

Telephone (804) 225-3297 Facsimile (804) 371-8326  
[www.indigentdefense.virginia.gov](http://www.indigentdefense.virginia.gov)

March 27, 2006

DAVID J. JOHNSON  
Executive Director

BONNIE R. FARRISH  
Fiscal Director

KARL A. DOSS  
Training & Human Resources Director

ANITA G. LESTER  
Planning & Communications Director

EDWARD ERNOUF, III  
Information Systems Director

The Auditor of Public Accounts  
P. O. Box 1295  
Richmond, Virginia 23218

Dear Sir:

During the Virginia Indigent Defense Commission's (VaIDC) audit for the period FY 2002 through FY 2005, the Auditor of Public Accounts commented that due to the Commission's rapid growth, improvements and clarifications were needed in the areas named below:

- Developing agency-wide strategies, goals and objectives
- Clarifying duties and responsibilities of the Commission and Executive Director
- Defining the role of the Chairman of the Commission, and
- Developing operational policies and procedures.

Following are the Virginia Indigent Defense Commission's responses to those comments:

### Develop agency-wide strategies, goals and objectives

The Commission recognizes the need to develop agency-wide strategies, goals and objectives to better meet the needs of our rapidly expanding system. We have begun the process by taking several significant steps and are dedicated to exploring all avenues of improving the efficiency and quality of our system.

In recognition of our need to take advantage of cost savings, to develop cost-saving strategies, and to improve efficiencies in operations, VaIDC first looked at the agency's procurement function in FY 2004. When it was decided to upgrade the agency's existing computers, the procurement was done on an agency-wide basis to standardize computer equipment and software and to take advantage of cost savings from volume purchasing.

A similar approach was taken for the purchase of reference law books and research services, memberships, and in offering agency-wide training for new attorneys. An annual "boot camp" for new attorneys and attorneys who need "refresher" training is being expanded next fiscal year to two training sessions because of the need the training fulfills relative to the cost. It is anticipated that expansion of the relatively cost-effective "boot camp" training will result more efficient and effective training for our attorneys.

Having these training sessions designed and conducted for the most part “in-house” has resulted in better trained attorneys at a significant cost savings.

The next step we have taken in fulfilling our objective of developing agency-wide strategies is recognition of the need to develop viable replacement strategies for our furniture and equipment. We will look at the possibility of taking advantage of the Department of Treasury’s Master Equipment Leasing Program for future equipment purchases in order to establish a consistent level of funding for this type of expenditure over a specific period of time for budgeting purposes.

In the fiscal area, we are looking to improve the reporting capabilities of the IDSS (Oracle based) accounting system to provide meaningful and timely expenditure to budget reports to the Public Defenders and the Commission members. Additionally, we are currently working with an Oracle software developer to improve IDSS’ ability to provide reports such as the outstanding purchase orders \$500 or greater report, and to improve the monthly expenditure and payroll reconciliation processes. Improvement of these processes would allow more time for fiscal employees to spend in other areas.

Significant modifications to our enabling statutes are expected to become law on July 1, 2006. (House Bill 844 has been conformed with Senate Bill 562 and has been approved) Several of these changes will impact the recommendations made by the Auditor of Public Accounts. Sections 19.2-163.01 and 19.2-163.02 amended as proposed will:

1. Clarify Duties and Responsibilities of the Commission and Executive Director:  
Section 19.2-163.01(A) (proposed) states that “The Commission shall be supervisory and shall have sole responsibility for the powers, duties, operations, and responsibilities set forth in this section.” Regarding the Commission’s working relationship with the Executive Director, sub-sections 8-14 details the specific authority of the Commission and the Executive Director.

At the September 9, 2005 meeting of the Commission, in recognition of the requirement of more direct involvement in the oversight and management of the system, the Commission created 3 sub-committees; the Personnel and Training Committee, the Policy and Procedure Committee, and the Budget Committee, charged with the responsibility of meeting regularly with the Executive Director to provide direction and guidance.

2. Define the Role of the Chairman:  
Section 19.2-193.02 (proposed) states that “The chairman or his designee shall preside at all regular and called meetings of the Commission and shall have no additional duties or authority unless set by statute or by resolution of the Commission and annually confirmed by the Commission.”

#### Document Operational Policies and Procedures

The VaIDC began a new budget process this year that will be documented for future years’ use. Although input had been sought from the Public Defenders in past years, the newly instituted process required meaningful, timely input from all offices. In February a memo was sent to public defenders instructing them to carefully review their previous year’s budget and compare that to actual expenditures to determine what their needs might be for next fiscal year and provide that information in writing to the fiscal director. Participation was mandatory and at the urging of the new Executive Director, we received 100% participation from the public defenders and administrative managers in providing this information. All that information was compiled into a spreadsheet which the Executive Director and the management team used to review each individual request

line item by line item and make adjustments as necessary. From that point the fiscal team began inputting the data into budget worksheets to compile the draft budget. Once the draft has been completed, it will be forwarded to the budget committee for its review and approval. Upon approval of the draft, the Executive Director will present the final budget to the full Commission for its approval at our May meeting. The approved budget will then be forwarded to the public defenders in June so they will know what funding they will have available for FY2007 prior to the beginning of the fiscal year. This process will be formally documented and submitted to the Policy & Procedure Committee for their input and approval.

Since FY 2006 was the first full year of having payroll responsibility within the agency, we will begin the process of developing formal policies and procedures that document the entire payroll process to include hiring the employee to reconciling and certifying payroll.

The Commission's Policy and Procedure Committee met on March 20, 2006 and instructed the Executive Director, in conjunction with a committee of public defenders, to begin work on a formal review of all existing Commission policies and procedures. The stated goal is the creation of a comprehensive policies and procedures manual setting forth in detail the operating rules and procedures for our agency.

We thank you for the obvious hard work that went into the recommendations you have made for the VaIDC. We recognize the validity of your recommendations and believe they will aid us in achieving our goal of improving our agency's efficiency and performance.

Sincerely,

A handwritten signature in black ink, appearing to be 'DJ Johnson', written in a cursive style.

David J. Johnson  
Executive Director

## INDIGENT DEFENSE COMMISSION

### COMMISSION MEMBERS

Jo-Ann Wallace  
Chair

David H. Albo	Alexander N. Levay, Jr.
Christopher L. Anderson	Frederick M. Quayle
Steven D. Benjamin	Robert E. Shepherd, Jr.
Karl R. Hade	Kenneth W. Stolle
Edward W. Hanson, Jr.	David D. Walker

Carmen B. Williams

### OFFICIALS

David Johnson  
Executive Director

Bonnie Farrish  
Fiscal Director