

**CITIZENS ADVISORY COMMITTEE FOR THE
CHARLOTTESVILLE-ALBEMARLE
PUBLIC DEFENDER OFFICE**

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April 15, 2009

Received

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County of Albemarle
Board of Supervisor's Office

The Honorable David Slutzky
Chairman of the Board of Supervisor
401 McIntire Road
Charlottesville, VA 22902

Dear Mr. Slutzky,

I am very pleased to send you a copy of the 2008 annual report from the Citizens Advisory Committee of the Charlottesville-Albemarle Public Defender Office. I am very proud of the work and accomplishments of the Committee during the past year. Your willingness to appoint quality individuals has certainly contributed to our successes.

Mr. Hingley's commitment to service for the indigent is remarkable. It is good to recognize his involvement with various organizations to support and provide quality service for the indigent. I have enclosed a copy of "An Act to amend and reenact 19.2-163.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-163.01:1, relating to supplementing compensation of public defenders." Mr. Hingley and the Committee were instrumental in getting this amendment passed. He commits countless hours of his personal time to ensure continued improvements for the indigent. We also applaud his staff for their outstanding service.

We thank you for your support, both locally and legislatively. All of our meetings are open to the public and meeting dates are posted in advance. Your presence is always welcomed. Please do not hesitate to contact me or any member of our committee if you have questions, ideas, or concerns.

Sincerely,


Rauzelle J. Smith, Chair

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 536

An Act to amend and reenact § 19.2-163.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-163.01:1, relating to supplementing compensation of public defenders.

[H 93]

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-163.01 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-163.01:1 as follows:

§ 19.2-163.01. Virginia Indigent Defense Commission established; powers and duties.

A. The Virginia Indigent Defense Commission (hereinafter Indigent Defense Commission or Commission) is established. The Commission shall be supervisory and shall have sole responsibility for the powers, duties, operations, and responsibilities set forth in this section.

The Commission shall have the following powers and duties:

1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants pursuant to § 19.2-159.

2. To 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.

3. To 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 and to 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. In establishing and updating the list, the Commission shall consider all relevant factors, including but not limited to, the attorney's background, experience, and training and the Commission's assessment of whether the attorney is competent to provide quality legal representation.

4. To establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients, and guidelines for the removal of an attorney from the official list of those qualified to receive court appointments and to notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.

5. To 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.

6. To periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.

7. To maintain all public defender and regional capital defender offices established by the General Assembly.

8. To hire and employ and, at its pleasure, remove an executive director, counsel, and such other persons as it deems necessary, and to authorize the executive director to appoint, after prior notice to the Commission, a deputy director, and for each of the above offices a public defender or capital defender, as the case may be, who shall devote his full time to his duties and not engage in the private practice of law.

9. To authorize the public defender or capital defender to employ such assistants as authorized by the Commission.

10. To authorize the public defender or capital defender to employ such staff, including secretarial and investigative personnel, as may be necessary to carry out the duties imposed upon the public defender office.

11. To authorize the executive director of the Commission, in consultation with the public defender or capital defender to secure such office space as needed, to purchase or rent office equipment, to purchase supplies and to incur such expenses as are necessary to carry out the duties imposed upon him.

12. To approve requests for appropriations and receive 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, *and to receive and distribute funds from a county or city as provided by § 19.2-163.01:1.*

13. To require and ensure that each public defender office collects and maintains caseload data and fields in a case management database on an annual basis.

14. To report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate

Committee on Finance on the state of indigent criminal defense in the Commonwealth, including Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed pursuant to § 19.2-159 or subdivision B 2 of § 16.1-266.

B. The Commission shall adopt rules and procedures for the conduct of its business. The Commission may delegate to the executive director or, in the absence of the executive director, the deputy executive director, such powers and duties conferred upon the Commission as it deems appropriate, including powers and duties involving the exercise of discretion. The Commission shall ensure that the executive director complies with all Commission and statutory directives. Such rules and procedures may include the establishment of committees and the delegation of authority to the committees. The Commission shall review and confirm by a vote of the Commission its rules and procedures and any delegation of authority to the executive director at least every three years.

C. The executive director shall, with the approval of the Commission, fix the compensation of each public defender and all other personnel in each public defender office. *When funds are received from a county or city as provided in § 19.2-163.01:1, the executive director, in accordance with policies adopted by the Commission, shall use the funds to adjust the compensation of the public defender and other personnel in the public defender's office in the county or city from which such funds are received. The adjustments to the compensation shall be effective only for the period for which such funds are provided by the county or city. The Commission shall have no obligation to continue the payment of any supplemental compensation when funds are not received from the county or city.* The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law.

§ 19.2-163.01:1. Supplementing compensation of public defender.

A. The governing body of any county or city may supplement the compensation of the public defender or any of his deputies or employees above the compensation fixed by the executive director, in such amounts as it may deem expedient. Such additional compensation shall be wholly payable from the funds of any such county or city.

B. Due to the privileged and protected nature of the attorney-client relationship and the statutory scope of representation provided in §§ 19.2-157 and 19.2-163.3, no county or city providing a supplement to compensation under this section shall place any condition or requirement upon the receipt of such funds.

C. Funds provided by any county or city under this section shall be paid to the Indigent Defense Commission in accordance with any required state procedures and processes.

**CITIZENS ADVISORY COMMITTEE FOR THE
CHARLOTTESVILLE-ALBEMARLE
PUBLIC DEFENDER OFFICE
ANNUAL REPORT 2008**

Background

The Committee held four regular meetings January 22nd, March 25th, May 6th, and June 24th. Four sub-committee meetings were held to discuss plans for the celebration of the 10 year anniversary of our Public Defender Office. The Committee was very pleased with the appointment of Dr. Robert Gest to represent the Albemarle Charlottesville Chapter of the NAACP.

Dr. Gest is a native of Haynes City, Florida. He served in the Air Force, spending time in Vietnam. He retired from the military and began working with DMV, after which he went to work for the Federal Executive Institute as Senior Faculty, from which he retired in December, 2002. He is currently working on an autobiography, is on the Board of C-ville Rail, and has published articles.

Committee's Activities

Committee members remain committed to making themselves available to the community to provide information about the services offered by the Public Defender Office. We will take this opportunity to reflect upon our efforts, which contributed to several accomplishments to improve the services for the indigent.

1. Senate bill Number #369: This bill was favorably reported by the Senate Courts of Justice Committee and passed the Senate by a wide margin, but when it arrived at the House, things changed. This bill entitles indigent defendants in capital cases to ask the court for expert assistance in a closed hearing. As it stands currently, an indigent defendant has to ask the court to appoint an expert and has to demonstrate the need in an open hearing. The problem is that this requires an indigent defendant to expose the defense strategy to prosecutors. Prosecutors came out in opposition to this bill. We hope that the reason is not because it takes away their unfair advantage over indigent defendants. This issue is not a problem in either Charlottesville or Albemarle County, where judges allow ex-parte (defense discussions with the judge without a prosecutor being present) communications for the purpose of appointing an expert. The Virginia Bar Association has supported this bill and it is also backed by the Virginia Indigent Defense Commission, The Virginia Association of Criminal Defense Lawyers, and the Virginia Fair Trial Project. This bill would also be consistent with the law in federal court. This bill allows indigent defendants (only applicable in capital cases) to ask the court in ex-parte proceedings to authorize the appointment and payment of expert witnesses. If a defendant has money to hire an expert, he/she does not have to reveal to anyone what evidence will be examined and possibly presented by this expert. If one is indigent, it is fundamentally unfair to be forced to expose the defense strategy to convince the court that

the hiring of an expert is justified. The vote was very close, but the bill was defeated. A federal prosecutor who testified before the legislators reported that they follow the procedures proposed by this bill every day, and that all other states that have capital punishment allow these ex-parte communications. The Committee has resolved to continue the fight to change this law.

2. Senate bill Number #610: This bill allows for fee cap waivers in some juvenile felony cases. In 2007, \$8.2 million was budgeted to fund fee waivers. Much effort went into creating provisions to increase reimbursement for court-appointed lawyers. Attorneys needed only to apply for the funds, but few took advantage of this, for reasons that were not obvious. As a result, some of the funds were taken back in the “caboose” budget. In order to receive these fee waivers, one has to keep records of time spent on the specific case. The federal system has been using these procedures for a long time. Approximately \$312,000 was used during the first 6 months of 2008. Various groups are working to inform attorneys of the availability of these funds and encourage more requests for fee waivers.
3. House Bill #93: This bill takes us back a couple of years when we sought local supplements from our localities so as to reduce pay inequities between prosecutors and public defenders. One thought was that perhaps pay inequities existed because we represent an unpopular group, but the Committee did an excellent job of publicizing the reasons why this pay inequity is unjustified. The reality is that both sides uphold the integrity of the system. Our aim in representing individuals is to serve the community by protecting those who are innocent and advocating for appropriate sentence for those who are determined to be guilty, meaning that we perform an important community service. We were successful in getting local supplements but the story had a sad ending in that Virginia statutes did not allow localities to do this. This bill allows localities to supplement local public defender offices, with funds to be appropriated through the Virginia Indigent Defense Commission (VaIDC). If the funds are allocated by the City or County, it goes to our local office. While the disparity between prosecutors and our staff salaries still exists, it is not as much as before. A copy of the bill is attached to this report
4. Several years of hard work and dedicated efforts by many community leaders and the Committee bore fruit for the community with the completion of the Crisis Intervention Team (CIT) Program. A few years ago, a small group of community stakeholders, realizing that too many people with mental illness were being incarcerated, decided to look at alternatives to incarceration. Not only were these individuals creating dangers to themselves and others, but they often would incur additional criminal charges during the process of arrest and/or during incarceration. With the support of the CCJB, a small grant from United-Way was secured to hire a facilitator to channel the ideas that came from these stakeholders into an action plan. The research led the group to the Crisis Intervention Team (CIT) concept. The Citizens Advisory Committee was instrumental in starting this project.
5. Tom von Hemert described the CIT process as involving two important steps, first training police officers in de-escalation techniques, and then developing a collaborative task force to manage the transfer of mentally ill individuals from police custody (if

necessary) to the appropriate community resources. Grant funding was secured to develop a CIT model requiring the training of 25% of the patrol force in the Charlottesville, Albemarle, and University of Virginia police forces. During the second year, 40% of the police force in the three local jurisdictions will be trained and 20 % of the police forces in rural adjoining jurisdictions will be trained. The training involves an understanding of mental illness, reducing the associated stigma. Tom reported that the response to these trainings has been overwhelmingly positive. The biggest remaining challenge is the collaboration between agencies. He will be applying for an additional \$80k grant for the third year of the project.

6. The Charlottesville _Albemarle Public Defender Office opened in 1998; it was with great joy and excitement that the Committee actively participated in the planning and celebrating of the 10th year anniversary. The Celebration was held on October 2, 2008, and was open to the public, with special invitations being sent to many community leaders and supporters of the Public Defender system. The event was held in the City Space on the Downtown Mall. Guest speakers were Mr. Eddie Harris, Parent Educator Children, Youth & Family Services, Inc., Mr. Bob Gibson, Executive Director, Sorensen Institute for Political Leadership and The Honorable Stephen H. Helvin, Judge (retired), Albemarle County General District Court. The Family of the Late Grace Tinsley was presented with a framed resolution honoring Grace Tinsley for her leadership in the community's efforts to establish a Public Defender Office and for her years of dedicated service as a member of the Citizens Advisory Committee. The Citizens Advisory Committee gratefully acknowledges the generosity of the Birch Studio for donating the design services for the invitation and programs, Virginia National Bank for providing the funds for printing services, the Culinary Arts Program at CATEC for providing the catering services at cost and the Charlottesville Parking Center for providing free parking for the event.

Special Guests Attending Meetings

Karen Gest, Wife of Dr. Robert Gest

Recognition

The committee applauds James Hingeley for 10 years of continued dedication, and the successful operation of the Public Defender Office with limited financial resources, and his participation and leadership in the following organizations.

- In 2007, Mr. Hingeley completed his second year of service as the Chair of the Virginia Fair Trial Project and his first year as Chair of the Criminal Law Section of the Virginia Bar Association.
- Virginia Association of Criminal Defense Lawyers
- Champion of Justice Award given to Mr. Hingeley in November, 2007. The award

recognized his leadership during many years in the battle to improve Virginia's Indigent Defense System.

Issues and Concerns

Our Committee remains concerned over the following realities:

- Lower salaries are paid to public defender lawyers than those paid to lawyers serving in the Commonwealth Attorney's offices or other public service positions such as city and county attorneys. Local governing authorities are currently providing subsidies for the prosecutors, and this year for the first time are permitted to provide local supplements to public defender offices. Unfortunately, the economic downturn in 2008, the decline in local tax revenues, and substantial competing demands for local funding made it impossible to seek local supplements for the public defender office this year. Attempting to secure local supplements will remain a high priority once the economy improves.
- Public defender offices offer extensive training to lawyers starting in their professions, but continue to lose these individuals to other offices offering higher pay.
- Educational debt is a significant barrier for lawyers interested in public service careers and while there is a Career Prosecutor Program, similar programs for public defenders do not exist.
- The current political philosophy of cutting funding from relatively costly hospital treatment programs with the rationale of treating the mentally ill in the community results in many mentally ill individuals becoming inappropriately and unnecessarily involved in the criminal justice system.
- Concerns have been expressed and discussed regarding the Latino communities in the Charlottesville and Albemarle County areas, related to bondsmen who often charge 55% of the amount of bond set (which is significantly higher than the percentage rate normally charged) to post bond.

Future Goals

- Continue to work with Albemarle County and Charlottesville, or the General Assembly, as appropriate, to achieve pay equity for public defenders.
- The Committee embraces the idea of improving minority recruitment. This issue remains a concern to our Committee and Mr. Hingeley.
- Continue efforts to explore the development of a Career Defender Program, modeled after the Career Prosecutor Program.
- Increase awareness of and support for the Public Defender Office and its role in strengthening the Criminal Justice System by offering quality legal service to the indigent

and advocating for sentencing alternatives that benefit both the offender and the community.

- Continue to make available to the public, through public forums and other means, information about public policy issues significantly affecting the welfare and interests of Public Defender clients.
- Continue our support of the Virginia Fair Trial Project and our work with the Brennan Center for Justice Community-Oriented Defense Network (COD).
- Explore the quality and quantity of client support services in our community with a view toward improving services and/or advocating for additional services where appropriate.

Approved:

Citizens Advisory Committee
Rauzelle J. Smith, Chair
April 15, 2009