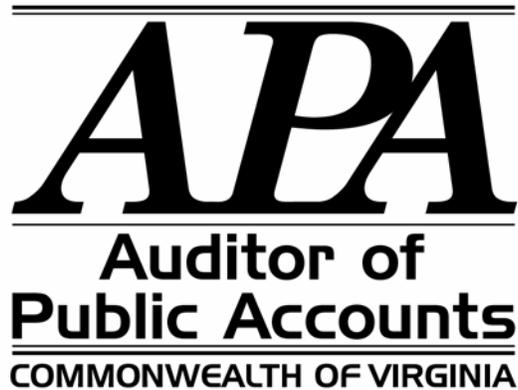


INDIGENT DEFENSE COMMISSION

REPORT ON AUDIT

FOR THE PERIOD

JULY 1, 2005 THROUGH JUNE 30, 2006



AUDIT SUMMARY

Our audit of the Indigent Defense Commission (Commission) for the period July 1, 2005 through June 30, 2006 found:

- proper recording and reporting of all transactions, in all material respects, in 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 or other matters that are required to be reported.

Review the Commission's Organization

The Commission has made significant progress in addressing a number of financial and managerial issues. However, there exist several organizational issues, which make determining the Commission's financial and managerial direction difficult. The most fundamental of these issues is how the Commission and staff address the operation and funding of individual offices.

Much of how the Commission staff process transactions and respond to issues arise not from a deliberate organizational structure, but one that is perceived and without management goals. Fundamental to the long-term direction of this organization is setting management goals and objectives and having an organizational structure that will efficiently and effectively allow the Commission to achieve those goals and objectives.

The Commission is in the process of setting its strategic plan and this provides an ideal vehicle for the Commission and staff to discuss the way in which they would like to operate. Staff are attempting to control financial and operational issues in an organizational structure which is a combination of two very different organizational models. Consequently, the results are not fully effective and methods to convert policy to process in this environment are cumbersome and burdensome on both the central office staff and field staff.

Our findings on the payroll process, system security and other matters are a reflection of attempting to fit a change in organization model that does not have a clear direction, which makes assigning accountability and responsibility difficult. To continue the progress of addressing our prior findings and establishing sound directions, the Commission and the staff must address this organizational model issue as part of its strategic planning efforts.

- TABLE OF CONTENTS -

	<u>Pages</u>
AUDIT SUMMARY	
AUDIT FINDINGS AND RECOMMENDATIONS	1-2
AGENCY HIGHLIGHTS	3
INDEPENDENT AUDITOR'S REPORT	4-5
AGENCY RESPONSE	6-7
AGENCY OFFICIALS	8

AUDIT FINDINGS AND RECOMMENDATIONS

Review the Commission's Organization

The Commission has made significant progress in addressing a number of financial and managerial issues. However, several organizational issues exist which make determining the Commission's financial and managerial direction difficult. The most fundamental of these issues is how the Commission and staff address the operation and funding of individual offices.

In order to understand this issue, it is helpful to review the evolution of the Commission and how staff perform their work. The Commission and its predecessor agencies provided guidance to public defenders as the General Assembly funded individual offices. At the establishment of the individual office, the General Assembly would fund the office and staff. Subsequent increases for salaries or general expenses were shared among the offices based on either their employment level or existing budget.

Each office has a base budget, which staff view as the individual office's minimum amount, and the Commission can only make temporary one time saving allocations out of that office for use elsewhere. This base fiscal budget with an associated staffing restricts, if not eliminates, the central office's ability to manage the Commission's resources and assist in providing any meaningful salary relief.

Additionally, to maintain the base budget, the central office staff must coordinate and wait on information from the various offices to determine and allocate resources. Finally, this approach requires annual restoration of funding back to the base to ensure budget neutrality.

Much of how the Commission staff process transactions and respond to issues arise not from a deliberate organizational structure, but one that is perceived and without management goals. Fundamental to the long-term direction of this organization is setting management goals and objectives and having an organizational structure that will efficiently and effectively allow the Commission to achieve those goals and objectives.

The Commission is in the process of setting its strategic plan and this provides an ideal vehicle for the Commission and staff to discuss the way in which they would like to operate. Staff are attempting to control financial and operational issues in an organizational structure which is a combination of these two very different organizational models. Consequently, the results are not fully effective and methods to convert policy to process in this environment are cumbersome and burdensome on both the central office staff and field staff.

Our findings on the payroll process, system security and other matters are a reflection of attempting to fit a change in organization model that does not have a clear direction, and which makes assigning accountability and responsibility difficult. To continue the progress of addressing our prior findings and establishing sound directions, the Commission and the staff must address this organizational model issue as part of its strategic planning efforts.

Document Information Systems Security

The Commission does not have a complete or current information security program; therefore, they do not meet Virginia's information technology security standard, ITRM Standard SEC 2001-01.1. Although the Commission does have informal security procedures, the security plan is undocumented. The Commission should have a documented security program that includes policies and procedures to provide reasonable assurance that appropriate levels of confidentiality, integrity, and availability exist over data in

their possession, and would meet the Commonwealth's new IT Security Standard 501-01. A well-developed security program should include documented policies and procedures consisting of the following components:

- Information Security Responsibilities and Separation of Duties
- Information Security Officer Role
- Risk Management
- IT Contingency Planning
- IT Systems Security
- Logical Access Control
- Data Protection
- Facilities Security
- Personnel Security
- Threat Management
- IT Asset Management

A comprehensive information security program provides the essential framework to protect the data on information systems and the data handled by employees. The lack of a comprehensive information security program prevents the Commission's management from assessing the current or potential risks to their data, and enabling them to adequately prevent or minimize those risks. The Commission should allocate the time and resources necessary to complete a comprehensive information security program that will meet industry best practices.

Review Payroll Processing

The Commission has not completed their monthly commonwealth payroll system to Virginia Retirement System (VRS) reconciliation since 2005. They do not perform the recommended post-certification audit each payroll cycle, and have no written procedures for the post-certification audit they do perform. Each of these items is important in verifying the accuracy of each payroll cycle.

In 2005, the Commission made the decision to perform payroll internally when the State Comptroller's Payroll Service Bureau began charging participating state agencies for this service. The Commission and Executive Director should reconsider this decision given the lack of staff resources to perform timely VRS reconciliation and post-certification procedures.

We recommend that the Commission revisit the decision to perform payroll in-house versus paying for the State Comptroller's Payroll Service Bureau. Both the Commission and the Executive Director need to consider as part of their analysis the additional cost of staff and other resources to address the findings in this report. Regardless of the final decision, the Commission needs to complete all outstanding VRS reconciliations and needs to complete them each month. If the Commission decides to keep payroll in-house, we recommend that the Commission develop and document procedures for the VRS reconciliations and post-certification procedures.

AGENCY HIGHLIGHTS

The Commission provides attorneys for indigent people charged with felonies or juvenile offenses. The Commission consists of 14 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. During fiscal 2006, the Commission employed an average of 422 full-time equivalent employees and 28 wage 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 to Actual Funding and Expenditure Analysis table, the Commission received an additional \$6.1 million in General Fund appropriations during fiscal year 2006. Most of this increase was from a \$3.7 million carry forward from fiscal year 2005. The carry forward resulted primarily from the opening of four new public defender offices during fiscal year 2005 that caused the vacancy turnover rate to be even higher than has been typical. Approximately \$1.3 million of the increase resulted from the statewide increase in salaries and related fringe benefits.

A comparison of actual expenses to the final budget shows that the agency did not spend \$3.7 million of its budget in fiscal 2005 and \$4.4 million of its budget in fiscal 2006. These unspent funds are primarily the result of the continued high turnover and resulting vacancies. During fiscal year 2006, the Commission could only use the year-end funds carried forward for one-time non-recurring expenses. In fiscal year 2007, the approved budget did not allow the Commission to carry forward its unspent funds.

Budget-Actual Funding and Expenditure Analysis

	<u>Fiscal Year Ending 2005</u>			
	<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>
	<u>Fiscal Year Ending 2006</u>			
	<u>Original Budget</u>	<u>Final Budget</u>	<u>Actual Funding</u>	<u>Expenses</u>
General Fund appropriations	\$32,050,979	\$38,100,606	\$38,100,606	\$33,704,855
Special revenue funds	10,000	15,212	7,310	12,522
Federal funds	<u> -</u>	<u> 71,025</u>	<u> 42,691</u>	<u> 45,733</u>
Total	<u>\$32,060,979</u>	<u>\$38,186,843</u>	<u>\$38,150,607</u>	<u>\$33,763,111</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**

June 20, 2007

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

The Honorable Thomas K. Norment, Jr.
Chairman, Joint Legislative Audit
and Review Commission
General Assembly Building
Richmond, Virginia

We have audited the financial records and operations of the Virginia **Indigent Defense Commission** for the period July 1, 2005 through June 30, 2006. 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 and fringe benefits
- Operating 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 Chapter 3 of 2006 Special Session Acts 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 June 28, 2007. 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

WJK/sks

VIRGINIA INDIGENT DEFENSE COMMISSION

COMMISSION MEMBERS

Jo-Ann Wallace, Chair
Professor Robert E. Shepherd, Jr., Vice Chair
Delegate David H. Albo
Christopher L. Anderson
Steven D. Benjamin
Karl R. Hade
Judge Edward W. Hanson, Jr.
Maria D. Jankowski
Alexander N. Levay, Jr.
Senator Frederick M. Quayle
Judge Alan E. Rosenblatt
Senator Kenneth W. Stolle
David D. Walker
Carmen B. Williams

1604 Santa Rosa Road, Suite 109
Richmond, Virginia 23229

Telephone (804) 662-7249 Facsimile (804) 662-7359
www.indigentdefense.virginia.gov

DAVID J. JOHNSON
Executive Director

DJ GEIGER

Deputy Director

LAURA L. STILL

Fiscal Director

CARLOS L. HOPKINS

Training & Attorney Certification Director

EDWARD ERNOUF, III

Information Systems Director

July 2, 2007

Mr. Walter Kucharski
Auditor of Public Accounts
101 North 14th Street, 8th Floor
PO Box 1295
Richmond, VA 23218

Dear Mr. Kucharski:

Thank you for meeting with us to discuss your Audit Findings and Recommendations. While I am very grateful for the acknowledgment that the Virginia Indigent Defense Commission "has made significant progress in addressing a number of financial and managerial issues", I understand that there remains much work to be done.

In your report you have recommended that the VaIDC; 1) Review the Commission's organizational structure, 2) Document information systems security, and 3) Review payroll processing. Each of these is a valid recommendation and we have already begun working towards compliance.

The Commission has started working towards meeting the requirements of the Commonwealth's IT Security Standard 501-01. Utilizing existing Agency resources, our goal is to fully meet the Standard by January 2008. Phased deliverables have been identified and major milestones have been assigned completion dates so that management can track progress towards completion of the project.

Pursuant to your recommendation, we are looking at contracting our payroll function to the State Comptroller's Payroll Service Bureau. We have begun preliminary talks with the Bureau and expect to present a proposal for consideration at the next quarterly Commission meeting scheduled for August 16, 2007. In addition to handling our payroll,

Mr. Walter Kucharski
Page 2 of 2
July 2, 2007

the Bureau would also assist us with the required VRS reconciliations. Additionally, the formal policy for payroll post-certification is nearing completion and a copy of the completed procedure will be forwarded to the APA.

We appreciate the recommendations made by the APA and your continued interest in our progress.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Johnson', with a long horizontal flourish extending to the right.

David J. Johnson
Executive Director

INDIGENT DEFENSE COMMISSION

COMMISSION MEMBERS

Chair

Jo-Ann Wallace, Chair

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

Carmen B. Williams

OFFICIALS

David Johnson
Executive Director

DJ Geiger
Deputy Director

Laura L. Still
Fiscal Director