



Written Statement of
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on behalf of the
NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

before the
Maryland General Assembly
Judicial Proceedings Committee

RE: Senate Bill 97
Maryland Public Defense Oversight Commission
February 24, 2010

Mr. Chairman, Mr. Mooney and distinguished Members of the Judicial Proceedings Committee:

Thank you for inviting me to submit written testimony on behalf of the National Association of Criminal Defense Lawyers on the important and timely issue of the structure of the Maryland Indigent Defense Oversight Commission. NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's 11,000 direct members -- and 80 state, local and international affiliate organizations with another 35,000 members -- include private criminal defense lawyers, public defenders, active-duty U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system.

I am writing to urge the state of Maryland to develop a truly independent oversight commission to uphold national public defense standards and to ensure essential indigent defense procedures. The recent dismissal of the Chief Maryland Public Defender by the State's three-member Board of Trustees demonstrates that the State of Maryland needs an independent commission.

In the American Bar Association's *Ten Principles of a Public Defense Delivery System*, one of the most widely used models to ensure national public defense standards, the first principle calls for independent features in all of the important components of a public defense system. Independence of the defense function is the only way to ensure insulation of the defense function from the executive and judicial branches in their administrative capacities, insulation from the judiciary in the courtroom, and insulation from the vicissitudes and improper influence of politics, supervisory overreaching, and untenable economic demands.

Essential to defense function independence, as explicitly recognized in the ABA's first principle, are independent oversight commissions. Without such a commission, government officials can pressure public defenders into conforming to certain procedures that compromise the quality of indigent defense and, at worst, undermine or violate the Sixth Amendment. Moreover, the independence standard helps to ensure diversity and enhance public confidence in the public defense system.

The National Legal Aid and Defender Association's *Guidelines for Legal Defense Services* standards specifically address the composition of an oversight commission that is independent from potential political manipulation. The NLADA standard advises that an independent oversight commissions should consist of 9-13 members. These members should be appointed by a variety of authorities to ensure a non-biased, bipartisan public defense system. Several states have created commissions consistent with these standards. North Carolina's commission, in particular, has been repeatedly held up as a model of good government and responsible indigent defense oversight. Maryland's taxpayers deserve no less.

The Constitution Project's National Right to Counsel Committee, in its recently issued report *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*, affirms that one of the most important mechanisms for ensuring independence of the indigent defense system is to have appointments to the oversight board originate from a variety of sources. At a minimum, the authority to appoint members to the commission should be allocated to all three branches of government and relevant bar associations. North Carolina allocates appointing authority to the chief justice, governor, house, senate, and six different bar groups, with the commission appointing three additional members. In other states, the responsibility is shared among the governor, the chief justice, the chairman of the legislature, and the state bar association. As explained in the Constitution Project report, these models ensure a diverse commission that is neither beholden to nor apt to do the bidding of any single branch of government, bar group, or individual who selects the commission's members.

The Constitution Project's National Right to Counsel echoes the ABA's and NLADA's position on commission composition by stating that, although commissions need not be a particular size, they should consist of at least seven to nine members so that they can perform the necessary work, wield sufficient authority, and feel a sense of responsibility for the commission's performance. Conversely, the larger the commission, the less likely members may have a sense of personal responsibility for the commission's success. On the other hand, since members of oversight bodies are usually uncompensated except for expenses, a commission comprised of at least nine to thirteen members will more likely assure the presence of a quorum at meetings and sufficient persons to devote time to essential tasks. Moreover, large and diverse

commissions may be more effective since there are more members to express public support on behalf of indigent defense.

In the case of former Chief Maryland Public Defender Nancy Forster, the Board of Trustees who dismissed her consisted of only three members, all of whom were appointed by the Governor. Without addressing the dismissal itself, NACDL submits that the decision inherently invites concerns because the Board's composition is inconsistent with the national standards and recommendations supported by the ABA, NLADA and the Constitution Project. Other states that have failed to insulate the administration of public defense from political interference have experienced similar turmoil. Maryland taxpayers are not well-served by such a model.

NACDL urges Maryland to install a commission consistent with the American Bar Association's *Ten Principles of a Public Defense Delivery System*, the National Legal Aid and Defender Association's *Guidelines for Legal Defense Services* standards, and the report of the Constitution Project's National Right to Counsel Committee. As a result of the events surrounding the chief public defender's dismissal, the independence of the defense function, and perhaps the quality of indigent defense, in the State of Maryland has been called into question. Now is the time for the State to confront the problem head-on by creating an independent oversight commission to ensure an effective, efficient and just public defense system.