

Criminal Justice Reform in Virginia

Background Information:

Aims of Criminal Legal System Reform Efforts

- Decarceral
- Evidence based
- Anti-racist
-

Adopted all over the country, including leading states like

- Texas
- South Carolina
- Oklahoma...

-Number of persons in jail and prisons in Virginia and across the nation have grown exponentially over the past 50 years.

- For trends, see the Prison Policy Initiative state profile on Virginia:

<https://www.prisonpolicy.org/profiles/VA.html>

Causes of mass incarceration:

Alexander Model

- The War on Drugs, starting mainly under the Nixon Administration, is responsible for the rise in mass incarceration.
- This, and the proliferation of non-violent felony offenses, has had a disproportionate impact on the black community.
- Reform needs to start with non-violent offense and the over policing of minority communities.

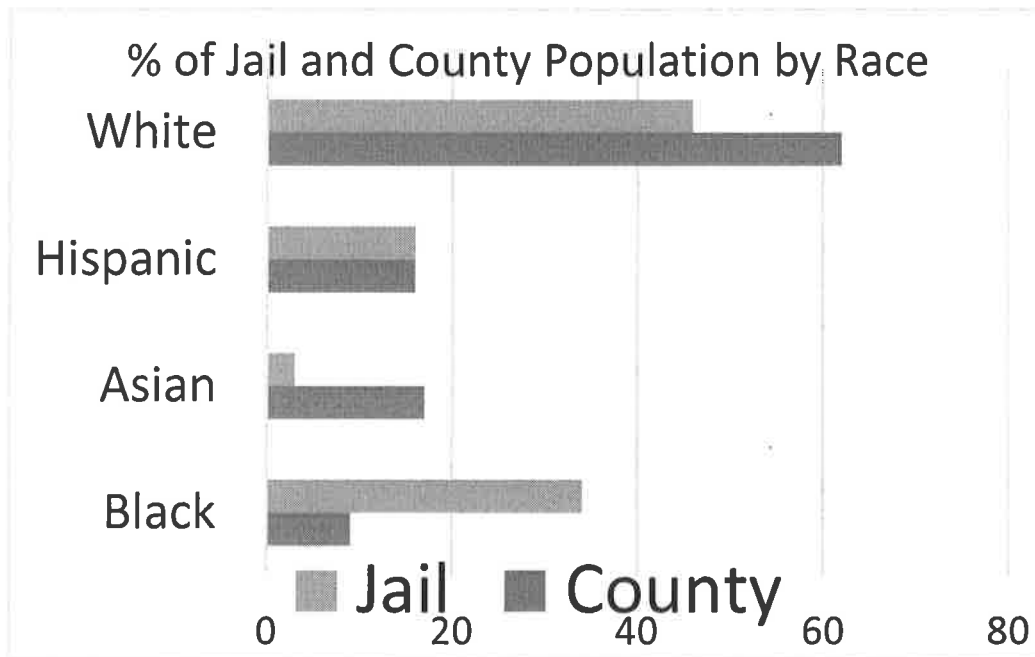
Pfaff Model

- Violent offenses are the ones driving mass incarceration, not the War on Drugs
- The issue is the increasing longer sentences that are being given for these offenses
- Longer sentences do not make anyone safer (and they might make people less safe)
- Start with sentencing reform (mandatory minimums, parole, etc.)

Costs of Incarceration

- Over 220 dollars per day to have someone stay at Fairfax ADC
- Approximately 25,000 dollars for a year in VA DOC
- Budget for incarceration is around 1.5 billion per year (just jail and prison operation)

Racial disparities in Fairfax ADC



- Marijuana Arrest disparity
 - Arlington: Black rate of arrest per 100k is 8.1x the white rate
 - Fairfax: Black rate of arrest per 100k is 3.2x the white rate
- Problem is not overt racism
- Florida leading the way in data collection efforts

Hot topics in Criminal Legal Reform

- Bail Reform
- Restorative Justice
- Court appointed Counsel
- Criminalization of Poverty
- Conditions of confinement
- Death penalty litigation
- Misdemeanor reform
- Parole
- Community/ police interactions
- Juvenile Justice Reform

Suggested Reading

- *Ordinary Injustice*- Amy Bach
- *Punishment without Crime*- Alexandra Natapoff
- *Charged*- Emily Bazelon
- *The New Jim Crow*- Michelle Alexander
- *Locked In*- John Pfaff
- *Let's get Free*- Paul Butler
- *Slavery by Another Name*- Douglas Blackmon
- *Stamped from the Beginning*- Ibram X. Kendi
- *Faces at the Bottom of the Well*- Derrick Bell

Restorative Justice

Restorative justice views crime as more than breaking the law – it also causes harm to people, relationships, and the community, and attends to these three players. Accordingly, restorative justice seeks to elevate the role of crime victims and community members; hold offenders directly accountable to the people they have harmed; and restore, to the extent possible, the emotional and material losses of victims by providing a range of opportunities for dialogue, negotiation, and problem solving.

To have restorative justice, the process needs:

1. Repair the harm that the crime caused to justice
2. Reconciliation between the Victim and Offender
3. Enable the offender to make life changes to reduce the chance they will offend again
4. “Crime victims have traditionally been given virtually no legal standing in the process of doing justice in American courts, even though the justice system exists because individual citizens have been hurt by criminal behavior. Victims of crime feel increasingly frustrated and alienated by the current system of justice. The crime is against "the state" and state interests drive the process of doing justice. Individual crime victims are left on the sidelines with little, if any, input.” <https://www.encyclopedia.com/social-sciences-and-law/law/law/restorative-justice>
5. Restorative justice provides an entirely different way of thinking about crime and victimization. Under previous criminal justice paradigms the state was viewed as the primary victim of criminal acts, and victims and offenders played passive roles. Restorative justice recognizes crime as first and foremost being directed against individual people. It assumes that those most affected by crime should have the opportunity to become actively involved in resolving the conflict. The emphasis is on restoration of losses, allowing offenders to take direct responsibility for their actions, and assisting victims in moving beyond their sense of vulnerability and achieving some closure.

6. It also recognizes that crimes harm not only victims, but offenders as well – causing huge damage to their relationships, and the community around them.
<https://www.encyclopedia.com/social-sciences-and-law/law/law/restorative-justice>
7. Widely starting to be considered and implemented for juvenile justice programs.
<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-1-what-is-restorative-justice/#sthash.X1LYocEm.dpb>
8. <https://charterforcompassion.org/restorative-justice/restorative-justice-some-facts-and-history>

What does Restorative Justice Look Like?

- Victim and offender agree to engage in restorative justice
- Open discussions between the victim(s) and offender about how their crime has caused harm.
- Victim Offender Mediation in which the participants include the victim, offender, and facilitator.
- Group activities, such as support groups and accountability circles, to help the healing of both the victim and offender and promote understanding.
- Legal Awareness that can help offenders (often times young) understand the legal repercussions of their crimes so that they understand the consequences, both presently and for potential future crimes.
- Since restorative justice is not just about broken laws, but broken lives. This means that simple punishment isn't enough to solve the problem; any particular crime is the product of a complex web of causes, and simply giving fair punishment doesn't do anything to address those causes. By getting to the root of the problem and attempting to transform the persons responsible for the crimes, another benefit of restorative justice is that it seeks to right not only the immediate wrongs, but the wrongs that made the crime possible in the first place.
- Restorative Justice requires three important things to happen
- First, you need to repair the harm that the crime caused to justice – this refers to the fact that the crime needs to be punished and to restore justice. How can the victim and the community be restored?
- Next, acknowledging that crime causes broken relationships, in a way which can lead to further crime in the future and the victim and offender need the opportunity to reconcile
- Third, you need to enable offenders to transform their lives for the better, restoring the balance in relationships and communities, and making it less likely that they will reoffend.
- Restorative justice views offenders as individuals who can make amends, transform into better people, reconcile with their victims, and eventually re-establish a functional and

working relationship with friends, family, and their society at in general. In practice restorative justice may look something like this.

If both the victim and offender agree to engage in restorative justice, they may engage in things like:

- **Agreement to engage in the process** Making a restorative justice session happen requires the agreement of all parties, but most states require that the process be initiated by the victim. “Take the family of a homicide victim,” “When someone is murdered, a whole bunch of crime victims are created by that act. It should be their choice to talk to the offender, not the offender’s choice to talk to the victims.”
<https://www.pbs.org/newshour/nation/states-consider-restorative-justice-alternative-mass-incarceration>
- **An Open Discussion.** Where the offenders meet with their victims and are given a chance to understand the exact ways in which their actions have caused harm. By openly discussing the impact of a crime, offenders are required not only to suffer for their crimes, but to understand how others have suffered too.
- **Victim Offender Mediation** in which the participants include the victim, offender, and facilitator. The face-to-face meeting is centrally focused on the victim and the offender, accompanied by a small number of support persons (such as parents or friends).
- **Group Activities.** Restorative justice programs also include activities where offenders, their victims, and support groups (if they’re available), engage in a number of activities together. This helps promote a sense of belonging and understanding.
- **Legal Awareness.** A number of offenders (often young offenders, or juveniles) are unaware of the legal repercussions of their crimes. Restorative justice programs might try to help them understand the law, so they know what consequences their actions can have.
- **Educational Programs.** Promoting academic awareness plays a part in most restorative justice programs, particularly when it comes to juvenile offenders. Youth are exposed to regular school programs, and receive aid with schoolwork. As an investment of time in their lives, this can be a powerful sign that they are worth investing in; leading them to reconsider their lives and choose a different path.

Consider the case of Rikki Spector

- Two boys car jacked Baltimore City Councilwoman Rikki Spector. They punched her in the face, called her a name, and threw her into a concrete pillar before stealing her car.
- <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0125-restorative-justice-20180124-story.html>

Other Examples

Since the Restorative justice program in DC has been implemented and proven some early success, Prosecutor Clark now says that she is referring some of the most serious cases on her

docket into the program, including one involving a transit police officer who tore his rotator cuff and strained his knee trying to apprehend a teenager fighting on a subway platform.

- <https://www.npr.org/2019/07/02/735506637/d-c-prosecutors-once-dubious-re-becoming-believers-in-restorative-justicerm>.
- Statistics:
 - according to Lawrence Sherman, professor at the University of Maryland.
<https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-0125-restorative-justice-20180124-story.html>
 - <https://www.ncjrs.gov/pdffiles1/ojdp/grants/250995.pdf>
- Although restorative justice may not be appropriate for every crime, such as sexual assaults or frequently violent crimes, it can be very effective in many cases at providing a more just resolution to the offender, victim, and community.
- It can also be used years after the crime and whatever punishment to give the offender and victim an opportunity to dialogue about the harm that has been caused to give both parties a sense of reconciliation and healing.

Concerns about Restorative Justice

- Does it actually work?
- Does it just let people “off the hook” for their crimes?
- Can the victim actually forgive and work with the offender?
- If we let the offender off that easy, will they commit more crimes?
- Are these programs expensive to put on?
- "Oh, OK, so we're not going to prosecute you? We're going to sit around in a circle with, like, the hippies down the hallway, and we're going to have a talk and then you don't have any punishment?" - DC Prosecutor Erika Clark on her first reaction to a restorative justice proposal

Why use Restorative Justice?

- Research is indicating that it is effective!
- Reduces recidivism
 - Systematic analysis of studies of restorative juvenile justice programs and practices showed a moderate reduction in future delinquent behavior relative to more traditional juvenile court processing.
- It helps address the multifaceted harms that a crime may have caused.

- Victim participants in these programs appear to experience a number of benefits and are more satisfied with these programs than traditional approaches to juvenile justice.
- Studies show restorative practices not only promote healing but also reduce offender recidivism, which saves the state \$8 for every \$1 spent.

BAIL REFORM

Overview

- Following an arrest, a person's ability to leave jail and return home pending trial often depends on money.
- Many defendants are released on personal recognizance or pretrial supervision pending trial.
- However, in Virginia and most states, bail bonds are often set for defendants in effort to ensure their presence at trial and to assure their good behavior pending trial.
- If a defendant cannot afford to pay the bond with the Court or pay a nonrefundable fee to a bail bond company, he or she remains in jail until the case is resolved.
- Incarceration data reflects that this system disproportionately affects poor, minority, and rural defendants, leaving many stuck in jail awaiting trial, sometimes for months or years, and raises serious constitutional, statutory and policy concerns.
- Virginia Statutes

Virginia Code § 19.2-120(A)

“A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or
2. His liberty will constitute an unreasonable danger to himself or the public.”

Virginia Code 19.2-120(B)

The general presumption in favor of bail does not apply to, *inter alia*, acts of violence (murder, robbery, kidnapping, malicious wounding, arson), offenses in which the maximum sentence is life imprisonment or death, certain drug offenses, certain firearm offenses, certain sexual offenses, and felonies committed on release pending trial.

- Virginia Statutes Cont.
 - “Bail” is defined as “the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.” Va. Code § 19.2-119.

- “If the person is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably fixed to assure the appearance of the accused and to assure his good behavior pending trial.” Va. Code § 19.2-121.
- Virginia law requires the judicial officer to take into account multiple factors, including “the financial resources of the accused or juvenile and his ability to pay bond.” Va. Code § 19.2-121.
- “Bond” is defined as “the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.” Va. Code § 19.2-119.

Virginia Statutes Cont.

- When a judicial officer determines that release on the defendant’s unsecured promise (recognizance) will not assure appearance at trial, the judicial officer “may impose any one or any combination of the following conditions of release:”
 - Placing the defendant in the custody and supervision of a designated person, organization or agency;
 - Restricting travel, association or place of abode during pretrial release;
 - Requiring the execution of a secure bond or the deposit of cash;
 - Requiring the defendant to maintain employment or an educational program, avoid contact with the victim or potential witnesses, comply with a curfew, refrain from possessing a firearm or weapon, and refrain from illegal drug use or excessive alcohol consumption, or submit to drug testing; or
 - Imposing any other condition the officer believes is reasonably necessary to assure the appearance of the defendant.

Va. Code § 19.2-123.

- The Virginia State Crime Commission (VSCC) is currently conducting a comprehensive study of the pre-trial process, including the bail bond system.
- In October 2018, Virginia’s Attorney General Mark Herring called for reforms to Virginia’s cash bail system citing constitutional and policy concerns.
- In the meantime, local prosecutors and judges have begun to institute reforms in their communities. For example,
 - In April 2018, Richmond Commonwealth’s Attorney Mike Herring announced that prosecutors in his office would no longer seek cash bail bonds for defendants awaiting trial.

- In the same year, Fairfax County Circuit Court Judge David Bernhard stopped setting cash bonds for defendants awaiting trial.
- In 2005, Virginia implemented the Virginia Pretrial Risk Assessment Instrument (VPRAI) to help pretrial services objectively calculate a defendant's likelihood of failure to appear and level of danger to society. The tool consists of eight factors that are weighted to create a risk score, and defendants eligible for bail are then assigned to one of five risk levels ranging from low to high.
- As of 2017, 74% of Virginia's localities (99 of 134) were served by pretrial services. Encouraging pretrial services in all Virginia localities will help assure that the VPRAI is properly utilized and that judicial officers making bail decisions consider the recommendation of pretrial services throughout the Commonwealth.

Current Reforms in Other States

- State legislatures and city councils are eliminating the use of cash bail, judges and prosecutors are instituting reforms in local jurisdictions, and courts are striking down existing bail systems as unconstitutional.
- ATLANTA:
 - With the backing of Atlanta Mayor Keisha Bottoms, the City Council approved an ordinance in February 2018 to eliminate the cash bail requirement in municipal court for nonviolent misdemeanor charges or city ordinance violations.
- CALIFORNIA:
 - The California Money Bail Reform Act, which would have eliminated money bail and replaced it with an assessment of defendants' risk to public safety, was signed by Governor Jerry Brown on August 28, 2018, and would have gone into effect on October 1, 2019. However, a successful referendum in the state has now placed the issue on the ballot for voters in the November 2020 election.
- CHICAGO:
 - In 2017, a Cook County judge issued an order requiring Chicago judges to consider a defendant's ability to pay before setting bail. A 2019 report showed that the number of inmates at Cook County jail dropped by more than 1,600 in the 15 months following the order. The data also shows that the average bond amount fell from \$5,000 to \$1,000, while the percentage of inmates picking up new charges while on bond dropped slightly, the report states. Violent crime in Chicago dropped 8% during same period, according to crime data reported to the FBI, the report states.
- HOUSTON:
 - In April 2017, a federal judge put a pause on Houston's use of its bail system, which it considered probably unconstitutional. [*ODonnell v. Harris County*]

- The Fifth Circuit largely upheld this decision, recognizing the two-tiered system of justice in Houston, although it allowed the county to take up to 48 hours after the arrest to provide the defendants with a hearing.

- NEW YORK:

- In New York, the state Legislature eliminated cash bail for most misdemeanor and non-violent felony offenses. The law goes into effect in January 2020. Once enacted, most people charged with misdemeanor and non-violent felonies will be automatically released.

Where Can We Go From Here?

- Involve Stakeholders at Every Stage of Reform

- A hallmark of successful reforms has been the repeated, consistent involvement of a broad range of stakeholders, including judges, prosecutors, public defenders, law enforcement, civil rights and civil liberties groups, community organizations, and people from communities that are most impacted by the criminal justice system.
- Across jurisdictions, a key to success has been the consensus-building value of in-person meetings of diverse stakeholders with different viewpoints, goals, and experiences. Stakeholders and the public should also be given the opportunity to learn about the harms of the money bail system, the feasibility of reform, and the effectiveness of pretrial systems that maximize release and minimize unnecessary release conditions.

- Limit Pretrial Detention

- The Supreme Court affirmed over thirty years ago that “in our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
- In the United States, every person is presumed innocent until proven guilty. Consistent with that principle, jurisdictions should implement strong procedural protections in favor of release pending trial.
- Jurisdictions may consider the requirement that prosecutors meet a certain evidentiary burden (such as “clear and convincing evidence”) in order to detain a defendant or impose restrictive conditions of release.
- Because even short stays in jail can cause outsized harm to the accused, their families, and the broader community, release decisions should be made within 24 hours of arrest, and defense counsel should be appointed as early as possible to ensure that judges make informed release decisions.

- Eliminate Money Bail
 - The Eighth Amendment to the United States Constitution and Article I of the Virginia Constitution both prohibit the use of “excessive bail.” U.S. Const. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”); Va. Const. art. I § 9 (“That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted[.]”).
 - The Equal Protection Clause of the 14th Amendment also forbids this type of wealth based discrimination.
 - As described in this presentation, many jurisdictions have eliminated money bail as a condition of release, at least for low-risk, non-violent offenders, in an effort reduce disparities in how wealthy and indigent defendants are treated in connection with bail determinations.
- Optimize Pretrial Services
 - As jurisdictions strive to release more people pending trial, they should adopt pretrial interventions that work and reject interventions that overburden defendants without significant benefits to public safety or court appearance rates.
 - Conditions of release that infringe on a person’s liberty should be narrowly tailored and relate to specific, individualized concerns (such as mental health or drug treatment).
 - Pretrial services should be fully funded by the government and the accused should not be forced to pay a “user fee” to pay for pretrial services or monitoring.
 - Phone and text message reminders can be a cost-effective means of increasing court appearance rates.
- Tread Carefully with Risk Assessment Tools
 - Most jurisdictions have adopted algorithmic risk assessment tools (such as the VPRAI) meant to help magistrates and judges better predict the risk of releasing a defendant pending trial.
 - Risk assessment tools use historical data to assess a particular defendant’s risk level based on the rate at which people with similar characteristics were arrested or missed court dates while on pretrial release. Many of these tools then offer a release recommendation based on that score.
 - However, risk assessment instruments are not required for meaningful bail reform, and any jurisdiction that contemplates adopting risk assessment tools should consider that pretrial risk assessment tools do not guarantee lower pretrial incarceration rates or more equal treatment, and the use of historical criminal history data that powers risk assessments may be biased given that research

reveals that black and Latino individuals are more likely than white individuals to be arrested, prosecuted, convicted, and sentenced to harsher punishments for the same conduct.

Criminal Justice Reform: Compensation for Court Appointed Counsel

Introduction

- As decided in Gideon v. Wainwright 372 U.S. 335, 342 (1963) the 6th Amendment to the Constitution guarantees indigent defendants the right to representation in criminal cases.
- Today, this constitutional requirement is met by both:
 - Public Defenders
 - Court Appointed Counsel
- Public Defenders and Court Appointed Counsel
- In Virginia, the Virginia Indigent Defense Commission (VIDC) protects the constitutional right to counsel for those who are indigent.

VIDC Overview:

- Established in 2004 replacing the Public Defenders Commission
- Supervises 24 public defenders offices across Virginia including four capital defenders offices
- Develops 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.
- Statutory authority: § 19.2-163.01.

Process to Attain Court Appointed Counsel

- The determination of the right to court-appointed counsel is made prior to the trial if no determination was made in a pre-trial procedure.
- The judge will appoint a lawyer to represent the accused at public expense if the person indicates he is indigent and completes the required paperwork.
 - DC-334, REQUEST FOR APPOINTMENT OF A LAWYER
 - DC-333, FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES.
- Once the decision is made to give court appointed counsel, the court must determine counsel to represent the defendant:

- Per Va. Code § 19.2-159

- "Except in jurisdictions having a public defender, or unless (i) the public defender is unable to represent the defendant by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01."

- Public Defender office are salaried positions
- Some PD offices in the state have investigators, sentencing advocates, and administrative staff
- Private attorneys who accept court appointed work representing persons charged with crimes who can't afford an attorney are paid by the state at a fixed hourly rate with a fee cap

Quick Quiz

- What is the hourly rate for court appointed work? \$90
- What is the fee cap for misdemeanor cases? \$120
- What is the fee cap for felony cases when the maximum punishment is 20 years or less? \$445
- What is the fee cap for a felony when the punishment is more than 20 years? \$1235
- What is the fee cap for a petition of appeal to the Virginia Court of Appeals for all felony cases? \$400 (+\$100 for oral argument)
- If petition is granted and the case is heard on the merits by the Virginia Court of Appeals, what is the total fee cap for all felony cases? \$725

Compensation for Court Appointed Counsel (VA)

- According to a 2004 ABA report conducted by the Spangenberg Group, Virginia's caps on court-appointed compensation placed its fees as the lowest in the nation.
- Statutory Authority: § 19.2-163. Compensation of court-appointed counsel.
- As set by the Supreme Court of Virginia, Hourly Rate: Up to \$90

Fee Caps for Court Appointed Counsel on Appeal

- Statutory Authority: § 19.2-326. Payment of expenses of appeals of indigent defendants.
- Supreme Court of Virginia has a complex system of compensation.

- Virginia Court of Appeals has a much clearer fee structure:
- Source: Virginia Independent Defense Commission 2019 Annual Report

Fee Cap Waivers

- Statutory Authority: § 19.2-163. Compensation of court-appointed counsel.
- Virginia law also allows for second level waivers in certain cases.
 - “If at any time the funds appropriated to pay for waivers under this section become insufficient, the Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further waivers shall be approved.” - § 19.2-163.
- Quality of Representation
 - Misdemeanor
 - Felony
 - Appeals
- Unpredictable Workload
 - Even cases with the exact same crime charged can vary widely on hours spent
- Results:
 - Less effective representation
 - Longer sentences
 - Inequity based on economic circumstance of defendant

Summary of reform platforms of newly elected Commonwealth’s Attorneys

Commonwealth Attorney: Loudoun County

- **Buta Biberaj (Democrat)**
 - Platform
 - Eliminate referrals of low-level nonviolent offenses to Juvenile Court Services Unit.
 - Discovery reform
 - Facilitate greater victim assistance

Commonwealth Attorney: Prince William County

- **Amy Ashworth (Democrat)**
 - Platform

- Open-file discovery
- Creation of public defender's office
- Elimination of 287 (g) program
 - Allowing deputies at county jails to act as U.S. Immigration and Customs Enforcement Agents.

Commonwealth Attorney: Fairfax County

- Steve Descano (Democrat)
 - Platform:
 - Drop prosecutions for marijuana possession
 - Charge fewer felonies
 - Discontinue death penalty
 - End cash bond

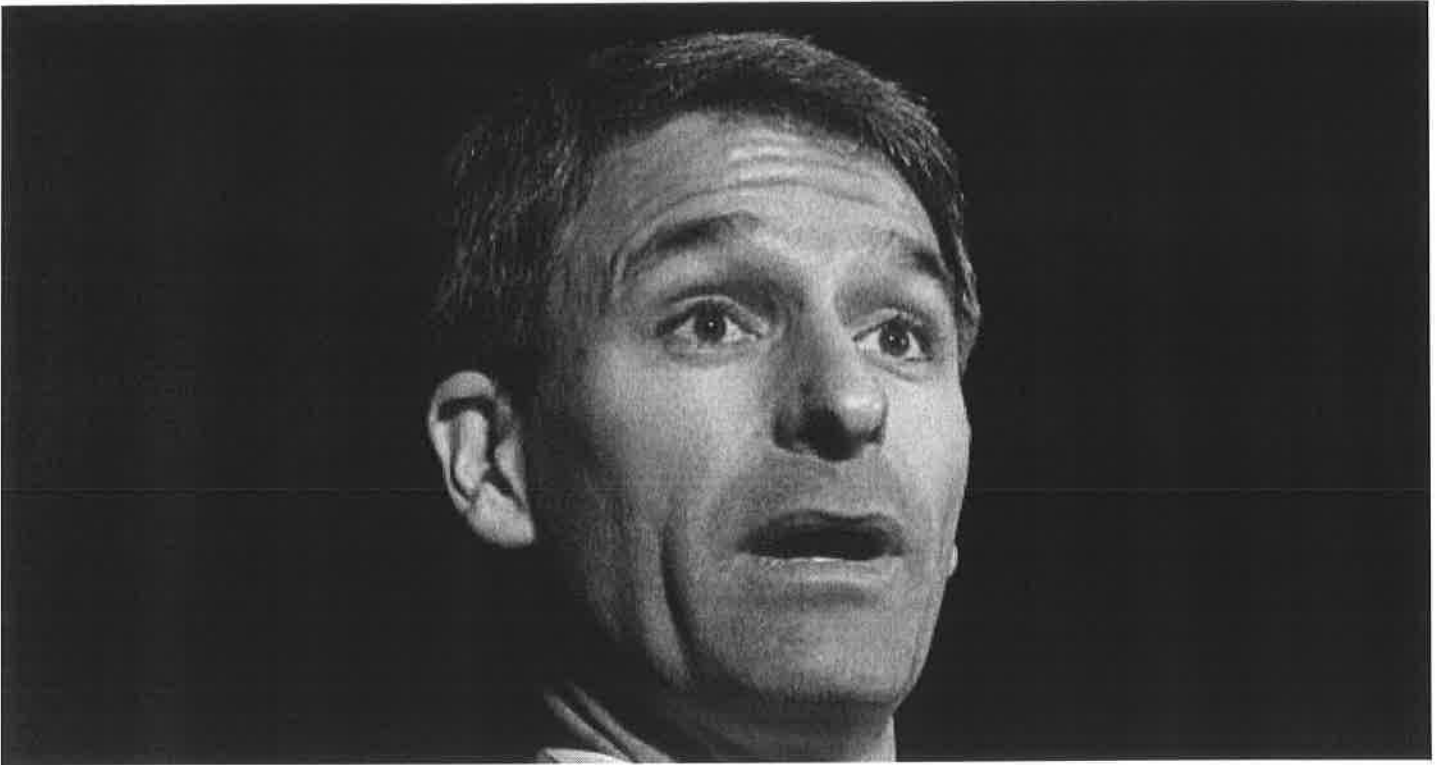
BREAKING Two Richmond shootings send 3 victims to the hospital — two of them juveniles

https://www.richmond.com/opinion/columnists/cuccinelli-nolan-norquist-and-reddy-smart-reforms-for-virginia-s/article_34e1fc32-5d11-578b-8423-1144a7ee2668.html

CRIME AND PUNISHMENT

Cuccinelli, Nolan, Norquist and Reddy: Smart reforms for Virginia's justice system

By Ken Cuccinelli, Pat Nolan, Grover Norquist and Vikrant P. Reddy Feb 7, 2016



Former Virginia Attorney General Ken Cuccinelli

2013 TIMES-DISPATCH

From the very beginning, Virginians have appreciated that justice and individual character are essential elements of self-government. In the Virginia Declaration of Rights of 1776, George Mason wrote that “no free government, or the blessings of liberty, can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue and by frequent recurrence to fundamental principles.”

Justice and the guarantee of safety are basic duties of government. We all deserve to live in safe neighborhoods and walk on safe streets. In Virginia, there are three actions that can be taken in the short run to dramatically improve our current justice system.

First, Virginians should hold the government accountable for keeping us safe and spending our tax dollars wisely. Unfortunately, it is currently legal under Virginia law for the government to seize someone’s property without convicting that person of a crime. Of course, no one has the right to profit from crime. But as individuals who believe in a limited government, it is deeply troubling that the state can take private property on the mere suspicion that it has been involved in illegal activity and the owner must then prove the property’s innocence to reclaim it.

Some in law enforcement (and we are all supporters of law enforcement) claim that this process, known as civil asset forfeiture, is “not a problem in the commonwealth.” We disagree. The system creates a profit incentive for government — and there is a lot of money on the table.

The state has seized more than \$70 million in assets between 2006 and 2015. Virginia agencies have also received more than \$100 million in “equitable sharing” payments from the federal government from 2004 to 2014.

Equitable sharing — a law-enforcement cooperation statute — allows state agencies to use federal law to skirt asset forfeiture restrictions. Because of this, a recent national report by the Institute for Justice gave Virginia a D- for its civil forfeiture laws, one of the worst grades in the country. Assets should generally not be seized until a defendant is actually convicted of a crime.





MLB draft: Tigers select Auburn's Casey Mize with No. 1 pick

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Second, it is time to address the ballooning cost of incarceration. In 1995, Virginia largely abolished parole, so more people now spend more time in Virginia prisons, thereby costing taxpayers more money. Furthermore, because offenders do not have a strong period of supervision and support when re-entering society, they are a significant risk to reoffend. Virginia taxpayers now spend more than \$1 billion per year on incarceration, but there is little evidence that this increased level of imprisonment is making us safer. Longer sentences do not necessarily deter crimes or make felons less likely to reoffend. We need to be more particular (and frugal) — identifying where longer sentences work and where they don't, and adjust accordingly.

There are steps we can take to improve public safety. For example, too many children in our state grow up in broken homes — often without a father. Other states have found ways to hold offenders, often men, accountable for their crimes while keeping them in their communities, where they can support their families and play a role in their children's lives. By using rigorous drug testing and rehabilitation programs and forcing offenders to pay restitution, society can hold offenders accountable while also promoting family unity. Broken homes are the single biggest predictor of the potential for a child to turn to a life of crime. Strengthening families makes us all safer.

Finally, it is important to ensure that the charge and punishment actually fit the crime. Since 1980, a theft of \$200 or more in Virginia is a felony offense, rather than a misdemeanor. This felony larceny threshold of \$200 is the lowest in the nation. Since 1993, famously tough-on-crime Texas has had a felony threshold set at \$1,500, and it increased that threshold to \$2,500 in 2015.

Virginia, meanwhile, unsurprisingly locked up more youths for a primary conviction of larceny than for any other offense in 2014. The consequences of these felony convictions reverberate for years. A felony conviction frequently makes it much more difficult to find legal employment, making it much harder to pull one's life back together. Virginia needs to raise its felony threshold — we suggest \$1,000.

Crime and punishment are unfortunate but ever-present elements of any society. In order for us all to enjoy the blessings of liberty, we need more justice on our streets and we need more virtue in our communities. Virginians have an opportunity to hold our government accountable for its actions and spending and to make commonsense changes that deter crime effectively. Through smart reforms, strong families, and a commitment to making our founding principles a reality, we can all enjoy a safer, more just commonwealth.

Contact Ken Cuccinelli, a former Virginia attorney general, at info@cuccinelli.com.

Contact Pat Nolan, director of the American Conservative Union Foundation's Center for Criminal Justice Reform, at <http://acufoundation.conservative.org/center-for-criminal-justice-reform/>.

Contact Grover Norquist, president of Americans for Tax Reform, at <http://www.atr.org/>.



OPINION & COMMENTARY

Editorial: Virginia should lift rate caps for court-appointed lawyers, boost public defenders' pay

MAY 23, 2016 | 7:43 AM



A Williamsburg lawyer pleaded guilty to her role in a scheme in which more than 1,000 time shares were put in the names of "straw buyers" -- random people who had no interest in buying the property and no means of paying the annual time-share fees. (Daily Press Graphic)

When the Virginia attorney general's office hired outside lawyers a year ago to defend the state's election laws, it paid those lawyers up to \$450 an hour.

Apiece.

A week's work — doing such things as looking up case law, fielding phone calls, and writing legal briefs — amounts to \$18,000. The AG's office ended up dishing out \$523,000 for the case, not counting what the House and Senate paid separately.

Meantime, private lawyers doing work for the Virginia Retirement System were paid up to \$725 an hour. Outside counsel working on "privatization matters" for the Virginia Department of Transportation were paid up to \$690 an hour.

And so on.

At this point, we're not ready to weigh in on whether we think all these legal bills were worth it — though we believe the AG's office should try to take on more of this work in-house.

But let's take a step back and compare these rates to what the state pays out for legal work that's arguably more important: Representing people who can't afford a lawyer but are facing decades in prison on felony charges.

We must ask: Are we paying enough to the lawyers performing the thankless task of representing the poor in criminal cases?

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»

The state pays these lawyers \$90 an hour, a fraction of the previously mentioned rates. Even more striking, a fee cap generally limits the amount they are paid to \$1,235 per felony charge.

It's natural, of course, to want to skimp when it comes to other people's lawyers. But the importance of having a good one — guaranteed under the Sixth Amendment to the constitution — is more clear when your own skin is on the line.

There doesn't appear to be a problem with death penalty cases, given that the state now generously opens its purse strings for those. The hourly rates for private capital defense lawyers are double the normal rates, the fee caps are waived, and each defendant gets two certified lawyers.

But generally, we must ensure that we're putting enough money into criminal defense to see that innocent people aren't wrongfully convicted and that justice — which is supposed to be blind — doesn't depend on the financial wherewithal of the person charged.

A recent AG's report said the state spent \$104 million on legal fees for the indigent in fiscal year 2015 — \$62.2 million for court-appointed lawyers and \$41.8 million for the state's public defender's offices statewide.

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In many cities — including Newport News, Hampton and South

Hampton Roads — the public defender's offices get more than two thirds of this work, with the rest going to lawyers appointed by the courts.

Public defenders are paid an annual salary, not an hourly rate. An assistant public defender, for example, starts out making \$50,130 a year, a quite modest salary for someone representing clients with decades in prison on the line.

Because of the relatively low pay, as soon as young lawyers in these offices get some experience, they are often looking for new work.

A few years ago, lawmakers passed legislation allowing cities and counties to boost public defender pay, just as they already do for prosecutors. But several years on, only three jurisdictions statewide actually do that.

As a way of helping the system to run more smoothly and reducing wrongful convictions, we urge city councils in both Newport News and Hampton to supplement the pay of their public defenders — just as both cities do now for prosecutors.

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Moreover, Virginia should consider increasing how much it pays to private lawyers doing court-appointed work. Some studies have shown the state to be among the cheapest states in the union for how much these lawyers are paid.

The biggest problem: A fee cap that arbitrarily limits the total

amount such lawyers can be paid.

Under Virginia law, court-appointed lawyers' pay is limited to \$445 — equating to about five hours of work — on lower-tier felony charges. It's limited to \$1,235 — or about 14 hours' worth of work — for crimes punishable by more than 20 years in prison.

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There are two important caveats.

First, if someone is facing multiple felonies, the caps multiply with the charges. Someone facing five serious felonies, for example, can be paid up to \$6,175. Second, judges can waive the fee caps under special circumstances.

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But though state judges are quick to grant such waivers, such as on homicide, shootings and many serious sexual assault cases, more

than 90 percent of cases are paid at the standard rates.

We believe the state should raise these caps, and lawyers should be paid for the hours they work. Yes, the caps probably do save money in the short run. But they are also a disincentive for quality legal representation, forcing lawyers to either work for free or cut corners.

Cutting corners is obviously not good for clients. But by increasing the chances of mistakes, bungling and people being convicted of crimes they didn't commit, it's not good for communities, either.

Topics: Compensation and Benefits, Jobs and Workplace

**FINANCIAL STATEMENT – ELIGIBILITY DETERMINATION
FOR INDIGENT DEFENSE SERVICES**
PRESUMPTIVE ELIGIBILITY

Case No.
Commonwealth of Virginia VA. CODE § 19.2-159

☐ I currently receive the following type(s) of public assistance in

CITY/COUNTY
☐ TANF \$ ☐ Medicaid ☐ Supplemental Security Income \$
☐ SNAP (food stamps) \$ ☐ Other (specify type and amount)

☐ I currently do not receive public assistance.

Names and address of employer(s) for defendant and spouse:

Self

Spouse (not applicable if alleged victim)

NET INCOME:

	Self	Spouse
Pay period (weekly, every second week, twice monthly, monthly)
Net take home pay (salary/wages, minus deductions required by law)	\$	\$
Other income sources (please specify)		\$

EMPLOYMENT HISTORY:

Were you employed at the time of your arrest? ☐ yes ☐ no
If yes, my net take home pay was ☐ per week ☐ month \$
If no, length of time since last employed?
Total wages earned last calendar year? \$

TOTAL INCOME \$ 0.00 + 0.00 = **0.00** A

ASSETS:

Cash on hand \$
Bank Accounts at: \$
Any other assets: (please specify)

Real estate – \$ with a value of \$
NET VALUE

Motor Vehicles { YEAR AND MAKE with net value of \$
YEAR AND MAKE with net value of \$

Other Personal Property: (describe) \$

TOTAL ASSETS \$ 0.00 + 0.00 = **0.00** B

..... Number in household defendant has financial responsibility for, including defendant.

EXCEPTIONAL EXPENSES (Total Exceptional Expenses of Family)

Medical Expenses (list only unusual and continuing expenses) \$
Court-ordered support payments/alimony \$
☐ deducted from paycheck ☐ not deducted from paycheck
Child-care payments (e.g. day care) \$
Other (describe): } \$

This statement is made under oath. Any false statement may constitute a violation of law under Virginia Code § 19.2-161 and be subject to criminal penalty, including incarceration.

TOTAL EXPENSES \$ 0.00 = **0.00** C
COLUMN "A" plus COLUMN "B" minus
COLUMN "C" equals available funds = **0.00**

I hereby state that the above information is correct to the best of my knowledge.

Name of defendant (type or print)

DATE SIGNATURE

Sworn/affirmed and signed before me this day.

DATE SIGNATURE TITLE



VIRGINIA DEFENDERS

INDIGENT DEFENSE COMMISSION

2019

ANNUAL REPORT

**Virginia Indigent
Defense Commission**

1604 Santa Rosa Road, Suite 200
Richmond, VA 23229
PH: (804) 662-7249 | F: (804) 662-7359
www.vadefenders.org

FY19 - Commission Members and (Appointing Authorities)

Chairman (July 2009 – Present)

The Honorable Alan E. Rosenblatt (ret.) (Senate of Virginia)

Steven D. Benjamin (Senate of Virginia)

Henry Chambers (Governor)

The Honorable Christopher E. Collins (Virginia House of Delegates)

John G. Douglass (Virginia State Bar)

Carolyn Grady (Virginia State Bar)

Karl R. Hade, Executive Secretary of the Supreme Court

The Honorable Edward W. Hanson, Jr. (Senate of Virginia)

James Hingeley (Governor)

Guy W. Horsley (Speaker of the House)

Kristen Howard (Crime Commission, designee)

The Honorable Richard Stuart (Senate of Virginia)

David D. Walker (Speaker of the House)

Carmen B. Williams (Speaker of the House)

Commission Staff

Executive Director

David J. Johnson

Deputy Director

Maria Jankowski

Information Technology Director

Jason Hodges

Human Resource Director

Donna Moore

Budget and Finance Director

Denise Sandlin

Public Defender Offices

Office	Localities Served	Year Established
Alexandria	City of Alexandria	1987
Arlington	County of Arlington and City of Falls Church	2005
Bedford	City/County of Bedford	1989
Capital Defender (Central)	Cities of Bedford, Charlottesville, Colonial Heights, Emporia, Hopewell, Lynchburg, Petersburg, Richmond, and Counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003

Public Defender Offices

Office	Localities Served	Year Established
Capital Defender (Western)	Cities of Bristol, Buena Vista, Covington, Danville, Galax, Lexington, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro and Counties of Alleghany, Augusta, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe	2003
Charlottesville	City of Charlottesville and County of Albemarle	1998
Chesapeake	City of Chesapeake	2005
Danville	City of Danville	1990
Fairfax	City and County of Fairfax	1987
Franklin	City of Franklin and Counties of Isle of Wight and Southampton	1989
Fredericksburg	City of Fredericksburg and Counties of King George, Stafford, and Spotsylvania	1990
Halifax	Counties of Halifax, Lunenburg, And Mecklenburg	1990
Hampton	City of Hampton	2005
Leesburg	Counties of Fauquier, Loudoun, and Rappahannock	1988
Lynchburg	City of Lynchburg	1991
Martinsville	City of Martinsville and Counties of Henry and Patrick	1992

Public Defender Offices

Office	Localities Served	Year Established
Newport News	City of Newport News	2005
Norfolk	City of Norfolk	2002
Petersburg	City of Petersburg	1979
Portsmouth	City of Portsmouth	1986
Pulaski	City of Radford and the Counties of Bland, Pulaski, and Wythe	1988
Richmond	City of Richmond	1986
Roanoke	City of Roanoke	1976
Staunton	Cities of Buena Vista, Lexington, Staunton, and Waynesboro and the Counties of Augusta and Rockbridge	1972
Suffolk	City of Suffolk	1989
Virginia Beach	City of Virginia Beach	1973
Winchester	Counties of Clarke, Frederick, Page, Shenandoah, and Warren, and the City of Winchester	1989

VIRGINIA INDIGENT DEFENSE COMMISSION

MISSION STATEMENT

Dedicated to protecting and defending the rights and dignity of our clients through zealous, compassionate, high-quality legal advocacy.

The Virginia Indigent Defense Commission (VIDC), in conjunction with court-appointed private attorneys, provides legal representation for indigent people accused of crimes for which the possible punishment is incarceration or death.¹

This year the VIDC welcomed one new Chief Public Defender. New Hampton Public Defender Matthew Johnson replaced Rebecca Robinson, who was selected by the General Assembly to serve as a Juvenile and Domestic Relations Judge in Newport News. Mr. Johnson was the long serving Deputy in Portsmouth and brings a wealth of trial, supervising and training experience.

Community and policy engagement continues to grow in 2019. In addition to the tens of thousands of cases handled every year across the Commonwealth by the Public Defender offices, the Executive Director, Deputy Director, and many Public Defenders serve on various boards, commissions, committees, and other groups working toward improving the criminal justice system both statewide and in their communities. The Executive Director continues his engagement with DCJS (Department of Criminal Justice Services) by serving on the Criminal Justice Services Board and Advisory Committee on Juvenile Justice and Prevention. The Executive Director serves on the Board of Governors for VTLA and as Co-Chair of the VCJC (Virginia Criminal Justice Conference). He also serves as co-Chair of the VCJC committee tasked with studying the impact of body worn cameras on the criminal justice system and on the deferred disposition study committee.

The Deputy Director, as well as the Public Defender for Petersburg and the Capital Defender for the Southwest region, serves on the Virginia State Bar Criminal Law Board of Governors. The Deputy also continues to serve on the State Drug Treatment Court Advisory Committee as well as groups organized by the Supreme Court to review applications for Veterans Dockets and Mental Health Dockets. The VIDC appreciates the opportunity to engage with other stakeholders to ensure that the unique challenges facing indigent defendants in the Commonwealth are not overlooked.

A. VIRGINIA CODE § 19.2-163.01 - STATUTORY MANDATES

The sections of the Code of Virginia governing the VIDC include several statutory mandates most of which concern the duty to oversee court-appointed private attorneys. A summary of the recent actions taken and the mandate requiring such action follows.

1. VIRGINIA CODE § 19.2-163.01(A)(1) - Publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed counsel for indigent defendants.

The initial qualification requirements as well as the requalification requirements for attorneys seeking to represent indigent clients accused in criminal cases are enumerated in Virginia Code §19.2-163.03. A list of the qualification requirements can be found on the VIDC website at www.vadefenders.org. Applications for initial certification and re-certification are also available on the website. The Certification and Compliance Attorney or the Certification and Compliance Assistant receive applications for certification and re-certification for review and determine whether the qualification or requalification requirements have been met.

2. VIRGINIA CODE § 19.2-163.01(A)(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.

The VIDC continues to offer live Initial Certification training for attorneys wanting to do court-appointed indigent criminal defense work. This training is offered three times a year. In FY2019 we held Initial Certification training in December at the Virginia State Police Headquarters and in March at the VIDC. We had 71 attendees at these trainings. This training is staffed with seasoned public defenders and other VIDC specialty attorneys, including our Chief Appellate Counsel and Certification Attorney. In addition to content updates and improvements, valuable practice tips are provided throughout the program. The VIDC attorney resource website and other free resources are highlighted for the attendees. Finally, the live format allows participants to ask questions of the faculty and the faculty are available to provide answers and support to the attendees. In addition to the resource manual, this training consists of six hours of specialized criminal defense instruction, four additional hours of juvenile defense instruction and two hours of immigration training over a two-day period.

The VIDC continues to strive to provide quality training, free of charge, to the private court-appointed attorneys. All VIDC trainings are MCLE (Mandatory Continuing Legal Education) approved by the Virginia State Bar. This year the VIDC provided numerous CLE hours to over 300 private court-appointed attorneys from across the state. All of these CLEs are offered free of charge. We hosted five Late Day Lectures at our Richmond administrative office in FY2019. "Late Day Lectures" (LDL) are one to two-hour long trainings focused on a specific area of the law. In FY2019 we offered lectures on juvenile sentencing, DWIs, ethics, SANE reports and ethical considerations when representing juveniles.

Recognizing a need for quality training across the Commonwealth, these LDLs have been recorded and are made available via our Sproutvideo replay library to the private court-appointed attorneys across the Commonwealth. We currently offer thirteen videos for misdemeanor/felony

eligible courses and seven videos for juvenile eligible courses. These videos range in length from one to two hours. These videos can be used by court appointed attorneys to re-certify if they are unable to attend the required recertification hours live. Initial Certification is also recorded and provided on Sproutvideo for public defenders only. This allows public defenders to become initially certified right after they are hired and not have to wait for one of the three live certification trainings. We cut back on the number of Late Day Lectures we hosted in second half of FY2019 because we have so many videos available on Sproutvideo and we hosted Initial Capital Certification in June of 2019 and were preparing for Capital Habeas Certification in July 2019.

In June of 2019 we hosted Initial Capital Certification. This training was initially done in 2015 and at that time the Capital Qualification Standards Committee decided that all attorneys would “sunset” off the capital list every four years. This meant that every attorney on the capital list needed to either attend Initial Capital Certification or some other qualifying capital-specific training and fill out a Sunset Application detailing their recent, relevant experience. This training was held in a conference room at the Virginia State Bar and offered twelve hours of CLE credit, including one and a half hours of ethics and two hours of capital appellate specific content. This training was also held for any attorney who was interested in becoming newly certified to handle capital cases. Thirty-two people attended this training and it covered the substantive law, ethical considerations, use of experts, jury selection, mitigation and mental health evidence. This training is also in our Sproutvideo replay library for anyone interested in becoming capital certified before we hold the next live training in four years.

Furthering the goal of providing hands on training, the VIDC continued to partner with Judges from the Court of Appeals for our day long Annual Introduction to Indigent Defense

Appeals at the University of Richmond, School of Law on July 26, 2018. Fifty-nine court appointed attorneys attended this training. In addition to this day long introductory program, a condensed version, Essentials of Appellate Advocacy, was held in Wytheville. This training also featured two Court of Appeals judges and had twenty-three attendees.

Acknowledging the need for more juvenile defense training, the VIDC continues to partner in presenting the Juvenile Law and Education Conference at the University of Richmond, School of Law.

All VIDC sponsored trainings satisfy the requirements for attorneys to maintain their eligibility for court appointments. Additionally, the VIDC reviews and approves legal education courses provided by other organizations to determine whether the courses satisfy the requirements for attorneys to maintain their eligibility for court appointments. A current list of Commission and MCLE-approved courses is provided on the VIDC website at <http://www.vadefenders.org/recertification/> and is updated as new courses are approved.

By statute, attorneys maintain their eligibility for court appointments for a period of two years from the date of their initial certification. Prior to the expiration of each two-year period, attorneys receive multiple expiration date notifications via e-mail along with instructions on where to find information about re-certification. Attorneys wishing to maintain certification for court-appointed work are required to complete the one-page re-certification form. Attorneys must include on the form the information verifying their completion of the statutorily required number of Commission and MCLE-approved continuing legal education credits.

- 3. VIRGINIA CODE § 19.2-163.01(A)(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.**

ACeS (Attorney Certification System) is an online system that allows attorneys to apply, renew and modify their certification status via the VIDC website. ACeS continually updates the certified counsel list located on the VIDC website and is accessible by court personnel to retrieve the names of certified attorneys by case type and judicial circuit/district

As of July 25, 2018, the number of certified attorneys totaled 2,081 and the total attorneys certified by case type were as follows: **(NOTE: An attorney may be certified for more than one case type.)**

Case Type	Number of Certified Attorneys 7/2018	Number of Certified Attorneys 7/2019	Annual Change %
Capital Appellate	21	22	+4.7
Capital Habeas	10	10	0
Capital Trial Co-Counsel	115	119	+3.48
Capital Trial Lead Counsel	64	64	0
Felony	1739	1695	-2.53
Juvenile	970	939	-3.20
Misdemeanor	2052	1949	-5.02

A list is sent to the Office of the Executive Secretary every four months advising of attorneys who have not been re-certified or who have been removed from the certified counsel list for other reasons. The most recent list of ineligible attorneys was provided on May 31, 2019.

- 4. VIRGINIA CODE § 19.2-163.01(A)(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 an 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.**

The Standards of Practice for Indigent Defense Counsel in non-capital cases are located on the VIDC website. The Standards of Practice complaint process and the complaint form are also

located on the website. The Standards of Practice are highlighted in the live certification training and beginning in June 2018 the complete Standards of Practice were included in the manual provided to every attendee.

Previously implemented efforts to raise awareness of the Standards of Practice and the enforcement thereof have continued. Currently, VIDC training programs incorporate the Standards of Practice whenever applicable.

5. VIRGINIA CODE § 19.2-163.01(A)(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.

All public defenders must receive the same certification training as any attorney seeking to serve as court-appointed counsel. In keeping with the revised Standards of Practice, now all public defenders must also complete a three-hour training on defending non-citizens. Additionally, all public defenders serving as their office's appellate supervisor must attend a specialized appellate training. Finally, every public defender attorney must attend the annual conference.

All newly hired attorneys must attend an intensive week-long "Trial Skills Boot Camp" and complete a two-part online appellate training once hired and before handling their first appeal. "Boot Camp" is an intensive four-day legal training program that continues to be a success. This training emphasizes trial skills and addresses the rewards and challenges of public defense with the goal of developing a client-centered practice. The program remains staffed by experienced public defender leaders as well as Senior Trial Attorneys who specialize in training. The bootcamp program is one part of an overall strategy to recruit, train, and retain quality attorneys who want to serve as public defenders.

The 2018 Annual Public Defender Conference was held on October 23-24, 2018 in Williamsburg, Virginia. The annual conference provides all public defenders with the opportunity to earn half of the required continuing legal education credit and maintain eligibility. The VIDC strives to provide a wide range of topics using experienced attorneys from across the Commonwealth as well as noted national experts. The plenary speakers included Stephen P. Lindsay, speaking on using demonstrative evidence, and David Patton, Executive Director of the Federal Defenders of New York, speaking on impeachment. We also featured several of our assistant public defenders speaking on appellate, immigration, firearms and digital evidence topics. Additional topics included adolescent brain development, false confessions, in-court identifications, ethics, DUIs and recent developments in criminal law and procedure. The 2019 Annual Public Defender Conference will be held October 10-11, 2019 in Williamsburg, Virginia. The conference, as always, will provide specific ethics, appellate, and juvenile training.

The VIDC continued to demonstrate its commitment to providing management training to all supervising attorneys within the Public and Capital Defender offices. In April 2019, the VIDC held its eighth annual Management Conference with the majority of the agency's supervising attorneys in attendance. This conference is an opportunity for Chief Capital and Public Defenders, Deputy Public Defenders, and supervising Senior Assistant Public Defenders to receive education in areas related to managing both people and processes. The conference included two sessions by Jonathan Rapping, President/Founder of Gideon's Promise, a review of the merit-based pay system and a discussion about the four core challenges to attorney retention.

- 6. VIRGINIA CODE § 19.2-163.01(A)(6) - 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.**

The VIDC counts cases by the number of individual clients represented, rather than by the number of charges defended. Many cases involve more than one charge. (See **Appendix A, VIDC FY19 Caseload and Charge Data**). These totals include appeals to both the Court of Appeals of Virginia and Supreme Court of Virginia.

7. **VIRGINIA CODE § 19.2-163.01(B) - Commission shall adopt Rules and Procedures for the conduct of its business.**

The VIDC adopted its policies and procedures in November 2006. The policies and procedures are reviewed and updated as necessary, but no less than annually. This year the Commission voted on a new procurement policy. The policies are accessible electronically to all employees via the VIDC intranet and MOAT, the IT security training program. All employees must acknowledge receipt of the Policies as part of the annual IT security training.

8. **VIRGINIA CODE § 19.2-163.01(A)(14) - 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 B2 of §16.1-266.**

A 2005 ABA report, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, noted that Virginia's caps on court-appointed compensation placed its fees among the lowest in the nation.²

This report, specifically the ranking, sparked debate in Virginia, the result of which was an added requirement on the VIDC to report on Virginia's ranking among the fifty states for compensation of court-appointed counsel.

State-to-state comparisons are difficult because the structure and funding of indigent defense systems vary nationwide. Pursuant to Va. Code § 19.2-163, an attorney appointed to represent an indigent defendant in Virginia is compensated at an hourly rate set by the Supreme

Court. The total amount or cap to be paid is set by statute and may not exceed \$120.00 for a misdemeanor in general district court, \$1,235.00 for a felony charge where the maximum period of confinement is more than 20 years, and \$445.00 for any other felony in circuit court. Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 years or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases. These caps, even with the initial waiver, remain some of the lowest in the nation. For a comparative look at the states see (Appendix B, State Comparisons Chart).

Compensation for court appointed counsel in Virginia on appeal is governed by Virginia Code §19.2-326 which provides in part:

In felony or misdemeanor case...the court which an appeal is taken shall order the payment of such attorneys' fees in an amount not less than \$300, cost or necessary expenses of such attorneys in an amount deemed reasonable by the court, by the Commonwealth out the appropriation for criminal charges. If the conviction is upheld on appeal, the attorney's fees, cost and necessary expenses of such attorney paid by the Commonwealth under provision hereof shall be assessed against the defendant.

According to the Supreme Court, during the writ stage each appeal is looked at on its own basis. Where there is a dismissal based on a procedural default the attorney receives nothing. Otherwise, generally, there is a minimum payment of \$400 and maximum of \$1200. In the case of a guilty plea, *Alford* plea, Anders petition, or probation violations there is a flat rate of \$400, whether or not there is oral argument. For other types of writ cases, there is a base rate of about \$400, where there is no oral argument. The attorney will receive \$400 if the petition is generally the same as the petition filed in the Court of Appeals. If there is a new

petition, where the attorney substantively addresses the Court of Appeals in the argument sections, there will be a bump of, generally, \$100. If it is a complicated case, like a capital non-death or a case with voluminous transcripts, additional money may be considered. If there is an oral argument, whether before the panel of Justices or Chief Staff Attorney, there is another bump of, generally, \$100. But, to get the \$100, it has to be more than just showing up for the argument and relying on brief. There are slight adjustments, downward, if the case is only a misdemeanor. What results in the difference between the range of \$400 and \$1200 is type of appeal; substantive oral argument; and whether there is a "new" petition in the Supreme Court. All this is only for the writ stage not for merit cases in the Supreme Court of Virginia.

In the Virginia Court of Appeals there is a clear fee structure as follows:

For writ stage if the case only involves misdemeanors the compensation is \$300 and if the appeal involves felony, \$400 and an extra \$100 if there is an oral argument. For the merit stage the total amounts which include writ and merit stages are as follows: If appeal only involves misdemeanors the compensation is \$625 and \$725 if the appeal involves a felony. If a rehearing en banc is granted the attorney is entitled to an extra \$200.

¹ U.S. Const. Amend. VI

² ABA, Rates of Compensation Paid to Court-Appointed Counsel in Non-Capital Felony Cases at Trial: A State-by-State Overview, The Spangenberg Group (August 2005)

Appendix A, VIDC FY19 Caseload Data

Office Caseload FY2019 (including Appeals)

Office	Total Cases	Charges
Alexandria	1926	3524
Arlington	2232	3771
Bedford	1114	1876
Charlottesville	1891	3648
Chesapeake	3819	8549
Danville	2203	3567
Fairfax	6225	10774
Franklin	996	1993
Fredericksburg	6177	12993
Halifax	1785	3184
Hampton	3711	6226
Leesburg	4522	6575
Lynchburg	3201	5059
Martinsville	2752	4245
Newport News	5811	11923
Norfolk	5455	9958
Petersburg	2084	3473
Portsmouth	3340	6185
Pulaski	2173	3806
Richmond	8180	15727
Roanoke	3967	6875
Staunton	4668	8645
Suffolk	2080	4159
Virginia Beach	8679	14754
Winchester	2657	4149

Appendix B – State Comparisons Chart

STATE	HOURLY RATE	CAPS	AUTHORITY/NOTES
Alabama	\$70	Capital Case: No cap Class A Felony: \$4,000 Class B Felony: \$3,000 Class C Felony: \$2,000 Juvenile: \$2,500 All Other Cases: \$1,500	Code of Ala §15-12-21 (2016) Counsel shall be entitled to reimbursement of non-overhead expenses, with expenses exceeding \$300 subject to advance approval by the trial court.
Alaska	\$60 in-court \$50 out-of-court	Misdemeanor - Guilty Plea, No Contest Plea, or Dismissal: \$400 Misdemeanor - Trial: \$800 Felony - Guilty Plea, No Contest Plea, or Dismissal: \$2,000 Felony - Trial: \$4,000 Probation Violation - Misdemeanor: \$350 Probation Violation - Felony: \$1,000	2 AAC 60.010 (1986) (Alaska Administrative Code)
Arizona	Varies	Varies (Judicial discretion)	A.R.S. § 13-4013 (2005) “Compensation for services rendered to the defendant shall be in an amount that the court in its discretion deems reasonable, considering the services performed.”

Arkansas	<p>\$90-\$110 - Capital</p> <p>\$70-\$90 - Homicide, Class Y or A Felonies</p> <p>\$60-\$80 - Other Felony</p> <p>\$50-\$80 - District, Juvenile, or Probate</p>	N/A	<p>A.C.A. § 16-87-211 (2001) Statute directs the Arkansas Public Defender Commission to set guidelines for court-appointed attorney compensation.</p> <p>Hourly rates provided by the Arkansas Public Defender Commission (2012).</p>
California	Varies	Varies	<p>Cal Pen Code § 987.2 (2002) Ca. Pen Code § 987.3 (1973) The court determines reasonable compensation.</p>
Colorado	<p>\$95 - Capital Cases</p> <p>\$85 - Type A Felony</p> <p>\$80 - Type B Felony, Juvenile</p> <p>\$75 - Misdemeanor, Traffic</p> <p>\$75 – Travel</p>	<p>Class 1 Felony & unclassified felonies where max. penalty is death, life, or 51+ years: \$30,000 (with trial), \$15,000 (without trial)</p> <p>Class 2 Felony, DF 1 felonies: \$13,000 (with trial), \$6,500 (without trial)</p> <p>Class 3-6 Felonies, DF 2-4 felonies: \$8,000 (with trial), \$4,000 (without trial)</p> <p>Misdemeanors, Traffic, & Petty Offenses: \$3,000 (with trial), \$1,500 (without trial)</p> <p>Juvenile: \$5,500 (trial)/ \$2,750 (without trial)</p>	<p>C.R.S. 21-2-101 (2007) C.R.S. 21-2-103 (2018) Describing when alternate defense counsel (as opposed to a public defender) would be appointed to represent an indigent defendant.</p> <p>Chief Justice Directive 04-04 (Amended July 2018) Provides alternate defense counsel hourly rates and fee caps.</p>

Connecticut	<p>\$75 - Felonies, serious Juvenile offenses, Habeas, appellate</p> <p>\$50 - Misdemeanor</p> <p>\$100 - Capital felony</p>	<p>Where flat rate compensation contracts are used, they are put in place by jurisdiction:</p> <p>Judicial District cases: \$1,000</p> <p>Geographical Area cases: \$350</p> <p>Juvenile Delinquency cases: \$350</p>	<p>Conn. Gen. Stat. § 51-291 (2012)</p> <p>By statute, the Chief Public Defender establishes the compensation for court-appointed attorneys.</p> <p>Division of Public Defender Services, Assigned Counsel Frequently Asked Questions (last visited July 2019)</p> <p>Cases are paid on an hourly rate or a flat fee and are assigned as such pursuant to the contract with the attorney. The bulk of case assignments are done through flat rate contract agreements.</p>
Delaware	<p>\$60 in Superior Court</p> <p>\$50 in Supreme Court</p>	<p>Felony: \$2,000 (per attorney)</p> <p>Misdemeanors: \$1,000 (per attorney)</p>	<p>Delaware Rules of Criminal Procedure, Rule 44 (2016) & Rules of the Supreme Court of the State of Delaware, Rule 26 (2019)</p> <p>Rules includes provisions for exceeding caps.</p>
District of Columbia	<p>\$60 - in-court</p> <p>\$40 - out-of-court</p> <p>Can seek up to \$75 in certain cases</p>	<p>Felony: \$7,000 (per attorney)</p> <p>Misdemeanor: \$2,000 (per attorney)</p>	<p>18 U.S.C. § 3006A (2010)</p> <p>“The compensation maximum amounts...shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted”</p> <p>Statute includes provisions for exceeding caps.</p>

Florida	Flat Fees	Capital: \$25,000 Life Felonies: \$9,000 Noncapital, Nonlife Felonies: \$6,000 Misdemeanors & Juveniles: \$1,000 Appeal: \$9,000	Fla. Stat. § 27.5304 (2018) Statute includes provisions for exceeding caps.
Georgia	By contract	By contract	O.C.G.A. § 17-12-22 (2011) Georgia Public Defender Standards Council contracts with individual attorneys for conflict appointment. State Bar of Georgia: Appointed Work for Attorneys Certain localities which have opted out of the state system set their own compensation rates for court-appointed attorneys.
Hawaii	\$90	Felony: \$6,000 Misdemeanor (jury trial): \$3,000 Misdemeanor (jury waived): \$1,500 Petty Misdemeanor: \$900 Appeals: \$5,000	HRS § 802-5 (2015) Statute includes provisions for exceeding caps.
Idaho	Set by contract either by the local board of county commissioners or by the court	Set by contract either by the local board of county commissioners or by the court	Idaho Code § 19-859 (2014) Compensation varies by each locality, largely set by the board of county commissioners, but judges can set the compensation rates in individual cases.

Illinois	<p>Reasonable Fee as set by the Court</p> <p>In Counties with populations greater than 2 million people:</p> <p>\$40 - in-court</p> <p>\$30 - out-of-court</p>	<p>Reasonable Fee as set by the Court</p> <p>In Counties with populations greater than 2 million people:</p> <p>Felony: \$1,250</p> <p>Misdemeanor: \$150</p>	<p>725 ILCS 5/113-3 (2000)</p> <p>Statute includes provisions for exceeding caps.</p>
Indiana	<p>Set by the Court – per the Indiana IDC, hourly rates range from \$30-\$60, with the majority of counties going with \$40 for out-of-court time and \$50 for in-court time</p> <p>The Indiana Public Defender Commission requires a \$90/hour rate in all Commission counties (roughly 2/3 of counties in Indiana)</p> <p>\$124 - Death Penalty</p>	N/A	<p>Burns Ind. Code Ann. § 33-40-8-2 (2004) states that “a judge shall establish the fee to be paid to an attorney or attorneys for providing services to poor people.”</p> <p>Indiana Public Defender Commission can recommend standards for indigent defense.</p>

Iowa	<p>\$73 - Class A Felony</p> <p>\$68 - Class B Felony</p> <p>\$63 - All other cases</p>	<p>Adult Cases -</p> <p>Class A Felony: \$18,000</p> <p>Class B Felony: \$3,600</p> <p>Class C Felony: \$1,800</p> <p>Class D Felony: \$1,200</p> <p>Aggravated Misdemeanors: \$1,200</p> <p>Serious Misdemeanors: \$600</p> <p>Simple Misdemeanors: \$300</p> <p>Misdemeanor appeals to District Court: \$300</p> <p>Contempt/Show Cause: \$300</p> <p>Probation/Parole violations: \$300</p> <p>Juvenile Cases –</p> <p>Delinquency: \$1,200</p> <p>Juvenile Court Review: \$300</p> <p>Judicial Bypass Hearings: \$180</p> <p>Juvenile Commitment Hearings: \$180</p> <p>Juvenile Petition on Appeal: \$600</p> <p>Motion for Further Review after Petition on Appeal: \$300</p>	<p>Iowa Code § 13B.4 (2017) - Flat fee contracts</p> <p>Iowa Code § 815.7 (2019) - Hourly rates</p> <p>Iowa Code § 815.10A (2013) Statute includes provisions for exceeding caps.</p> <p>State Public Defender Administrative Rules Chapter 12.6 (2017) Provides the attorney fee caps.</p>
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Kansas	\$80 (Negotiable) \$75 - Assigned Attorneys	<p>Non-tried cases -</p> <p>Felony 1-5: \$1,500</p> <p>Felony 6-10: \$1,125</p> <p>Probation Revocations: \$400</p> <p>Tried cases -</p> <p>Felony 1-3, off-grid felony offenses, felony drug offenses level 1: \$7,500</p> <p>Felony 4, felony drug offenses 2-5: \$3,000</p> <p>Felony 5-10: \$2,4000</p>	<p>K.S.A. § 22-4507 (2007)</p> <p>The Court can negotiate a lower hourly rate with attorneys willing to accept court appointments. If appropriations for payments are insufficient, the state board of indigent's defense services can establish a formula for pro rata payments.</p> <p>Kansas Administrative Regulations 105-5-2, -6, -7, -8 Provides generally for the hourly rates and caps, as well as provisions for exceeding caps.</p> <p>It appears that localities set caps for misdemeanor cases. See Douglas County Kansas Rules and Suggestions for Completing Misdemeanor Vouchers</p>
Kentucky	Set by contract by the Department of Public Advocacy	Set by contract by the Department of Public Advocacy	<p>KRS § 31.235 (2002)</p> <p>The court shall pay reasonable and necessary fees but not in excess of fees established by the Department of Public Advocacy.</p>
Louisiana	Flat fee contracts	Flat fee contracts	<p>La. R.S. 15:147(C)(1) (2017)</p> <p>The Louisiana Public Defender Board enters into contracts with attorneys to provide indigent defense services.</p>

Maine	\$60	<p>Murder: Fee to be set by Executive Director</p> <p>Class A: \$3,000</p> <p>Class B and C (against person): \$2,250</p> <p>Class B and C (against property): \$1,500</p> <p>Class D and E (Superior or Unified Criminal Court): \$750</p> <p>Class D and E (District Court): \$540</p> <p>Probation Revocations: \$540</p> <p>Juvenile: \$540</p>	<p>15 M.R.S. § 810 (2018) 4 M.R.S. § 1804(3)(F) (2019) The Maine Commission on Indigent Legal Services sets the rate for court appointed counsel.</p> <p>Code of Maine Rules § 94-649, Chapter 301 (2011) Provides the hourly rates and caps.</p>
Maryland	Same hourly rate as federal panel attorneys.	<p>District Court - federal misdemeanor</p> <p>Circuit Court - federal felony</p> <p>Juvenile Court - federal felony</p>	<p>Md. Criminal Procedure Code Ann. § 16-207 (2008) The Public Defender prepares schedules for fees and expenses for panel attorneys.</p> <p>Code of Maryland Regulations 14.06.02.06 (2018) Attorneys are compensated at the same hourly rate as federal panel attorneys.</p>
Massachusetts	<p>\$100 - Homicide</p> <p>\$68 - Superior Court non-homicide</p> <p>\$50 - District Court</p> <p>\$53 - Children/Family Law, Sex Offender, Mental Health</p>	Annual cap on billable hours: 1,650	<p>ALM Gl ch. 211D, §11 (2018)</p> <p><u>Note:</u> Counsel may not accept new appointments or assignments after billing 1,350 billable hours, except in homicide cases.</p>
Michigan	Set by the Court	Set by the Court	<p>MCLS § 775.16 (2013) The statute covers appointment of counsel, but the case law notes following the statute state that the court sets the rates.</p>

Minnesota	State Board of Public Defense determines rates	State Board of Public Defense determines rates	<p>Minn. Stat. §611.215(2)(c)(3) (2007) State Board of Public Defense responsible for appointment of counsel and collection of costs.</p> <p>Minn. Stat. §611.27 (2014) The state's obligation for the costs of the public defender services (including court-appointed attorney fees) is limited to the appropriations made to the Board of Public Defense.</p>
Mississippi	Set by the Court	<p>Circuit Court: \$1,000</p> <p>Court not of record: \$200</p> <p>Capital Cases: \$2,000</p> <p>Appeals to State Supreme Court: \$1,000</p>	Miss. Code Ann. §99-15-17 (1980)

Missouri	<p>Flat fee contracts</p> <p>Jury Trial - \$1,500 for 1st day, \$750 for each additional day (partial days prorated)</p> <p>Bench Trial - \$750/day, prorated</p>	<p>Murder first degree: \$10,000</p> <p>Other homicide: \$6,000</p> <p>Felony Class A/B - Drugs: \$750</p> <p>Felony Class A/B- Other: \$1,500</p> <p>Felony Class A/B - Sex: \$2,000</p> <p>Felony Class C/D/E - Drugs: \$750</p> <p>Felony Class C/D/E - Other: \$750</p> <p>Felony Class C/D/E - Sex: \$1,500</p> <p>Misdemeanor: \$375</p> <p>Juvenile - Non-violent offense: \$500</p> <p>Juvenile - Violent offense: \$750</p> <p>Probation Violation: \$375</p> <p>Direct Appeal: \$3,750</p>	<p>§600.042 R.S.Mo. (2019) The state Public Defender contracts with private attorneys for legal services.</p> <p>§600.021 R.S.Mo. (1986) The commission contracts with private attorneys to provide defense services.</p> <p>Missouri State Public Defender Website – https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/</p>
Montana	Non-Capital - \$56	Statute allows for fixed fee contracts	<p>47-1-121, MCA (2019) The Public Defender Commission adopts rules to provide reasonable compensation to contract attorneys.</p>
Nebraska	Set by Court or Public Defender Commission	N/A	<p>R.R.S. Neb. §29-3927 (2014) Public Defender Commission is responsible for determining compensation rates for contracting attorneys and court-appointed attorneys.</p> <p>R.R.S. Neb §29-3905 (1990) Allows the court to fix reasonable expenses and fees.</p>

Nevada	<p>\$125 - Capital cases</p> <p>\$100 - all other cases</p>	<p>Capital, or life case: \$20,000</p> <p>Felony not punishable by death or life in prison or a gross misdemeanor: \$2,500</p> <p>Misdemeanor: \$750</p> <p>Gross Misdemeanor or Felony Appeal: \$2,500</p> <p>Misdemeanor Appeals: \$750</p>	<p>Nev. Rev. Stat. Ann. §7.125 (2013)</p> <p>Statute includes provisions for exceeding caps.</p>
New Hampshire	<p>\$100 – Major Crimes</p> <p>\$60 – all others</p>	<p>Homicides under RSA 630:1-2 (per co-counsel): \$20,000</p> <p>Felony – Sexual Assault: \$8,000</p> <p>Felony: \$4,100</p> <p>Misdemeanor: \$1,400</p> <p>Supreme Court Appeals: \$2,000</p>	<p>Rules of the Supreme Court of the State of New Hampshire, Rule 47 (2015)</p> <p>Rule includes provisions for exceeding caps.</p>
New Jersey	<p>\$60 - in-court</p> <p>\$50 - out-of-court</p> <p>\$252 - full day (per diem)</p> <p>\$60 – in-court (appellate cases)</p> <p>\$50 – out-of-court (appellate cases)</p> <p>\$250 – Oral Argument (appellate cases)</p>	N/A	<p>N.J. Stat. §2A:158A-7 (1994)</p> <p>Public Defender establishes compensation with contract attorneys.</p> <p>OPD Pool Attorney Application Process (2019)</p> <p>These guidelines set the current rates.</p>

New Mexico	<p>Flat-fee contracts generally</p> <p>First degree murder and first degree felonies – \$85</p>	<p>Can vary by district</p> <p>1st Degree Murder: \$5,400</p> <p>1st Degree Felony (Life Imprisonment): \$5,400</p> <p>1st Degree Felony: \$800 or \$750</p> <p>2nd Degree Felony: \$780 or \$700</p> <p>3rd Degree Felony: \$750 or \$645</p> <p>4th Degree Felony: \$650 or \$540</p> <p>Juvenile: \$350 or \$300</p> <p>Misdemeanor Trial: \$180</p> <p>Retrial: Half the Original Fee</p>	<p>N.M. Stat. Ann. §31-15-7 (2014) Public Defender to establish fee schedule for court appointed counsel.</p> <p>Public Defender Contract Counsel Sample Contract (2018) Lists flat fee schedules on pages 19-20.</p>
New York	<p>\$75 – Felony both in and out of court</p> <p>\$60 – Misdemeanor both in and out of court</p>	<p>Felony: \$4,400</p> <p>Misdemeanor: \$2,400</p>	<p>NY CLS County §722-b (2004) Statute includes provisions for exceeding caps.</p>

North Carolina	<p>\$90 - Capital Cases, Appeals, & post-conviction</p> <p>\$75 - Class A-D felony</p> <p>\$60 – Class E-I felony</p> <p>\$55 - All other cases resolved in District court</p> <p>\$60 - All other cases resolved in Superior Court</p> <p>\$60 - Parole and post-release revocation hearings</p> <p>\$55 – Competency Cases</p> <p>\$75 – Non-Capital Appeals and Post-Conviction (A-D Felony)</p> <p>\$60 – All other Non-Capital Appeals and Post-Conviction</p>	<p>No caps in general</p> <p>Capital – cannot bill more than \$35,000 pre-trial, \$10,000 for mitigation, or \$10,000 for investigation</p>	<p>N.C. Gen. Stat. § 7A-498.5 (2015) Office of Indigent Defense Services responsible for setting rates.</p> <p>Private Assigned Counsel Rates were updated December 1, 2018.</p>
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North Dakota	<p>By contract, either using a flat fee or hourly rates</p> <p>According to Commission office, standard monthly contract rate is \$75/hr.</p>	<p>Felony - \$2,000</p> <p>Misdemeanor - \$850</p> <p>Juvenile - \$850</p> <p>Post-conviction - \$500</p> <p>Appeal - \$2,000</p>	<p>N.D. Cent. Code, § 54-61-02 (2017) Commission on Legal Counsel has authority to set fees.</p> <p>N.D. Cent. Code, § 29-07-01.1 (2013) Lawyers representing indigent persons must be compensated at a reasonable rate determined by the commission on legal counsel for indigents.</p> <p>Presumed Rate for Attorney Fee Reimbursement (2019) Provides the presumed rates for cases as determined by the Commission.</p> <p>Policy on Payment of Extraordinary Attorney Fees (last viewed 2019) Provides policy for exceeding caps, as well as the caps themselves.</p>
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Ohio	<p>\$75 - in-court or out-of-court</p> <p>\$125 - death penalty cases, both in-court and out-of-court</p>	<p>Adult Aggravated Murder (w/ specs) - no fee maximum</p> <p>Aggravated Murder (w/o specs) - \$15,000/1 attorney, \$25,000/2 attorneys</p> <p>Murder - \$10,000</p> <p>Felony with Possible Life Sentence/Repeat Violent Offender/Major Drug Offender: \$10,000</p> <p>Felony (degrees 1-2) - \$8,000</p> <p>Felony (degree 3) - \$5,000</p> <p>Felony (degrees 4-5) - \$3,500</p> <p>Misdemeanor (degrees 1-4) - \$2,000</p> <p>Misdemeanor OVI/BAC - \$2,500</p> <p>Contempt - \$500</p> <p>Probation violations - \$750</p> <p>Preliminary Hearings - \$300</p> <p>Sex Offender - \$750</p> <p>Juvenile Aggravated Murder (w/ specs) - no fee maximum</p> <p>Aggravated Murder (w/o specs) - \$7,500/1 attorney, \$12,500/2 attorneys</p> <p>Murder - \$6,000</p> <p>Felony (degrees 1-2) - \$5,000</p> <p>Felony (degrees 3-5) - \$3,500</p>	<p>ORC Ann. 120.33 (2017) The Board of County Commissioners shall establish a schedule of fees by case or an hourly basis. The County must file an up-to-date fee schedule with the Ohio Public Defender, who then will reimburse up to the maximum set by the Ohio Public Defender State Maximum Fee Schedule. Statute includes provisions for exceeding caps.</p> <p>Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement (2019) Manual on Ohio Public Defender's website that provides the hourly rates and caps (includes the State Maximum Fee Schedule referenced above).</p>
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Oklahoma	Flat-fee contracts	<p>Felony: \$3,500</p> <p>Misdemeanor, Juvenile, Traffic: \$800</p>	<p>22 Okl. St. §1355.8 (2001)</p> <p>Statute includes provisions for exceeding caps.</p>

Oregon	<p>\$61 - Capital lead counsel</p> <p>\$46 - Capital co-counsel</p> <p>\$46 - Non-capital cases</p>	N/A	<p>ORS §151.216 (2018) The Public Defense Services Commission adopts guidelines regarding the fair compensation of appointed counsel.</p> <p>Public Defense Payment Policy and Procedures (2019) Provides guidelines for obtaining an increase in the set hourly rates (section 2.2). Also sets out the hourly rates (Exhibit 2).</p>
Pennsylvania	Set by the Court	Set by the Court	<p>16 P.S. §9960.7 (1969) Attorney to be rewarded reasonable compensation to be fixed by the Court.</p>
Rhode Island	<p>\$100 - Murder</p> <p>\$90 - Class 1 Felony</p> <p>\$60 - Class 2 Felony</p> <p>\$50 - Misdemeanor Appeal (Superior Court)</p> <p>\$30 - Violation of Court Order (non-payment of fines, costs)</p> <p>\$85 - Criminal Appeal</p> <p>\$85 - Misc. Appeals & Petitions</p> <p>Some courts provide \$200/day or \$300/day for certain case types</p> <p>Family Court: \$30 - Dependency/Neglect/Abuse/Arraignment</p> <p>\$50 - DUI</p> <p>\$50 - Misdemeanor</p>	<p>Murder: \$30,000</p> <p>Class 1 Felony: \$10,000</p> <p>Class 2 Felony: \$5,000</p> <p>Misdemeanor Appeal (Superior Court): \$1,500</p> <p>Violation of Court Order (non-payment of fines, costs): \$1,500</p> <p>Criminal Appeal: \$5,200</p> <p>Misc. Appeals & Petitions: \$5,200</p> <p>Family Court Dependency/etc.: \$1,000</p> <p>DUI: \$2,500</p> <p>Misdemeanor: \$1,500</p>	<p>General Laws of Rhode Island §8-15-2 (1969) Statute cited in Executive Order (see below) which provides chief justice of the court to ensure that court-appointed attorneys are paid in a fair and equitable fashion</p> <p>Supreme Court Executive Order re Indigent Defense Service Payment Rates (2019) Provides the hourly rates and caps. Additional case types included beyond those listed.</p>

South Carolina	\$60 - in-court \$40 - out-of-court	Felony: \$3,500 Misdemeanor: \$1,000	S.C. Code Ann. §17-3-50 (2007) Includes provisions for exceeding hourly rates and caps.
South Dakota	\$95	N/A	S.D. Codified Laws § 23A-40-8 (1983) Reasonable amount to be paid based upon guidelines established by the presiding judge of the circuit court. Office of the State Court Administrator re 2019 Court-Appointed Attorney Fees and Mileage Provides the hourly rate.
Tennessee	<i>Non-Capital Cases</i> \$50 - in and out of court <i>Capital Cases</i> Lead Counsel: \$100 Co-Counsel: \$80 Post-conviction: \$80	First Degree Murder or Class A or B felony in trial court: \$6,000 Felony other than First Degree Murder or Class A or B felony: \$4,000 Preliminary hearings for felonies, juvenile charged w/non-capital felony: \$1,500 Misdemeanor, probation violation: \$1,000 Contempt of Court, parole revocation: \$500	Tennessee Supreme Court Rule 13 (checked 2019) Rule includes provisions for exceeding caps (see specifically section 2(e)(1)).
Texas	Court sets rate	Court sets fee	Texas Code of Criminal Procedure Article 26.05 (2019) Counsel to be paid a reasonable fee as set by the court.
Utah	Court sets rate per guidelines set by the county or municipality	Court sets rate per guidelines set by the county or municipality	Utah Code Ann. § 78B-22-302 (2019) Utah Code Ann. § 78B-22-203 (2019) Attorney shall be paid reasonable compensation by the court.

Vermont	\$50	<p>Felony with possible life sentence or death penalty: \$25,000</p> <p>Other major felony: \$5,000</p> <p>Minor felony or Juvenile: \$2,000</p> <p>Misdemeanors & all other proceedings: \$1,000</p> <p>Appeals: \$2,000</p>	<p>13 V.S.A. § 5205 (1982) The Supreme Court shall set reasonable rates of compensation.</p> <p>Vt. A.O. 4 § 6 (1993) Administrative Order of the Supreme Court. Provides the hourly rates and caps, as well as provisions for exceeding the caps.</p>
Virginia	\$90	<p>Felony with 20 years or more sentence (resolved in district court or circuit court): \$1,235</p> <p>Other felony (resolved in district court or circuit court): \$445</p> <p>Misdemeanor in Circuit Court: \$158</p> <p>District Court cases (misdemeanors, felony preliminary hearings where the felony was not resolved in district court): \$120</p>	<p>Va. Code § 19.2-163 (2009) Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 year or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases.</p>
Washington	Set by Court	Set by Court	<p>Rev. Code Wash. (ARCW) §36.26.090 (1969) The court shall provide reasonable compensation to a court-appointed attorney.</p>
West Virginia	<p>\$80 - in-court</p> <p>\$60 - out-of-court</p>	<p>Felony offenses with possibility of life in prison: court discretion</p> <p>All other cases: \$3,000</p>	<p>W. Va. Code §29-21-13a (2019) Statute includes provisions for exceeding caps.</p>
Wisconsin	\$40 - in-court and out-of-court	N/A	<p>Wis. Stat. § 977.08 (2018)</p>
Wyoming	<p>\$100 - in court</p> <p>\$35-\$60 - out-of-court</p>	N/A	<p>Wyoming Rules of Criminal Procedure Rule 44(e) (2019)</p>

BE INFORMED ABOUT PRETRIAL REFORM

SUPPORT HB2121/SB1687—PRETRIAL DETENTION DATA COLLECTION

THE PROBLEM

Our current system of cash bail isn't working.

Virginia detains far too many people pretrial, and it does so largely based on how wealthy they are. More than 28,000 people are held in Virginia jails each night, and 46% of them haven't been convicted of any crime and are presumed innocent. **Many are detained simply because they're too poor** to afford the cash bail amount set.

Between 1978 and 2013, Virginia's pretrial detention population tripled. Our pretrial incarceration rate exceeds the national average.

Alternatives exist to this wealth-based system; alternatives that are evidence-based, non-discriminatory, and more effective at protecting both the community and the rights of the accused.

Something needs to change; the only question is what. **Answering that question requires a deliberate process, based on full information**—the type of information sought in HB2121/SB1687.

PRETRIAL DETENTION HAS SERIOUS CONSEQUENCES

Harms communities:
lack of mental health &
medical treatment

Harms public safety: Pretrial
detention raises the likelihood of
being involved in new crimes

Harms families: Lack of
child care and loss of
income

**25% more
likely to plead
guilty**

**2x longer prison
sentences**

**3x longer jail
sentences**

**Lost housing
due to missed
rent**

**Lost jobs
and
wages**

**3x greater
likelihood of being
sentenced to prison**

**4x greater
likelihood of being
sentenced to jail**

**Unable to
assist in own
defense**

BE INFORMED ABOUT PRETRIAL REFORM

SUPPORT HB2121/SB1687—PRETRIAL DETENTION DATA COLLECTION

WHAT'S THE PURPOSE OF HB2121/SB1687?

Data is needed to better understand the depth, breadth, and impact of Virginia's current pretrial practices. This will allow us to decide whether to implement reforms, and if so, which ones. Collecting data on who is being held pretrial and who is being released will not only help inform decisions, but allow us to measure the impact of those decisions.

ADVANTAGES OF THE BILL

- Provides detailed information about who is being held pretrial and for how long; who is being released and on what conditions; and pretrial outcomes.
- Information will permit informed decisions concerning possible bail reforms and improve pretrial decision making by magistrates, judges and prosecutors.
- Supplements a study by the Virginia Crime Commission on the efficacy of pretrial programs. Without knowing who is being held or released, the VCC study only provides a snapshot of the status quo, and a partial one at that.
- Currently, data regarding pretrial detention and release is not centralized or easily accessible. This has made assessment of the pretrial system exceedingly complex and challenging. This bill seeks to aggregate data currently held by a variety of agencies so that it may be more easily accessed and analyzed.
- Complete information ensures an evidence-based & effective policymaking process, which will help eliminate race, wealth, & gender as factors in pretrial outcomes.

ORGANIZATIONS SUPPORTING HB2121/SB1687



**JUSTICE
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**Justice Forward Virginia PAC
Virginia Association of Criminal Defense Lawyers
National Association of Criminal Defense Lawyers**