

## Appendix D: Factors increasing workload for criminal prosecution and defense attorneys

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In recent years, changes to statute, shifting philosophy for criminal defense and prosecution, and increases in amounts and types of technology have contributed to a greater workload for prosecutors and criminal defense attorneys. These include:

**Proliferation of technology and electronic evidence:** Prosecution and defense attorneys are ethically obligated to fully review digital evidence that is relevant to the case. The proliferation of police body camera footage, surveillance cameras, smart devices, and social media during the past decade has exponentially increased the amount of digital evidence to review. Because electronic evidence is a factor in a large proportion of cases, and because review of electronic evidence is often time consuming, it was largely cited as the primary driver in increased workload for prosecutors and defense attorneys.

**More defendants with mental illness:** Defense attorneys indicated that they are experiencing an increase in the proportion of clients they serve who are suffering from mental illness. This can make a client more challenging and/or time consuming to work with because of increased communication difficulties or because the client may require additional arrangements or services—such as placement in a behavioral health program—that is not directly related to their legal defense. By one measure, the State Compensation Board *Mental Illness in Jails Report (2022)* indicates that the number of inmates in Virginia prisons with a known or suspected mental illness increased 89 percent from 2010 to 2022.

**Ability for a defendant to receive judge sentencing upon conviction in a jury trial (§ 19.2-295):** More cases are being set for a jury trial, which requires additional preparation, time, and effort from prosecution and defense attorneys. Effective July 1, 2021, a defendant can request a jury trial, and if found guilty, can elect judge sentencing. A jury trial is believed to be more favorable to the defendant (less chance of conviction), whereas a judge is believed to be more favorable to the defendant during sentencing (access to sentencing guidelines and are not bound to statutory sentencing in the way juries are). Before this change, a defendant electing a jury trial would also receive jury sentencing, which often deterred the defense from electing a jury trial.

**Statute change to an Appeal of Right (§ 17.1-405):** On January 1, 2022, all criminal appeals became appeals of right, which can result in a greater workload for defense attorneys handling appeals. Before this legislative change, the Court of Appeals exercised appellate jurisdiction in criminal cases through a petition-based process where the court had the ability to accept or reject the petition, and frequently a rejection was made. Under an appeal of right structure, appellate counsel files a notice of appeal with the circuit court, which automatically triggers the appeal process. As a result, the court and counsel must prepare all cases for full merit review. This includes filing briefs with citations to the record and law, followed by oral argument in most cases. The briefs and oral argument aspects add additional work for the attorney representing the appellant. The General Assembly adopted a budget amendment in 2021 providing \$7 million to support the need for additional judges and staff at the Virginia Court of Appeals and approximately \$1 million for the Virginia Indigent Defense Commission for eight appellate attorney positions.

**Elimination of bail presumptions (§ 19.2-120):** Defense attorneys have greater opportunity to pursue bail in all cases, which places an additional burden on defense attorneys and prosecutors to prepare their respective bail arguments. Previously, individuals accused of specific crimes listed in statute were presumed by statute to be ineligible for bail, so bail arguments from the defense were less likely to succeed. Effective July 1, 2021, a statutory change provided magistrates and judges more discretion to consider granting bail for these cases, which encourages defense attorneys to pursue bail more zealously in some cases.

**Deferred dispositions (§ 19.2-298.02):** The 2020 General Assembly passed legislation concerning the deferred disposition of a criminal case when there are mitigating factors for the defendant or upon request from the victim. The law states that upon consideration of the facts of the case, a trial court may defer proceedings or defer entry of a final order and continue the case for a final disposition, which may include conviction, either for the original charge or an alternative one, or dismissal. Terms and conditions are provided to the defendant, and upon violation of the conditions, the court may enter an adjudication of guilt and make the final disposition. Cases that receive a deferred disposition stay open longer and may have more hearings until a final disposition is entered, which can add to the workload of both the prosecution and the defense.

**Amended discovery rules:** Effective July 1, 2020, the Supreme Court amended Rule 3A:11 (Discovery and Inspection), resulting in changes in discovery obligations for the Commonwealth. The rule change affects protective orders for discovery such that the court may enter a protective order establishing conditions including, but not limited to, a requirement that the parties not disclose evidence in public forums, including websites, or with third parties who are not agents of the parties or expert witnesses. Changes to 7C:5 (Discovery) occurred in September and November of 2020 and became effective on March 1, 2021. The updated version of the rule applies to more evidence than in the past and is generally broad in scope, allowing the accused to hear, inspect, and copy or photograph any relevant written or recorded statement or confession and any criminal record of the accused.

**Philosophical shift to holistic criminal defense and diversion programs:** Defense attorneys perform activities to help their client that are beyond their traditional role of representation during the court process. There has been a shift in philosophy and best practices for criminal defense in recent years, moving toward a more holistic approach. Defense attorneys using this approach will aim to address both the legal and social needs that can help mitigate punishment for current offense(s) or reduce the chance of future contact with the criminal justice system. These include connecting their client to resources in the community; helping their client access social support programs; making arrangements for housing, mental health support, or substance abuse rehabilitation; and having more frequent and open communication with the client and their family or support network.

## Appendix E: Analysis of case outcomes by attorney type

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JLARC conducted regression analyses on the effect of attorney type on four outcomes:

- sentence length for five types of felony offenses;
- case resolution (plea vs. trial);
- charge resolution (guilty or not guilty); and
- charge reduction (i.e., from a felony to a misdemeanor).

### Sentence length

For this analysis, JLARC used data from the Office of the Executive Secretary of the Virginia Supreme Court's (OES) circuit court case management system (CMS) data, Fairfax County circuit court case management system data, and Virginia Criminal Sentencing Commission (VCSC) sentencing guidelines data.

OES and Fairfax case management data provided demographic information about defendants, while VCSC data provided detailed information about the nature of offenses and the criminal background, if any, of defendants. Data was analyzed at the "sentencing event" level, meaning one record per conviction that included *all* charges, rather than one record per charge.

JLARC analyzed 115,000 cases from a 10-year period. JLARC selected five of the most common types of felony offenses for this analysis because (1) they included enough cases for an effective sample size for analysis and (2) they comprised about 70 percent of all sentencing events from FY13 through FY22. The five felony offense types were:

- assault (n=11,011);
- grand larceny (n=39,508);
- schedule I/II drugs (n=57,530);
- weapons offenses (n=2,586); and
- burglary of a dwelling (n=3,076).

Some assault, drug, weapon, and burglary of a dwelling offenses have mandatory minimums. These offenses were excluded from analysis because the mandatory minimum is the primary driver of sentence length in those cases (Table E-1). Median sentences without mandatory minimum offenses are available in Chapter 2.

**TABLE E-1**  
**Median sentences by attorney type including mandatory minimum offenses**

	<b>Court-appointed</b>	<b>Public defender</b>	<b>Retained</b>
Assault	12 months	11 months	12 months
Drug	12 months	11 months	12 months
Weapon	12 months	12 months	9 months
Burglary	20 months	17 months	14 months

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

Quantile regression (median) was used for this analysis because sentence lengths are not normally distributed. Sentence length, measured in months, served as the dependent variable.

**TABLE E-2**  
**Quantile regression (median) for sentence length in felony assault cases (n=11,011)**

<b>Variable</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>t</b>	<b>P&gt; t </b>	<b>UB</b>	<b>LB</b>
Public defender	-0.36	0.43	-0.85	0.396	0.48	-1.20
Retained attorney	-0.18	0.47	-0.38	0.702	0.75	-1.11
Female	-2.73	0.51	-5.33	<0.001	-1.72	-3.73
Black	0.36	0.37	0.98	0.325	1.09	-0.36
Hispanic	10.91	4.42	2.46	0.014	19.6	2.23
Another race	-0.36	1.71	-0.21	0.831	2.98	-3.71
Primary offense	<0.01	<0.01	-0.64	0.522	<0.01	<0.01
Counts of primary offense	4.45	0.81	5.49	<0.001	6.05	2.86
Additional offenses	12.27	0.31	39.42	<0.001	12.88	11.66
Weapon used	3.36	0.40	8.4	<0.001	4.15	2.58
Serious victim injury	30.09	0.64	47.2	<0.001	31.34	28.84
Prior convictions	2.73	0.44	6.19	<0.001	3.59	1.86
Prior incarcerations	<0.01	0.51	0.00	<0.001	0.99	-0.99
Juvenile record	2.45	0.48	5.15	1.0	3.39	1.52
SG worksheet C	7.18	0.55	13.08	<0.001	8.26	6.11
On probation or parole	1.73	0.42	4.11	<0.001	2.55	0.90

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

NOTE: Pseudo R<sup>2</sup>=0.164. Excludes cases that were subject to a mandatory minimum sentence. Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-3**  
**Quantile regression (median) for sentence length in felony larceny cases (n=39,508)**

<b>Variable</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>t</b>	<b>P&gt; t </b>	<b>UB</b>	<b>LB</b>
Public defender	-0.04	0.07	-0.61	0.54	0.09	-0.18
Retained attorney	-0.11	0.1	-1.16	0.25	0.08	-0.3
Female	-0.14	0.07	-2.08	0.04	-0.01	-0.27

Black	0.07	0.06	1.1	0.27	0.2	-0.06
Hispanic	-0.46	1.08	-0.43	0.67	1.65	-2.57
Another race	0.1	0.35	0.29	0.78	0.78	-0.58
Primary offense	0.34	0.02	13.84	<0.001	0.39	0.29
Counts of primary offense	2.78	0.22	12.84	<0.001	3.21	2.36
Additional offenses	1.12	0.07	16.1	<0.001	1.25	0.98
Prior convictions	0.07	0.11	0.62	0.54	0.29	-0.15
Prior larceny convictions	0.27	0.08	3.27	0.001	0.44	0.11
Prior person crime convictions	2.47	0.1	25.54	<0.001	2.66	2.28
Prior misdemeanor convictions	-0.07	0.11	-0.65	0.52	0.14	-0.28
Prior incarcerations	1.38	0.1	13.6	<0.001	1.58	1.19
Juvenile record	0.84	0.09	9.28	<0.001	1.02	0.66
On probation or parole	0.73	0.07	10.28	<0.001	0.87	0.59
SG worksheet C	9.69	0.09	105.62	<0.001	9.87	9.51

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY20.

NOTE: Time period does not include FY21 or FY22 because the threshold for felony larceny was changed from \$200 to \$1,000 starting in FY21. Pseudo  $R^2=0.338$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-4**  
Quantile regression (median) for sentence length in schedule I/II drug cases (n=57,530)

Variable	Coefficient	Standard error	t	P> t	UB	LB
Public defender	-0.05	0.08	-0.65	0.52	0.1	-0.2
Retained attorney	-0.22	0.08	-2.80	0.01	-0.07	-0.37
Female	-0.39	0.07	-5.47	<0.001	-0.25	-0.52
Black	0.36	0.07	5.34	<0.001	0.49	0.23
Hispanic	-0.44	0.94	-0.47	0.64	1.4	-2.28
Another race	-0.43	0.31	-1.39	0.17	0.18	-1.05
Primary offense	0.36	0.01	37.55	<0.001	0.38	0.34
Counts of primary offense	2.75	0.28	9.91	<0.001	3.29	2.2
Additional offenses	2.24	0.08	26.77	<0.001	2.4	2.07
Prior convictions	0.6	0.09	6.48	<0.001	0.78	0.42
Prior drug convictions	0.43	0.08	5.26	<0.001	0.6	0.27
Prior incarcerations	0.36	0.08	4.4	<0.001	0.53	0.2
Juvenile record	1.2	0.1	12.59	<0.001	1.38	1.01
On probation or parole	0.96	0.07	14.14	<0.001	1.09	0.83
Weapon possession	0.58	0.15	3.9	<0.001	0.87	0.29
SG worksheet C	8.15	0.1	80.98	<0.001	8.35	7.95

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

NOTE: Pseudo  $R^2=0.287$ . Excludes cases that were subject to a mandatory minimum sentence. Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-5**  
**Quantile regression (median) for sentence length in weapons cases (n=2,586)**

<b>Variable</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>t</b>	<b>P&gt; t </b>	<b>UB</b>	<b>LB</b>
Public defender	<0.01	0.4	<0.01	1	0.79	-0.79
Retained attorney	<0.01	0.38	<0.01	1	0.75	-0.75
Female	<0.01	0.62	<0.01	1	1.22	-1.22
Black	0.16	0.33	0.49	0.62	0.82	-0.49
Hispanic	2.16	4.7	0.46	0.65	11.39	-7.06
Another race	0.08	1.49	0.06	0.96	2.99	-2.83
Primary offense	0.08	0.23	0.36	0.72	0.53	-0.36
Counts of primary offense	0.16	1.18	0.14	0.89	2.47	-2.14
Additional offenses	1.33	0.4	3.35	0.001	2.11	0.55
Serious victim injury	4.16	0.57	7.34	<0.001	5.28	3.05
Prior convictions	<0.01	0.58	<0.01	1	1.13	-1.13
Prior misdemeanor convictions	<0.01	0.56	<0.01	1	1.1	-1.1
Prior incarcerations	<0.01	0.51	<0.01	1	1	-1
On probation or parole	0.16	0.38	0.43	0.67	0.91	-0.58
Type of additional offense	0.59	1.11	0.53	0.6	2.77	-1.59
SG worksheet C	7.67	0.52	14.88	<0.001	8.68	6.66

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

NOTE: Pseudo R<sup>2</sup>=0.263. Excludes cases that were subject to a mandatory minimum sentence. Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-6**  
**Quantile regression (median) for sentence length in burglary of a dwelling cases (n=3,076)**

<b>Variable</b>	<b>Coefficient</b>	<b>Standard error</b>	<b>t</b>	<b>P&gt; t </b>	<b>UB</b>	<b>LB</b>
Public defender	-0.43	0.9	-0.48	0.63	1.34	-2.21
Retained attorney	0	1.14	<0.01	1	2.24	-2.24
Female	-2.43	1.14	-2.14	0.03	-0.2	-4.67
Black	1.13	0.8	1.41	0.16	2.7	-0.44
Hispanic	-12.52	9.4	-1.33	0.18	5.9	-30.94
Another race	<0.01	4.06	<0.01	1	7.96	-7.96
Primary offense	2.5	0.22	11.21	<0.001	2.94	2.06
Counts of primary offense	9.48	1.87	5.08	<0.001	13.14	5.82
Additional offenses	3.43	0.83	4.15	<0.001	5.06	1.81
Weapon used	9.57	1.58	6.05	<0.001	12.67	6.46
Prior convictions	0.48	1.26	0.38	0.7	2.95	-1.99
Prior misdemeanor convictions	-1	1.12	-0.89	0.37	1.19	-3.19
Prior property crime (adult)	10.43	0.94	11.04	<0.001	12.29	8.58
Prior property crime (juvenile)	5.78	1.07	5.41	<0.001	7.88	3.69
Prior incarcerations	1.65	1.16	1.42	0.16	3.94	-0.63
Prior probation revocation	4.91	0.95	5.17	<0.001	6.78	3.05
On probation or parole	2.43	0.92	2.65	0.01	4.24	0.63
Type of additional offense	78.91	4.62	17.08	<0.001	87.97	69.85
SG worksheet C	13.65	1.26	10.84	<0.001	16.12	11.18

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY21.

NOTE: Time period does not include FY22 because of changes to the sentencing guidelines. Excludes cases that were subject to a mandatory minimum sentence. Pseudo  $R^2=0.334$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

## Plea vs. trial

For this analysis, JLARC used data from OES’s circuit court CMS data, Fairfax County circuit court case management system data, and VCSC sentencing guidelines data. Analysis was performed at the case level, not the charge level. JLARC analyzed 115,000 cases from a 10-year period. JLARC selected five of the most common types of felony offenses for this analysis because (1) they included enough cases for an effective sample size for analysis and (2) they comprised about 70 percent of all sentencing events from FY13 through FY22. The five felony offense types were:

- assault (n=11,513);
- grand larceny (n=39,599);
- schedule I/II drugs (n=59,705);
- weapons offenses (n=3,753); and
- burglary of a dwelling (n=3,253).

Logistic regression was used for this analysis, with whether a case was resolved with a guilty plea (0) or a trial (1) as the dependent variable.

**TABLE E-7**  
**Logistic regression for plea vs. trial in felony assault cases (n=11,513)**

<b>Variable</b>	<b>Odds ratio</b>	<b>Standard error</b>	<b>z</b>	<b>P&gt; z </b>	<b>UB</b>	<b>LB</b>
Public defender	0.95	0.05	-0.97	0.33	1.06	0.85
Retained attorney	1.28	0.08	4.08	<0.001	1.44	1.14
Female	1.23	0.08	3.07	<0.001	1.39	1.08
Black	1.42	0.07	7.35	<0.001	1.57	1.30
Hispanic	3.35	1.62	2.45	0.01	8.66	1.27
Another race	0.59	0.17	-1.85	0.07	1.03	0.34
Primary offense	1.0	<0.01	-0.19	0.85	1.00	0.99
Counts of primary offense	1.01	0.1	1.47	0.14	1.35	0.96
Additional offenses	1.0	0.04	0.99	0.32	1.12	0.96
Weapon used	1.03	0.06	0.88	0.38	1.61	0.94
Serious victim injury	1.11	0.09	1.26	0.21	1.29	0.95
Prior convictions	1.00	0.06	-0.16	0.87	1.11	0.88
Prior incarcerations	0.88	0.06	-1.95	0.05	1.00	0.77
Juvenile record	1.28	0.08	4.26	<0.001	1.44	1.14
SG worksheet C	1.53	0.12	5.40	<0.001	1.79	1.31
On probation or parole	1.13	0.62	2.22	0.03	1.26	1.01
Mandatory minimum	1.53	0.14	4.54	<0.001	1.83	1.27

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

NOTE: Pseudo  $R^2=0.017$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-8**  
**Logistic regression for plea vs. trial in felony larceny cases (n=38,599)**

<b>Variable</b>	<b>Odds ratio</b>	<b>Standard error</b>	<b>z</b>	<b>P&gt; z </b>	<b>UB</b>	<b>LB</b>
Public defender	0.91	0.03	-2.38	0.02	0.98	0.85
Retained attorney	1.07	0.06	1.21	0.22	1.18	0.96
Female	1.06	0.04	1.53	0.13	1.14	0.98
Black	1.29	0.04	7.45	<0.001	1.39	1.21
Hispanic	0.73	0.53	-0.43	0.67	3.07	0.17
Another race	0.95	0.2	-0.25	0.8	1.43	0.63
Primary offense	0.9	0.01	-7.09	<0.001	0.93	0.88
Counts of primary offense	0.98	0.12	-0.13	0.9	1.26	0.77
Additional offenses	0.84	0.03	-4.57	<0.001	0.9	0.78
Prior convictions	1.04	0.7	0.57	0.57	1.18	0.91
Prior larceny convictions	0.94	0.04	-1.44	0.15	1.02	0.86
Prior person crime convictions	1.12	0.05	2.26	0.02	1.23	1.01
Prior misdemeanor convictions	1.16	0.07	2.35	0.02	1.32	1.03
Prior incarcerations	0.84	0.05	-2.89	0.004	0.95	0.75
Juvenile record	1.37	0.06	7.04	<0.001	1.49	1.25
On probation or parole	1.03	0.04	0.8	0.42	1.12	0.96
SG worksheet C	1.55	0.08	8.78	<0.001	1.72	1.41

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY20.

NOTE: Time period does not include FY21 or FY22 because the threshold for felony larceny was changed from \$200 to \$1,000 starting in FY21. Pseudo  $R^2=0.015$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-9**  
**Logistic regression for plea vs. trial in felony drug cases (n=59,705)**

<b>Variable</b>	<b>Odds ratio</b>	<b>Standard error</b>	<b>z</b>	<b>P&gt; z </b>	<b>UB</b>	<b>LB</b>
Public defender	1.07	0.04	1.73	0.08	1.15	0.99
Retained attorney	1.03	0.04	0.7	0.49	1.11	0.95
Female	1.08	0.04	1.99	0.05	1.16	1
Black	1.46	0.05	11.57	<0.001	1.55	1.37
Hispanic	1.47	0.59	0.95	0.34	3.23	0.67
Another race	1.09	0.18	0.53	0.59	1.5	0.79
Primary offense	1	<0.01	0.87	0.38	1.01	1
Counts of primary offense	1.29	0.15	2.2	0.03	1.62	1.03
Additional offenses	0.93	0.04	-1.84	0.07	1	0.86
Prior convictions	0.88	0.04	-2.74	0.01	0.96	0.8
Prior drug convictions	0.9	0.04	-2.65	0.01	0.97	0.83
Prior incarcerations	1.02	0.04	0.49	0.63	1.11	0.94



Juvenile record	1.41	0.06	8.35	<0.001	1.53	1.3
On probation or parole	0.95	0.03	-1.43	0.15	1.02	0.89
Weapon used	0.79	0.05	-3.56	<0.001	0.9	0.69
Mandatory minimum	1.58	0.09	7.7	<0.001	1.78	1.41
SG worksheet C	1.31	0.06	5.48	<0.001	1.44	1.19

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

NOTE: Pseudo  $R^2=0.014$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-10**  
**Logistic regression for plea vs. trial in felony weapon cases (n=3,753)**

Variable	Odds ratio	Standard error	z	P> z	UB	LB
Public defender	0.95	0.12	-0.45	0.65	1.22	0.73
Retained attorney	0.89	0.11	-1.14	0.25	1.11	0.67
Female	1.57	0.3	1.96	0.05	2.2	1
Black	1.07	0.13	0.98	0.33	1.4	0.89
Hispanic	4.02	4.01	0.93	0.35	37.17	0.28
Another race	0.3	0.29	-1.25	0.21	2.07	0.04
Primary offense	0.61	0.05	-5.32	<0.001	0.77	0.57
Counts of primary offense	1.35	0.47	0.74	0.46	2.64	0.64
Additional offenses	0.99	0.13	0.44	0.66	1.34	0.83
Serious victim injury	0.91	0.16	-0.51	0.61	1.29	0.64
Prior convictions	0.84	0.18	-0.67	0.5	1.31	0.58
Prior misdemeanor convictions	0.84	0.16	-1.12	0.26	1.19	0.53
Prior incarcerations	1.16	0.19	0.38	0.7	1.52	0.75
On probation or parole	1.67	0.22	3.93	<0.001	2.18	1.3
Type of additional offense	0.99	0.32	-0.21	0.84	1.82	0.48
SG worksheet C	1.18	0.29	2.09	0.04	2.2	1.02
Mandatory minimum	2.15	0.26	6.21	<0.001	2.73	1.69

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY22.

NOTE: Pseudo  $R^2=0.026$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

**TABLE E-11**  
**Logistic regression for plea vs. trial in felony burglary cases (n=3,253)**

Variable	Odds ratio	Standard error	z	P> z	UB	LB
Public defender	0.86	0.1	-1.28	0.2	1.08	0.69
Retained attorney	1.15	0.16	0.98	0.33	1.51	0.87
Female	1.35	0.19	2.12	0.03	1.77	1.02
Black	1.38	0.14	3.22	0.001	1.68	1.13
Hispanic	4.67	4.37	1.65	0.1	29.25	0.74
Another race	0.78	0.48	-0.4	0.69	2.64	0.23
Primary offense	0.91	0.03	-3.22	0.001	0.96	0.86

Counts of primary offense	0.97	0.25	-0.11	0.91	1.6	0.59
Additional offenses	1.22	0.13	1.85	0.07	1.52	0.99
Weapon used	1.27	0.23	1.3	0.19	1.81	0.89
Mandatory minimum	0.84	0.17	-0.89	0.37	1.24	0.57
Prior convictions	1.23	0.2	1.24	0.21	1.7	0.89
Prior misdemeanor convictions	1.25	0.19	1.47	0.14	1.67	0.93
Prior property crime (adult)	1.03	0.12	0.28	0.78	1.29	0.83
Prior property crime (juvenile)	1.16	0.14	1.19	0.23	1.48	0.91
Prior incarcerations	0.89	0.13	-0.8	0.42	1.19	0.66
Prior probation revocation	1.19	0.14	1.53	0.13	1.49	0.95
On probation or parole	1.14	0.13	1.15	0.25	1.43	0.91
Type of additional offense	2	0.86	1.61	0.11	4.67	0.86
SG worksheet C	1.1	0.18	0.61	0.54	1.51	0.81

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system and Virginia Criminal Sentencing Commission sentencing guidelines data, FY13–FY20.

NOTE: Time period does not include FY22 because of changes to the sentencing guidelines. Pseudo  $R^2=0.02$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES.

SG=Sentencing guidelines.

## Guilty/not guilty

For this analysis, JLARC used data from OES’s circuit, general district, and adult juvenile and domestic relations court CMS data and Fairfax County circuit court case management system data for FY13–FY22. This analysis was conducted at the charge level and was limited to localities served by a public defender office.

JLARC analyzed 2,103,084 charges from a 10-year period. Logistic regression was used, with whether a case was resolved with a guilty (0) or not guilty (1) as the dependent variable. “Not guilty” was defined as a dismissal, *nolle prosequi*, or not guilty at trial (either jury or bench trial).

**TABLE E-12**  
**Logistic regression for guilty/not guilty (n=2,103,084)**

Variable	Odds ratio	Standard error	z	P> z	UB	LB
Public defender	1.26	0.01	33.82	<0.001	1.28	1.24
Retained attorney	0.91	0.01	-13.43	<0.001	0.92	0.89
Female	0.8	<0.01	-65.11	<0.001	0.81	0.8
Black	0.96	<0.01	-11.79	<0.001	0.97	0.95
Hispanic	1.79	0.03	35.48	<0.001	1.85	1.74
Asian	0.92	0.02	-4.9	<0.001	0.95	0.89
Other race	0.86	0.1	-13.05	<0.001	0.88	0.84
Misdemeanor	3.9	0.03	178.5	<0.001	3.96	3.84
GDC	0.28	<0.01	-161.04	<0.001	0.28	0.28
JDR	0.1	<0.01	-231.61	<0.001	0.1	0.09
FY 2013	0.89	0.01	-10.83	<0.001	0.91	0.87
FY 2014	0.86	0.01	-13.87	<0.001	0.88	0.84
FY 2015	0.83	0.01	-17.56	<0.001	0.84	0.81
FY 2016	0.79	0.01	-22.1	<0.001	0.8	0.77

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FY 2017	0.75	0.01	-25.9	<0.001	0.77	0.74
FY 2018	0.75	0.01	-26.77	<0.001	0.76	0.73
FY 2019	0.7	0.01	-32.52	<0.001	0.72	0.69
FY 2020	0.57	0.01	-50.92	<0.001	0.58	0.56
FY 2021	0.55	0.01	-53.37	<0.001	0.56	0.54
FY 2022	0.5	0.01	-59.75	<0.001	0.51	0.49
FIPS 13	0.74	0.01	-19.75	<0.001	0.76	0.72
FIPS 15	0.99	0.02	-0.72	0.47	1.02	0.95
FIPS 19	0.98	0.02	-1.13	0.26	1.01	0.95
FIPS 21	0.64	0.03	-11.13	<0.001	0.69	0.59
FIPS 41	1.01	0.01	0.68	0.5	1.04	0.98
FIPS 43	0.98	0.03	-0.72	0.47	1.04	0.91
FIPS 61	1.15	0.02	7.7	<0.001	1.19	1.11
FIPS 69	1.16	0.02	8.74	<0.001	1.2	1.12
FIPS 83	0.86	0.02	-7.67	<0.001	0.89	0.83
FIPS 93	0.67	0.01	-18.1	<0.001	0.7	0.65
FIPS 99	0.56	0.01	-24.96	<0.001	0.59	0.54
FIPS 107	0.81	0.01	-14.17	<0.001	0.83	0.78
FIPS 111	0.71	0.02	-10.64	<0.001	0.75	0.66
FIPS 117	0.84	0.02	-9.08	<0.001	0.87	0.8
FIPS 131	2.3	0.05	37.01	<0.001	2.41	2.21
FIPS 139	1.22	0.03	8.76	<0.001	1.27	1.16
FIPS 141	0.98	0.03	-0.67	0.51	1.03	0.93
FIPS 153	0.7	0.01	-25.59	<0.001	0.72	0.69
FIPS 155	0.85	0.02	-8.91	<0.001	0.88	0.82
FIPS 157	1.26	0.05	6.01	<0.001	1.36	1.17
FIPS 163	1.42	0.03	18.81	<0.001	1.47	1.37
FIPS 171	0.75	0.01	-15.75	<0.001	0.77	0.72
FIPS 175	0.86	0.02	-6.31	<0.001	0.9	0.82
FIPS 177	0.73	0.01	-20.59	<0.001	0.75	0.7
FIPS 179	0.62	0.01	-32.79	<0.001	0.64	0.6
FIPS 187	1.07	0.02	3.48	0.001	1.11	1.03
FIPS 197	0.73	0.01	-17.15	<0.001	0.75	0.7
FIPS 510	0.49	0.01	-40.21	<0.001	0.51	0.48
FIPS 530	0.71	0.02	-9.74	<0.001	0.76	0.67
FIPS 540	0.75	0.01	-14.95	<0.001	0.78	0.72
FIPS 550	0.75	0.01	-20.09	<0.001	0.77	0.73
FIPS 590	0.84	0.01	-10.29	<0.001	0.87	0.81
FIPS 630	0.9	0.02	-5.8	<0.001	0.94	0.87
FIPS 650	0.47	0.01	-49.22	<0.001	0.49	0.46
FIPS 680	0.78	0.01	-15.97	<0.001	0.8	0.76
FIPS 690	0.78	0.02	-11.68	<0.001	0.81	0.75
FIPS 700	0.54	0.01	-37.3	<0.001	0.56	0.52
FIPS 710	0.7	0.01	-25.05	<0.001	0.72	0.68
FIPS 730	0.59	0.01	-30.1	<0.001	0.62	0.58
FIPS 740	0.44	0.01	-54.7	<0.001	0.45	0.43
FIPS 750	0.52	0.01	-30.15	<0.001	0.54	0.5
FIPS 760	0.52	0.01	-42.58	<0.001	0.53	0.5

FIPS 770	0.75	0.01	-19.63	<0.001	0.77	0.72
FIPS 790	1.13	0.02	5.99	<0.001	1.18	1.09
FIPS 800	0.55	0.01	-37.67	<0.001	0.57	0.53
FIPS 810	1.06	0.01	4.08	<0.001	1.08	1.03
FIPS 820	1	0.02	0.09	0.93	1.05	0.96
FIPS 840	1.05	0.02	2.62	0.01	1.09	1.01
GDC-Public defender*	1.14	0.01	12.1	<0.001	1.16	1.11
GDC-Retained*	1.13	0.01	11.22	<0.001	1.16	1.11
JDR-Public defender*	0.98	0.01	-1.74	0.08	1	0.95
JDR-Retained*	0.72	0.01	-21.01	<0.001	0.75	0.7
Public defender-Misdemeanor*	0.95	0.01	-5.33	<0.001	0.97	0.93
Retained-Misdemeanor*	0.98	0.01	-2.26	0.02	1	0.95

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system data, FY13–FY22.

NOTE: Pseudo R<sup>2</sup>=0.112. Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES. GDC=general district court. JDR=juvenile and domestic relations court.

\*Interaction variable.

## Charge reductions

For this analysis, JLARC used data from OES’s circuit, general district, and adult juvenile and domestic relations court case management system data and Fairfax County circuit court case management system data for FY13–FY22. This analysis was conducted at the charge level and was limited to localities served by a public defender office.

JLARC analyzed 2,103,084 charges from a 10-year period. Logistic regression was used, with whether a charge was reduced (0) or not reduced (1) as the dependent variable. “Reduced” was defined as a charge changed from a felony to a misdemeanor in any court.

**TABLE E-13**  
**Logistic regression for reduced charges (n=1,443,937)**

Variable	Odds ratio	Standard error	z	P> z	UB	LB
Public defender	1.12	0.02	7.94	<0.001	1.15	1.09
Retained attorney	1.11	0.02	7.55	<0.001	1.15	1.08
Female	1.11	0.01	14.81	<0.001	1.13	1.09
Black	1.02	0.01	2.44	0.02	1.03	1.00
Hispanic	0.25	0.01	-24.34	<0.001	0.28	0.22
Asian	1.10	0.04	2.64	0.01	1.17	1.02
Other race	0.58	0.02	-17.91	<0.001	0.62	0.55
Misdemeanor	0.39	0.01	-71.55	<0.001	0.40	0.38
GDC	0.21	0.00	-87.83	<0.001	0.22	0.20
JDR	0.92	0.02	-3.87	<0.001	0.96	0.88
FY 2013	0.87	0.02	-6.22	<0.001	0.91	0.83
FY 2014	0.89	0.02	-5.23	<0.001	0.93	0.85
FY 2015	0.83	0.02	-8.22	<0.001	0.87	0.79
FY 2016	0.81	0.02	-9.39	<0.001	0.84	0.77

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FY 2017	0.84	0.02	-7.64	<0.001	0.88	0.80
FY 2018	0.79	0.02	-10.56	<0.001	0.82	0.75
FY 2019	0.87	0.02	-5.98	<0.001	0.91	0.83
FY 2020	0.90	0.02	-4.73	<0.001	0.94	0.86
FY 2021	0.72	0.02	-13.70	<0.001	0.75	0.68
FY 2022	1.11	0.03	3.54	<0.001	1.18	1.05
FIPS 13	0.57	0.02	-14.01	<0.001	0.61	0.52
FIPS 15	0.81	0.03	-5.69	<0.001	0.87	0.76
FIPS 19	1.32	0.10	3.70	<0.001	1.54	1.14
FIPS 21	0.81	0.02	-7.71	<0.001	0.85	0.77
FIPS 41	0.57	0.04	-7.44	<0.001	0.66	0.49
FIPS 43	0.74	0.03	-7.81	<0.001	0.80	0.69
FIPS 61	0.69	0.02	-10.24	<0.001	0.74	0.64
FIPS 69	0.44	0.02	-18.50	<0.001	0.48	0.40
FIPS 83	0.73	0.04	-6.45	<0.001	0.81	0.67
FIPS 93	0.82	0.04	-4.20	<0.001	0.90	0.75
FIPS 99	1.27	0.04	8.20	<0.001	1.35	1.20
FIPS 107	0.44	0.04	-9.04	<0.001	0.52	0.36
FIPS 111	0.48	0.02	-15.14	<0.001	0.53	0.44
FIPS 117	0.29	0.02	-19.90	<0.001	0.33	0.26
FIPS 131	0.26	0.02	-20.98	<0.001	0.30	0.23
FIPS 139	0.80	0.04	-4.27	<0.001	0.89	0.72
FIPS 141	1.22	0.03	7.39	<0.001	1.28	1.16
FIPS 153	0.92	0.03	-2.39	0.02	0.98	0.86
FIPS 155	0.69	0.06	-4.52	<0.001	0.81	0.58
FIPS 157	0.36	0.02	-21.77	<0.001	0.40	0.33
FIPS 163	0.71	0.03	-8.51	<0.001	0.77	0.66
FIPS 171	0.23	0.02	-18.90	<0.001	0.27	0.20
FIPS 175	1.11	0.03	3.27	<0.001	1.17	1.04
FIPS 177	0.56	0.02	-18.86	<0.001	0.59	0.53
FIPS 179	0.71	0.03	-8.43	<0.001	0.77	0.65
FIPS 187	0.88	0.03	-3.22	<0.001	0.95	0.82
FIPS 197	0.84	0.03	-4.95	<0.001	0.90	0.78
FIPS 510	0.35	0.03	-10.73	<0.001	0.42	0.29
FIPS 530	1.00	0.04	-0.10	0.92	1.07	0.93
FIPS 540	0.51	0.02	-22.45	<0.001	0.55	0.49
FIPS 550	0.48	0.02	-19.75	<0.001	0.52	0.45
FIPS 590	0.72	0.03	-9.17	<0.001	0.77	0.67
FIPS 630	0.58	0.02	-17.27	<0.001	0.62	0.54
FIPS 650	0.78	0.02	-7.87	<0.001	0.83	0.73
FIPS 680	0.60	0.03	-11.08	<0.001	0.66	0.55
FIPS 690	0.75	0.02	-8.67	<0.001	0.80	0.71
FIPS 700	0.62	0.02	-16.52	<0.001	0.65	0.58
FIPS 710	0.92	0.03	-2.52	0.01	0.98	0.86
FIPS 730	0.39	0.01	-28.60	<0.001	0.42	0.37
FIPS 740	0.48	0.03	-13.59	<0.001	0.53	0.43
FIPS 750	1.13	0.03	4.01	<0.001	1.20	1.06

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FIPS 760	1.43	0.04	12.49	<0.001	1.51	1.35
FIPS 770	0.56	0.03	-12.75	<0.001	0.61	0.51
FIPS 790	0.48	0.02	-21.47	<0.001	0.51	0.45
FIPS 800	0.44	0.01	-29.31	<0.001	0.47	0.42
FIPS 810	1.02	0.04	0.53	0.60	1.11	0.94
FIPS 820	0.66	0.03	-10.84	<0.001	0.71	0.62
FIPS 840	0.67	0.01	-23.39	<0.001	0.69	0.64
GDC-Public defender*	0.47	0.01	-42.51	<0.001	0.48	0.45
GDC-Retained*	0.90	0.02	-4.60	<0.001	0.94	0.86
JDR-Public defender*	0.88	0.02	-4.82	<0.001	0.93	0.84
JDR-Retained*	1.12	0.02	7.94	<0.001	1.15	1.09

SOURCE: JLARC analysis of Office of the Executive Secretary of the Supreme Court of Virginia (OES) and Fairfax County court case management system data, FY13–FY22.

NOTE: Pseudo  $R^2=0.0729$ . Circuit court case data from Alexandria court was not used for this analysis because the circuit court case management system is separate from OES. GDC=general district court. JDR=juvenile and domestic relations court.

\*Interaction variable.

## Appendix F: New payment caps for court-appointed attorneys

**TABLE F-1**  
**Illustrative options for raising court-appointed attorney payment caps**

	<b>Current statutory cap</b>	<b>Maximum hrs. com- pensated (\$90/hr)</b>	<b>Partial (75%) case weight cap</b>	<b>Maximum hrs. com- pensated (\$90/hr)</b>	<b>Case weight cap</b>	<b>Maximum hrs. com- pensated (\$90/hr)</b>
Violent felony	\$445 or \$1,235*	4.9 or 13.7	\$1,692	18.9	\$2,256	25.1
Nonviolent felony	\$445 or \$1,235*	4.9 or 13.7	834	9.3	1,112	12.4
Misdemeanor DUI	\$120 or \$158**	1.3 or 1.8	447	5.0	597	6.6
Other misdemeanors	\$120 or \$158**	1.3 or 1.8	330	3.7	440	4.9
Juvenile case	\$120	1.3	680	7.6	906	10.1

SOURCE: JLARC analysis and National Center for State Courts public defender workload study.

NOTE: "Case weight" is the quantification of the typical amount of time estimated to be necessary for attorneys to spend on each case to provide quality legal representation.

\*Amount depends on whether felony is Class 3–6 (\$445) or Class 2 (\$1,235).

\*\*Amount depends on whether case is heard in district court (\$120) or circuit court (\$158).

## Appendix G: Public defender workload analysis and case weights

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A case weight is the quantification of the typical amount of time estimated to be necessary for attorneys to spend on each case to provide quality legal representation. Different types of court cases vary in complexity, and consequently, in the amount of attorney time required to provide quality representation. For example, a typical felony case requires more attorney time than the average misdemeanor case. Having case weights that are specific to different case types can help public defender offices determine how many attorneys are needed to sufficiently handle their workload, based on the numbers and types of each case they handle per year.

As part of this study, JLARC staff contracted with staff from the National Center for State Courts (NCSC) to develop updated Virginia public defender case weights. NCSC previously developed case weights for public defenders in Virginia in 2010. However, there have been several changes to legal practice in recent years that have increased the amount of time attorneys must spend on each case to provide quality legal representation (Appendix D). JLARC staff worked with NCSC to update the 2010 case weights to account for these changes.

### Attorney year and day values

The first elements of the model are the attorney “year” and “day” values, which are the (1) the number of days per year attorneys have to spend on case-related work and (2) the amount of time per day attorneys have to spend on case-related work. To determine the year and day values, JLARC and NCSC staff convened a panel of eight deputy and chief public defenders from offices across the state.

The panel first determined the year value, which is the number of days attorneys spend on case-related work in a given calendar year. The year value is calculated as the total number of days per year, minus holidays, weekends, vacations, sick leave, and time spent attending training. The panel made the following adjustments to the number of working days per year from the 2010 study:

- **Holidays:** The number of holidays was increased from 12 to 14, which includes 2010 state holidays that are still recognized, plus Juneteenth (which was not a holiday in 2010), and two days each year in which there are typically four hours of additional holiday time granted by the Virginia governor (e.g., the Wednesday prior to Thanksgiving).
- **Personal days:** Personal days were reduced from five to four days to align with the amount personal time allocated to state employees with fewer than 10 years of experience (the population that comprises a majority of the public defender workforce).
- **Vacation days:** The number of vacation days accrued each year was used to recognize the goal of building a staffing model that allows attorneys to use all of their vacation leave (rather than assuming only a portion of accrued vacation is used each year). Fifteen vacation days were included to reflect the number of days accrued for a typical public defender with five to 10 years of experience, based on average years of experience (7.1 years in FY22).
- **Sick leave:** Public defenders can use sick leave for their own illness, and a new Virginia Indigent Defense Commission (VIDC) policy allows employees to use sick leave to care



for their sick children. Considering this new policy, the panel reached a consensus to count nine days of sick leave.

- **Training/continuing legal education (CLE):** The number of non-working days for training and/or CLEs was increased from four to seven days. The additional three days were added to account for additional trainings offered and attended and the travel time to and from the trainings. The VIDC Annual Public Defender Conference is typically a two-day conference, but a third day has been added to include a management conference this year. Travel time to and from the conference was considered since some offices are not centrally located to the conference location. Additionally, there are other CLE programs offered during the year that attorneys attend, such as an advanced skills course, various certifications, and forensics training.

Including these adjustments, the panel agreed on 212 working days per year. Table G-1 includes the year value at the time of the 2010 study in comparison to the updated year value for 2023.

**TABLE G-1**  
**Number of working days per year decreased from 225 days in 2010 to 212 days in 2023**

	2010	2023
Total days per year	365	365
<i>Subtract non-working and training days</i>		
Weekends	104	104
Holidays	12	14
Personal days	5	4
Vacation days	10	15
Sick days	5	9
Training/continuing legal education	4	7
<b>Total working days per year</b>	<b>225</b>	<b>212</b>

SOURCE: NCSC Virginia public defender workload assessments, 2010 and 2023.

The panel next determined the day value, which is the total time attorneys have available per day to work on cases, excluding any time spent on non-case-related tasks (e.g., traveling to and from courts/jails) and any time allotted for lunch or other breaks. Starting from an eight-hour work day, the 2010 NCSC study established a day value of 6.5 hours, or 390 minutes, allocating 90 minutes each day for non-case-related time. As part of the 2010 study, 20 minutes per day were designated for travel time to visit clients in detention facilities. The remaining 70 minutes were for other non-case-related activities unrelated to travel time—such as staff meetings, administrative tasks, and lunch breaks. The panel agreed to retain the original 70 minutes for non-case-related time each day but advised JLARC and NCSC to consider variations in travel time across offices and develop several different day values to correspond to travel time differences.

To categorize offices based on travel time, JLARC staff reviewed total mileage for each office based on mileage reimbursements from FY19 to FY23. Staff calculated an average total annual mileage for each office over the five-year period, as well as an average mileage per attorney per year and per working day, based on the established year value of 212 days. An average drive time per attorney per day

was also estimated based on mileage. Offices were then ranked from highest to lowest average time spent driving by attorneys per day, and given a drive time adjustment ranging from five to 30 minutes per day. All offices were also given an additional 10 minutes of travel time per day, to account for other aspects of travel such as time spent parking, walking, and passing through courthouse security. Table G-2 shows travel time adjustments for each office, as well as the final day value that attorneys in each office have available to spend on case-related work each day.

**TABLE G-2**  
**Adjustments for travel time and attorney day values by office**

Office	Travel time adjustment <sup>a</sup> (in minutes)	Attorney day value (in minutes)
Alexandria	15	395
Arlington	15	395
Bedford	20	390
Charlottesville	15	395
Chesapeake	15	395
Chesterfield	15	395
Danville	15	395
Fairfax	15	395
Fredericksburg	30	380
Halifax	40	370
Hampton	15	395
Leesburg	15	395
Lynchburg	15	395
Martinsville	40	370
Newport News	15	395
Norfolk	15	395
Petersburg	15	395
Portsmouth	15	395
Prince William	20	390
Pulaski	15	395
Richmond	15	395
Roanoke	15	395
Smithfield <sup>b</sup>	15	395
Staunton	20	390
Suffolk	15	395
Virginia Beach	15	395
Warrenton	30	380
Winchester	30	380

SOURCE: JLARC staff analysis of Virginia Indigent Defense Commission mileage reimbursement data (FY19–FY23) and NCSC Virginia public defender workload assessment, 2023.

NOTE: Does not include any additional wait time beyond travel time, such as time spent waiting at the jail to meet with clients. Average drive time per attorney per day estimated based on an average speed limit of 33 miles per hour on Virginia roadways as reported by the Virginia Department of Transportation. <sup>a</sup> Includes office-specific adjustment for drive time as well as an additional 10 minutes allocated to each office for parking, walking, going through security, etc. <sup>b</sup> Formerly Franklin office.

One issue affecting travel time in recent years is the closure or consolidation of local jails and the increased reliance on regional jails. This has contributed to increases in travel time for public defenders in localities affected by jail closure or consolidation. Consideration could be given to adjusting attorney day values systemwide to reflect changes in the amount of travel over time. In instances where one office is greatly affected by the closure of a jail in its locality, a more targeted adjustment of travel time for staff in that office could be conducted to more accurately quantify the office's staffing needs.

Travel time may also be undercounted to some extent, as attorneys may spend additional time waiting throughout the day that cannot be accounted for. For example, attorneys may spend an hour or more waiting at the jail to visit their clients, and VIDC leadership reported that public defenders are now waiting longer to visit their clients than they have in the past. However, this is difficult to account for because it cannot be attributed to a single client or case. Attorneys may wait an hour at the jail to visit one client or multiple clients, for example, so this wait time cannot be attributed to a single case or case type.

### **Administrative adjustments**

Administrative adjustments account for the fact that chief public defenders have additional supervisory and administrative responsibilities that make it difficult for them to maintain a full caseload. The 2010 study added an additional 0.50 of a full time equivalent (FTE) attorney for offices with more than 20 attorneys and 0.25 FTE for offices with less than 20 attorneys. The panel agreed to use an adjustment of 0.50 FTE for the chief public defender regardless of the size of the office. The rationale for having the same adjustment for all offices is that in larger offices, the chief public defender performs more administrative duties and has less of a caseload, while the chief public defender in the smaller offices may have a higher caseload but with more minor level cases to allow him or her to perform the administrative responsibilities. The panel also recommended adding an administrative adjustment of 0.25 FTE for the deputy public defender. Though this adjustment was not included in the 2010 study, the panel agreed the deputy public defender has administrative responsibilities beyond normal non-case-related activities and therefore warranted an adjustment at half of the chief public defender's adjustment, or 0.25 FTE.

### **Case weight adjustments**

JLARC, NCSC, and VIDC convened four panels of public defender attorneys from offices across the state to recommend adjustments to the 2010 public defender case weights based on changes in legal practice and time requirements that have occurred since the 2010 workload assessment. Each panel considered a different category of cases:

- violent felony and non-violent felony,
- misdemeanor/driving while intoxicated,
- juvenile, and
- appellate.

For each case type category, the corresponding panel reached a consensus on which case-related activities have changed since 2010, the percentage of cases affected by each change (e.g., 10 percent of cases are impacted), and the additional amount of time required to perform each activity (e.g., 10

additional minutes per case). For each activity, an adjustment is calculated by multiplying the average time per case (in minutes) by the frequency of cases affected for the activity. For example, the felony panel came to a consensus that in 25 percent of violent felony cases, reviewing social media evidence takes an additional 60 minutes compared with 2010, adding an adjustment of 15 minutes to the violent felony case weight across the average of all violent felony cases. The individual adjustments for each case type were summed to calculate a total change and added to the 2010 case weight to produce an updated value. Several common themes were cited throughout the panel sessions as a factor that has contributed to greater attorney workload as compared to 2010.

- **Statutory changes:** Mandatory minimums, probation violation reform, jury sentencing reform, and changes in deferred dispositions were some of the most commonly referenced legislative changes impacting workload (Appendix D).
- **Technology changes and the proliferation of electronic evidence:** Social media usage has expanded, more jurisdictions use body cameras, and cell phones are ubiquitous. The volume of evidence has increased dramatically as a result, and attorneys must sift through hours of cell phone camera footage and body camera footage, in addition to text messages and social media posts. They also require additional time to review this footage and other evidence with their clients. Additionally, the availability of tablets in jails and the increased variety of modern methods of communication make it much easier for clients and their families to contact their attorneys, leading to an increase in time spent on client contact and family communication.
- **Shift toward a more holistic, client-centered approach to legal defense:** Attorneys now more commonly advise clients about collateral consequences, explain the case to the client's family, research options for program placement, and follow up on their clients' mental health and service needs. In some situations, attorneys may spend time identifying housing options for clients.

The case weights increased from 2010 by an average of 70 percent when accounting for these changes to legal practice and the activities required to provide a quality defense. The final case weights for each case type are shown in Table G-3.

TABLE G-3

Amount of time needed by public defenders for each case has increased over the past decade

Case type	Original 2010 case weight (minutes)	Updated case weight (minutes)	Difference
Murder	2,471	3,652	48%
Violent felony	766	1,511	97
Nonviolent felony	433	748	73
Misdemeanor	147	293	99
Juvenile	317	604	91
Driving while intoxicated (DWI)	191	398	108
Probation Violation – Felony	165	225	36
Probation Violation - Misdemeanor	54	60	11
Probation Violation – Juvenile	41	41	0
Appellate	3,053	7,164	135

SOURCE: NCSC Virginia public defender workload assessments, 2010 and 2023.

NOTE: 2010 capital defense case weight was not updated because capital punishment was abolished in Virginia in 2021.

***Felony case types***

The felony panel, comprising 10 attorneys, met on two separate occasions (once virtually and once in person) to review felony case-related activity, including murder/homicide, violent felony, nonviolent felony, and felony probation violations.

For murder/homicide cases, the largest case-related activity adjustments that affected the overall case weight included:

- **Body worn camera footage:** In 80 percent of cases, an additional 360 minutes were added per case for the attorney to review body worn camera footage, which was almost non-existent in 2010. Often there is footage from multiple perspectives, and all of it must be reviewed. The attorney also must review the video footage with the client.
- **Cell phone evidence:** In 60 percent of cases, an additional 360 minutes were added per case for the increased evidence stemming from cell phones, including phone calls and text messages. Attorneys report that the amount of material is substantial, and that sometimes there are technical difficulties in loading and viewing files that add to the reviewing time.
- **New types of evidence:** In 50 percent of cases, an additional 300 minutes were added per case for new types of evidence since 2010, such as cell phone locator technology and surveillance data. The attorney must understand the technology and be prepared to cross-examine the expert witness to discredit them and/or the relevance of the evidence.

For violent felony cases, the largest case-related activity adjustments that affected the overall case weight included:

- **Trial preparation:** In 25 percent of cases, an additional 1,000 minutes were added per case for the increased number of cases being set for trial relative to 2010. Even if the trial ultimately does not proceed, attorneys must prepare for each of these cases as if they were

going to be tried. Jury sentencing reforms have also led to an increase in trials, as defendants can now receive judge sentencing upon conviction in a jury trial. The additional time for this case activity also reflects the fact that two attorneys work on trial preparation for violent felony cases.

- **Body worn camera footage:** In 80 percent of cases, an additional 180 minutes were added per case for the attorney to review body worn camera footage.
- **Pre-trial motions:** In 50 percent of cases, an additional 120 minutes were added per case for the increase in filing pre-trial motions since 2010. Mandatory minimums and mandatory life sentences both require extra work in the form of suppression motions and pre-trial litigation. Additionally, if the defendant has mental health issues, the attorney must research their client's history so it can be addressed in a pre-trial motion.

Similar to violent felony cases, the largest case-related activity adjustments that affected the overall case weight in nonviolent felony cases also included an increase in time to review body worn camera footage (additional 120 minutes in 80 percent of cases); an increase in several pre-trial motions (additional 120 minutes in 25 percent of cases); and an increase in the number of cases being set for trial (additional 600 minutes in 5 percent of cases).

For felony probation violations, the only case weight adjustment made was for the increase in litigation of hearings because of probation violation reform (additional 60 minutes in 100 percent of cases). Attorneys report that the reform has resulted in the litigation of more hearings and requires them to spend more time researching to confirm the type of violation (e.g., technical), researching prior violations, and understanding the changes from the reform. They also report spending additional time on front end research.

### ***Misdemeanor case types***

The misdemeanor panel, comprising eight attorneys, had one in-person meeting to review misdemeanor case-related activity, including misdemeanors, driving while intoxicated (DWI), and misdemeanor probation violations. The DWI case weight technically includes both misdemeanor and felony DWIs, but were kept together as one case weight to be consistent with the original 2010 case weight. Additionally, most DWI cases are misdemeanor cases (about 84 percent in FY22).

For misdemeanor cases, the largest case-related activity adjustments that affected the overall case weight included:

- **Body worn camera footage:** In 50 percent of cases, an additional 60 minutes were added per case for the attorney to review body worn camera footage.
- **Family communication:** In 55 percent of cases, an additional 40 minutes were added per case for more communication with clients' family members. Family members must be reassured the client is receiving good legal representation, and they may also be involved with the release plan, which means more communication to coordinate the plan. Diversion programs may also mean that the defendant is in jail for a longer period of time, which may mean more family contact during this time through multiple methods of communication (e.g., email, messages, social media). Greater awareness of mental health issues has

also resulted in more communication with family members to obtain information about the client's history.

- **Pre-trial mental health issues:** In 25 percent of cases, an additional 60 minutes were added per case for case activity related to addressing client mental health issues prior to trial. Clients exhibiting mental health issues are more common now. Statutory changes around competency also lead to more litigation. Attorneys indicated there are also delays in receiving evaluations and reports.

For DWI cases, the largest case-related activity adjustments that affected the overall case weight included:

- **Body worn camera footage:** In 80 percent of cases, an additional 120 minutes were added per case for the attorney to review body worn camera footage.
- **Program placement:** In 40 percent of cases, an additional 60 minutes were added to identify appropriate programs for their client. Entry into programs may mean more court dates for the attorney and the client. Because of Medicaid expansion, since 2010, clients now qualify for more programs. Changes to Virginia Code § 19.2-298.02 (deferred disposition in a criminal case) make raising program placement issues earlier in the case more beneficial. Mitigation specialists within the public defender office are often available only for felony cases, which means attorneys must do this work themselves on misdemeanor DWI cases. Defendants charged with DWI also have more available programs, which increases the amount of time an attorney must consult with their clients about the program criteria. Time is also sometimes spent convincing the client of their need for the program.
- **Pre-trial motions:** In 30 percent of cases, an additional 60 minutes were added per case for the increase in pre-trial motions being filed. Attorneys report additional motions to suppress based on body camera footage, more advanced preparation, and more motions being filed before the trial date. The attorney must also be prepared to raise pre-trial issues related to the stop, seizure, and statement in the event the commonwealth's attorney does not offer a plea.

For misdemeanor probation violations, the only case weight adjustment made was for the increase in litigation of hearings because of probation violation reform (additional 20 minutes in 30 percent of cases).

### ***Juvenile case types***

The juvenile panel, comprising eight attorneys, had one in-person meeting to review juvenile case-related activity, including juvenile cases and juvenile probation violations.

For juvenile cases, the largest case-related activity adjustments that affected the overall case weight included:

- **Body worn camera footage:** In 75 percent of cases, an additional 120 minutes were added per case for the attorney to review body worn camera footage.
- **Post-dispositional hearings:** In 25 percent of cases, an additional 120 minutes were added per case because of the increase in review hearings since 2010. Review hearings are

held to review the juvenile's progress in a program and review probation conditions. There are often multiple post-disposition review hearings.

- **Pre-trial mental health issues:** In 25 percent of cases, an additional 90 minutes were added per case for addressing pre-trial mental health-related issues. Cases where a juvenile is exhibiting mental health issues have increased, as well as the awareness of communal trauma, such as adverse childhood experiences (ACEs). More courtroom time is required for discussing program placement and explaining program options and requirements to the juvenile. More review hearings are required to check on juveniles previously placed in programs.
- **Electronic evidence:** In 50 percent of cases, an additional 45 minutes were added per case for the review of electronic evidence in juvenile cases, including text messages, cell phone videos and screenshots, and school surveillance videos. There has been a large increase in volume of this type of evidence since 2010.

For juvenile probation violations, the panel discussed how case-related activities for juvenile probation violation cases have changed since 2010 and reached a consensus that no adjustment was needed.

### ***Appellate case type***

One organizational change in how the public defender system handles cases since 2010 is the creation of an appellate cohort within the VIDC central office in 2022. The cohort includes up to eight attorneys focusing solely on client representation at the Virginia Court of Appeals and the Supreme Court. The cohort was created as an appellate resource for the public defender offices when the Virginia Court of Appeals implemented significant changes in 2022.

The cohort accepts appellate case referrals from public defender offices. Approximately 30 percent of offices refer all of their appeals to the cohort. However, not all appellate cases are handled by the cohort. Some or all appellate cases within a particular office may be handled internally by the same office that defended the underlying case on which the appeal is based, at the discretion of the local office. In offices that handle their own appeal, the attorney representing the client in the underlying case or a designated appellate attorney within the office may handle the appeal. This practice varies by office.

The appellate panel consisted of 10 attorneys from various jurisdictions, including attorneys from the appellate cohort and attorneys who handle appellate cases within their local public defender office. The panel had one in-person meeting to review appellate case-related activity. For appellate cases, the largest case-related activity adjustments that affected the overall case weight included:

- **Reply brief:** In 89 percent of cases, an additional 1,200 minutes were added per case because of a structural change that always allows the right to appeal to an intermediate appellate court. Reply briefs were previously filed in only about 10 percent of cases, but because of the change, 99 percent of cases now require a reply brief. Reply briefs are important to protecting against procedural defaults. Further, higher VIDC standards of practice have resulted in more time needed to prepare reply briefs.
- **Opening brief requirement:** Under the new rules, 100 percent of cases have an opening brief, while under the previous rules, all cases included a petition for appeal, but only



about 10 percent of cases included an opening brief. An additional 720 minutes were added per case for the 90 percent of cases which previously would have had only a petition for appeal. This adjustment also allows for an increase in national standards for quality of opening briefs.

- **Preparation for oral argument:** In 81 percent of cases, an additional 780 minutes were added per case for the attorneys to prepare for oral arguments at the Court of Appeals. The court is often more prepared at the time of the argument, having electronic access to the court record during the oral argument. There are also higher expectations due to national standards. Therefore, the attorney must be more prepared to make the argument. Attorneys moot all oral arguments which includes three additional attorneys in addition to the assigned appellate attorney.
- **Assignments of Error:** In 100 percent of cases, an additional 480 minutes were added per case for the new mandatory pleading, “Assignments of Error,” due 15 days after the record transfer. This new pleading has also resulted in more procedural challenges from the Attorney General’s Office that must be addressed.

### Example calculation of attorney need with updated 2023 case weights

Three factors drive the number of attorneys that are needed to sufficiently handle a public defender office’s workload: (1) number of cases by type (caseload); (2) case weights (typical time needed to provide adequate defense); and (3) the attorney year value (time available for an attorney to work in a given year).

$$\frac{\text{Caseload} \times \text{Case weights (minutes)}}{\text{Year value (minutes)}} = \text{Resource need (FTE)}$$

To calculate total attorney need for a public defender office, the number of each type of case is multiplied by the corresponding case weight. Dividing the workload by the year value yields the total number of full-time equivalent (FTE) attorneys needed to handle the office’s workload. Administrative adjustments are added afterwards. Table G-4 shows how total attorney need was calculated for the Prince William office for FY22 using the updated case weights.

**TABLE G-4**  
**Prince William office needs approximately 34 attorneys to sufficiently handle its workload (FY22)**

Case type	FY22 caseload	x	2023 updated case weight (minutes)	=	Workload (minutes)
Murder	10	x	3,652	=	36,520
Violent felony	543	x	1,511	=	820,337
Nonviolent felony	1,108	x	748	=	828,507
Misdemeanor	2,312	x	293	=	676,838
Juvenile	348	x	604	=	210,192
Driving while intoxicated (DWI)	440	x	398	=	175,098
Probation Violation – Felony	112	x	225	=	25,200
Probation Violation - Misdemeanor	36	x	60	=	2,160
Probation Violation – Juvenile	39	x	41	=	1,599
Total workload (minutes)					2,776,446
Attorney year value (minutes)					82,680
Attorney need for cases					33.58
Chief public defender administrative adjustment (FTE)					.50
Deputy public defender administrative adjustment (FTE)					.25
<b>Total attorney need (FTE)</b>					<b>34.33</b>

SOURCE: JLARC staff analysis of Virginia Indigent Defense Commission caseload data and NCSC Virginia public defender workload assessment, 2023.

NOTE: Numbers may not sum because of rounding. Case weight values have also been rounded.

## Appendix H: Considerations for expanding public defender coverage

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The study resolution directed JLARC staff to determine the need for, feasibility of, and fiscal impact of additional public defender offices. Because there is no significant difference between the quality of representation provided by court-appointed attorneys and public defenders (Chapter 2), and because public defender offices are currently experiencing challenges to fill vacant positions (Chapter 4), a systematic expansion of public defender coverage is likely not practical at this time. However, should the state decide to expand public defender coverage to additional localities, the key factors that should be considered are (1) whether there is a sufficient number of quality court-appointed attorneys serving a locality; (2) whether and how to expand coverage to a new locality via a new office or through expansion of an existing office; and (3) appropriate attorney staffing levels to handle the expected caseload in the new locality(ies). Expanding public defender coverage to additional localities currently requires a change to state law.

### Whether locality is sufficiently served by court-appointed attorneys

One key consideration is whether there are currently a sufficient number of court-appointed attorneys to provide representation to indigent criminal defendants. As discussed in Chapter 3, the number of attorneys willing to serve as court-appointed attorneys has been declining in recent years. Localities that are unable to maintain a sufficient number of private attorneys willing to serve in a court-appointed role may be a good candidate for expanding public defender coverage. Steps to increase court-appointed attorney reimbursement discussed in Chapter 3 may also help to address issues attracting quality attorneys to serve in a court-appointed role.

### Expanding coverage via a new office vs. an existing office

The following are several considerations for expanding public defender coverage to additional localities through an existing office vs. opening a new office.

#### 1. Is the new locality in the same judicial district as an existing office?

Multiple localities that are currently covered by a single public defender office are within the same judicial district. This is the most efficient way to minimize potential overlapping docket schedules across courts, and facilitates building a rapport between the public defender office and the judges within that district.

#### 2. Is the travel time feasible to incorporate courts in the new locality into an existing office?

The more time attorneys spend traveling to and from court, jails, etc., the less time they have to spend on case-related activities. Across existing public defender offices, the longest travel time between courts is approximately 45 minutes. If the court in the new locality is more than 45 minutes away from the court(s) in the localities already being covered by the existing public defender office, then it is likely not feasible to add coverage for this locality onto an existing office.

**3. Are there any other localities in the same judicial district, within a reasonable distance, to group together into one new office?**

In instances in which a locality does not have proximity to an existing public defender office and therefore requires a new office, it would be worth considering whether other adjacent localities sharing that judicial district could also be included as part of the new office expansion. A similar benchmark of no more than 45 minutes between courts should be used to determine localities that could be covered by a single office.

**Staffing levels for new public defender offices**

Attorney staffing levels for new public defender offices—or for expanding existing offices—can be determined using the 2023 updated case weights developed by the National Center for State Courts (NCSC) (Appendix G). A case weight is the quantification of the typical amount of time estimated to be necessary for attorneys to spend on each case to provide quality legal representation. To apply the case weights and calculate corresponding staffing levels, several data points are needed:

**1. Number of cases currently handled by court-appointed attorneys within the locality(ies)**

The number of cases currently being handled by court appointed attorneys within the new locality(ies) can be used to estimate the number of cases that will be handled by public defenders each year. Financial data maintained by the Office of the Executive Secretary of the Supreme Court of Virginia (OES) includes the total number of charges for which court-appointed attorneys have been reimbursed in a particular jurisdiction. Public defenders typically have 1.9 charges per case, on average, so this ratio can be used to approximate the number of cases public defenders will handle from the total number of charges. For example, if court appointed attorneys are handling 10,000 charges annually within a particular jurisdiction, then public defenders could be expected to handle approximately 5,300 cases per year if a new office were opened in that jurisdiction. It may also be helpful to consider a three-year-average number of cases, rather than a single year, to control for any fluctuations in caseloads in a particular year.

Additionally, public defenders do not provide defense for *all* of the indigent criminal cases within a jurisdiction. Court-appointed attorneys are still needed for a portion of cases in jurisdictions with a public defender office, such as those in which the public defender has a conflict of interest (e.g., multiple codefendants on the same case). In FY22, public defenders handled around 65 percent of the workload within their jurisdiction, on average, so public defender offices should be staffed to handle roughly the same proportion of cases in the new locality(ies).

**2. Estimated breakdown of total cases by case type**

In addition to the total number of cases, the specific types of cases comprising the caseload will also need to be estimated for the new public defender office. Because of data limitations, it is not feasible to determine the breakdown of different case types court-appointed attorneys are currently handling using OES data. However, case composition for existing public defender offices could be used to estimate the number of each type of case for the new office.

Table H-1 shows a generalized breakdown of case types based on averages across existing public defender offices. However, to the extent that a specific office is expected to be similar to the numbers and types of cases in the new office, individual offices can also be used as a benchmark to model case type composition for the new office.

**TABLE H-1**  
**Proportions for estimating case type composition for new offices**

<b>Case type</b>	<b>Estimated proportion of cases</b>
Murder	0.2%
Violent felony	11.0
Nonviolent felony	22.0
Misdemeanor	47.5
Juvenile	4.0
Driving while intoxicated (DWI)	6.0
Probation Violation – Felony	8.0
Probation Violation - Misdemeanor	1.0
Probation Violation – Juvenile	0.3

SOURCE: JLARC staff analysis of Virginia Indigent Defense Commission caseload data, FY22.

### 3. Estimated attorney travel time

An attorney “day value” will need to be specified for the new office, which is the amount of time attorneys spend on case-related work each day. Starting with an eight-hour work day, the case weight model assumes all public defenders will spend 70 minutes per day on non-travel, non-case-related tasks. As a result, differences in the amount of time attorneys have to dedicate to working on cases across different public defender offices are driven by differences in attorney travel time. The locality(ies) covered by the new public defender office can be compared to existing public defender offices to assign a travel time to the new office. For example, a new public defender covering a large geographic and/or more rural area, similar to the Martinsville or Halifax office, would be assigned 40 minutes of travel time per day, allowing for a total of 370 minutes (6.17 hours) of time to devote to case related activities each day. Conversely, a public defender office in a single suburban jurisdiction would be assigned a travel time of 15 minutes per day, leaving 395 minutes (6.58 hours) of time that attorneys could spend on casework each day.

These data points can then be used with Virginia’s updated weighted caseload model to calculate the number of attorneys needed to sufficiently handle the estimated workload of the new public defender office. For more information about the case weights and assessing public defender workload, see Appendix G.

One factor that is not considered by the current case weights is the number of *support staff* needed for each public defender office. Any expansion of public defender coverage will also require additional support staff to assist attorneys with various case-related and administrative tasks. Without support staff case weights, support staff could be determined using the statewide average ratio of attorneys

to support staff based on estimated attorney need for the new office. (See Chapter 4 for more information on support staff ratios for public defender offices.)

### **Example: Henrico County**

A new public defender office was most recently proposed for Henrico County during the 2022 and 2023 legislative sessions but did not pass and was instead referred to JLARC for consideration as part of this study. Henrico County is used as an example here for how public defender coverage could be expanded using the model discussed above.

First, Henrico County is the only locality in Virginia's 14<sup>th</sup> Judicial District, meaning it would not be appropriate to add public defender coverage for Henrico onto an existing public defender office, and that there are no additional localities that could practically be included with Henrico if a new office were to be established there.

Next, attorney staffing levels for a new Henrico office would need to be estimated using the updated case weight model.

- In FY22, about 13,100 charges were handled by court-appointed attorneys in Henrico County, which would equate to approximately 6,900 public defender cases. Assuming the public defender office would ultimately handle around 65 percent of these cases, staffing would be needed for around 4,500 cases per year.
- Travel time for the new Henrico office would likely be similar to the adjacent Chesterfield office, in which attorneys spend about 15 minutes traveling per day on average (according to mileage reimbursements for the office). Modeling the new Henrico office off of the Chesterfield office would result in attorneys having 395 minutes to work on case-related activities each day.

Table H-2 shows the estimated number of each case type for a new Henrico office, based on the average caseload composition across public defender offices. (The Chesterfield office could also be used to benchmark these estimates, but is not necessary because Chesterfield's breakdown is similar to the statewide averages.) Using the updated NCSC case weights for this estimated caseload, staffing a new Henrico County public defender office could require approximately 30 attorneys to sufficiently handle the office's expected workload.

**TABLE H-2**  
**New Henrico County public defender office could need approximately 30 attorneys to sufficiently handle its estimated workload**

Case type	Estimated caseload	x	2023 updated case weight (minutes)	=	Workload (minutes)
Murder	9	x	3,652	=	32,864
Violent felony	493	x	1,511	=	744,800
Nonviolent felony	986	x	748	=	737,282
Misdemeanor	2,129	x	293	=	623,265
Juvenile	179	x	604	=	108,116
Driving while intoxicated (DWI)	269	x	398	=	107,049
Probation Violation – Felony	359	x	225	=	80,775
Probation Violation - Misdemeanor	45	x	60	=	2,700
Probation Violation – Juvenile	13	x	41	=	533
Total workload (minutes)					2,437,382
Attorney year value (minutes)					÷ 83,740
Attorney need for cases					29.11
Chief public defender administrative adjustment (FTE)					.50
Deputy public defender administrative adjustment (FTE)					+ .25
<b>Total attorney need (FTE)</b>					<b>29.86</b>

SOURCE: JLARC staff analysis of Virginia Indigent Defense Commission caseload data (FY22), Office of the Executive Secretary court-appointed attorney reimbursement data (FY22), and NCSC Virginia 2023 public defender workload assessment.

NOTE: Numbers may not sum because of rounding. Case weight values have also been rounded.

## **Appendix I: Local salary supplements for public defenders and commonwealth's attorneys**

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Localities have discretion to supplement the salaries of the public defenders and/or commonwealth's attorneys within their jurisdiction, in addition to the state salary these attorneys receive (§ 15.2-1605.1 and § 19.2-163.01:1). However, whether public defenders and/or commonwealth's attorneys receive local supplements, as well as the size of the supplement, varies by jurisdiction. Table I-1 shows average local supplement amounts for public defender offices and commonwealth's attorney offices covering the same jurisdiction(s), as well as how the supplement amounts impact total salaries.

Thirteen out of 28 public defender offices receive at least some supplemental salary from the locality(ies) in their jurisdiction. Among offices that receive local supplements, the supplements increase public defender attorney salaries by an average of 17 percent. The largest supplement is in the Richmond office, which receives \$1 million to divide across 45 attorneys and support staff (~\$22,222 per person). The smallest supplement is in the Winchester office, which only receives supplements from Warren County for attorneys and support staff working in the Front Royal satellite office (\$1,000 per person).

All public defenders jurisdictions encompass one or more commonwealth's attorney offices that offer a local supplement. Across commonwealth's attorney offices in these localities, local supplements increase attorney salaries by an average of 30 percent, ranging from 4 percent in Pulaski (\$2,500 per attorney) to 70 percent in Prince William (\$50,000 per attorney). As a result, the average gap in local salary supplements between public defender and commonwealth's attorney offices sharing jurisdictions is about \$16,000 per attorney. Combined with the base salary provided by the state in FY23, public defenders make about \$12,000 less, on average, than commonwealth's attorneys in the same jurisdiction.



**TABLE I-1**  
**Local salary supplements for public defenders and commonwealth's attorneys vary across jurisdictions (FY23)**

Public Defender Office	Public defender state salary	Public defender local supplement	Public defender total salary	Comm. attn. state salary	Comm. attn. local supplement	Comm. attn. total salary	Total salary gap
Arlington	\$81,740	\$20,094	\$101,834	\$70,890	\$35,959	\$106,849	5%
Bedford	77,214	-	77,214	67,496	7,137	74,633	-3
Charlottesville	77,667	16,358	94,026	73,065	31,809	104,874	10
Chesapeake	73,764	-	73,764	71,417	37,306	108,722	32
Chesterfield	74,622	-	74,622	79,317	13,794	93,111	20
Danville	72,987	-	72,987	72,886	7,830	80,717	10
Fairfax	81,808	12,271	94,079	65,114	35,565	100,678	7
Fredericksburg	79,765	-	79,765	70,684	38,030	108,714	27
Halifax	76,514	-	76,514	67,749	9,774	77,523	1
Hampton	72,463	-	72,463	70,152	20,148	90,300	20
Leesburg	81,760	20,440	102,200	74,381	29,783	104,164	2
Lynchburg	69,449	-	69,449	71,433	6,225	77,658	11
Martinsville	70,060	-	70,060	75,239	5,201	80,440	13
Newport News	74,010	-	74,010	71,327	23,605	94,933	22
Norfolk	74,402	10,000	84,402	69,061	17,599	86,660	3
Petersburg	75,071	-	75,071	76,671	8,931	85,602	12
Portsmouth	73,859	9,783	82,989	68,408	8,929	77,337	-7
Prince William	79,492	11,924	91,416	71,693	50,425	122,118	25
Pulaski	72,860	-	72,860	71,339	2,531	73,870	1
Richmond	73,156	22,222	95,379	79,661	19,216	98,877	4
Roanoke	74,259	-	74,259	76,142	13,688	89,830	17
Smithfield	92,797	-	92,797	74,888	12,682	87,570	-6
Staunton	75,712	-	75,712	70,977	3,827	74,804	-1
Suffolk	77,334	17,250	94,584	76,900	41,275	118,174	20
Virginia Beach	74,964	20,000	94,964	74,627	43,608	118,235	20
Warrenton	82,447	6,000	88,447	78,268	34,361	112,629	21
Winchester	82,599	182	82,781	72,261	15,995	88,256	6
<b>Statewide</b>	<b>\$76,383</b>	<b>\$7,802</b>	<b>\$84,116</b>	<b>\$72,640</b>	<b>\$20,976</b>	<b>\$93,617</b>	<b>10%</b>

SOURCE: Virginia Indigent Defense Commission Cardinal salary data, JLARC staff public defender survey, and Virginia Compensation Board salary data.

NOTE: Indicates average local supplement amount per attorney in FY23, excluding chief public defender and elected commonwealth attorney positions. Full-time attorney positions only. Average salary for commonwealth's attorneys includes all offices within public defender jurisdictions. All public defender jurisdictions encompass one or more commonwealth's attorney offices that offer a local supplement. Alexandria receives local supplements for both commonwealth's attorneys and public defenders, but specific information on the average supplement for each public defender attorney was not available. Warrenton public defender office receives local salary supplement for only entry level attorney positions (assistant public defender I).

## Appendix J: Virginia’s pretrial process

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The initial stages of the pretrial process address whether and under what conditions a criminal defendant who has been taken into custody can be released on bail during their trial. Local variation in the timing of these stages can result in differences in detention length for defendants. Policy options of counsel at first appearance and same-day bail hearings seek to minimize local variation, with the goal of shortening the length of detention for defendants who will ultimately be released on bail (Chapter 7).

### **Counsel at first appearance and same-day bail hearings would apply to cases in which the criminal defendant is detained pretrial**

Some, but not all, defendants who face criminal charges are taken into custody. Most defendants, particularly those accused of charges whose sentences would not include jail time (“non-jailable offenses”), are released by law enforcement on a summons to appear in court. However, an estimated 102,000 to 130,000 defendants—or approximately 116,000 defendants—charged with jailable offenses were taken into custody and brought to a judicial officer for a bail determination in FY22. Magistrates make the initial bail determination for nearly all arrested defendants; some defendants who are arrested on a direct indictment may be taken to a circuit court judge, who will make the initial bail determination and conduct the first appearance, but that number is small.

The number of defendants who were taken into custody has decreased in recent years. In 2016, an estimated 127,000–162,000 defendants were taken to a judicial officer for a bail determination, but in FY22, that number had decreased to approximately 102,000–130,000 defendants. However, the percentage of defendants who are taken into custody but released by the next day also decreased. In FY16, 74 percent of defendants were released by the next day, but in FY22, only 68 percent were.

Only a subset of the defendants taken into custody—those still detained at first appearance—would qualify for counsel at first appearance and same-day bail hearings. Just over half of defendants who meet with a judicial officer are released that same day; the remaining 44,000–55,000 defendants—or approximately 50,000 defendants—*may* qualify for counsel at first appearance (Table J-1). However, the actual number of defendants who would need counsel to be appointed is likely smaller. Some of these defendants may ultimately be released from detention before the first appearance if they meet bail conditions set by the judicial officer before the first appearance has occurred—such as by obtaining bond funds. Additionally, some defendants may choose to retain counsel or waive counsel at the first appearance instead of accepting court-appointed counsel.

**TABLE J-1**  
**Most defendants released within a day of arrest, but many who remain will be released on bail**

Days since arrest	Defendants who are released within timeframe	Total defendants released as of x day	Defendants who remain detained but <i>will</i> be released on bail at a later date
0 days	58,000–74,000	58,000–74,000	36,000–46,000
1 day	11,000–14,000	69,000–88,000	25,000–32,000
2 to 14 days	17,000–22,000	86,000–110,000	9,500–12,000

SOURCE: JLARC analysis of FY22 data provided by the Office of the Executive Secretary of the Supreme Court, the Department of Criminal Justice Services, and the Virginia State Compensation Board.

NOTE: An estimated total of 102,000–130,000 defendants are taken to a judicial officer annually for a bail determination. There are approximately 7,500–9,500 defendants who will not be released on bail before their case concludes.

### **Timing of initial stages of the pretrial process can depend on court schedules, counsel appointment methods, and other factors**

Several factors influence the variation in localities' pretrial processes. These factors include court schedules, the availability of information related to the case (e.g., the pretrial investigative report and police report), attorney appointment and notification practices, the logistics of attorney-client meetings, and the workloads of the various stakeholders involved in the pretrial process. Policies to address variances in any of these factors, such as counsel at first appearance and same-day bay hearings as well as others, may affect how long defendants are detained pretrial.

#### ***Frequencies of court schedules***

Court schedules can dictate how quickly detained defendants have their first appearances and bail hearings. Courts in localities with larger populations, and therein higher caseloads, tend to be held more often than those in localities with smaller populations. First appearances must be held for detained defendants on the next day in which the court sits; therefore, the length of time between arrests and first appearances depends heavily on how often court is held. The court schedule can also affect how quickly bail hearings can occur. Because most attorney appointments occur at the first appearance, variation in the timing of first appearance affects how quickly an attorney is appointed to a case and able to motion for a bail hearing. Once a motion for a bail hearing is filed, the court schedule may dictate when the bail hearing is held. JLARC found that detained defendants had bail hearings most quickly after arrest in localities where court is held every weekday and most slowly in localities where court is held twice per week or less.

#### ***Speed of counsel appointments and notifications***

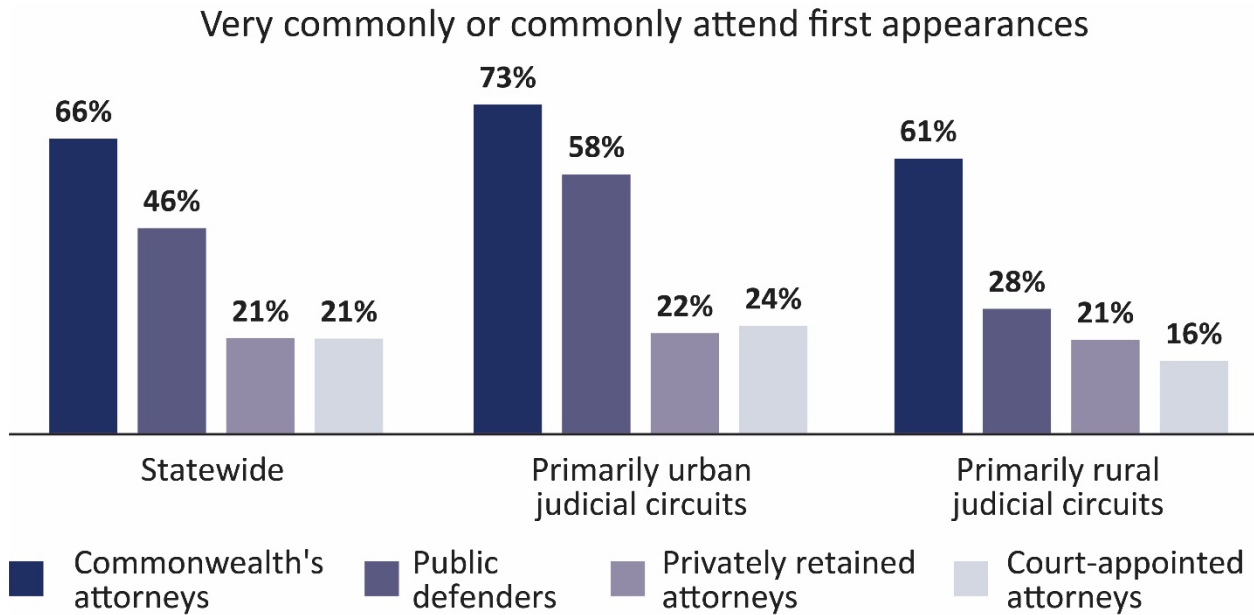
The speed of counsel appointments and notifications can also affect how quickly defendants have their bail hearing. Just over 40 percent of indigent defense attorneys typically receive notification of an appointment to a case on the day of the defendant's first appearance, but more than 25 percent typically receive the notification two or more days later. Notifications tend to take slightly longer in cases involving a court-appointed attorney rather than a public defender. Some of this delay is because public defenders are more likely to have a standardized process for quickly receiving notifications,

whereas a court-appointed attorney is often notified by a phone call, email, or through a paper-based system. Several court-appointed attorneys shared that it can take more than a week to receive the paperwork for their cases. None of Virginia’s criminal justice data systems tracks how quickly an indigent defense attorney joins a defendant’s case after arrest.

Some Virginia localities provide counsel at first appearance already. The localities that do are primarily urban and served by public defenders (see Appendix L for examples). Overall, public defenders are present at first appearances at over twice the rate of court-appointed attorneys, according to a JLARC survey of judges. Additionally, indigent defense attorneys (public defenders and court-appointed attorneys) are slightly less likely to be present at first appearances in rural judicial districts than in urban judicial districts (Figure J-1).

**FIGURE J-1**

**Rate that defense attorneys are present at first appearances can vary by jurisdiction type**



SOURCE: JLARC survey of judges, 2023.

NOTE: To maintain anonymity, judges were asked only to indicate in which grouping of judicial districts they worked. Judges were considered to serve in a primarily urban judicial circuit if they serve in Hampton Roads (judicial circuits 1, 2/2A, 3, 4, 7, and 8), the Richmond area (judicial circuits 12, 13, and 14), or Northern Virginia (judicial circuits 17, 18, 19, and 31). Judges in any other judicial circuits were considered to serve in a primarily rural judicial circuit. Not all localities are served by public defenders.

***Difficulty arranging attorney-client meetings***

Logistics for coordinating private attorney-client meetings can also delay how quickly a bail hearing occurs. Attorneys must meet with their clients to become familiar with their clients’ cases and needs, and they often will only file a motion for a bail hearing once they have met with a detained client. Some attorneys indicated that limited jail visiting hours or long distances to jails limit attorneys’ ability to visit clients. Only 41 percent of public defenders and 24 percent of court-appointed attorneys report typically meeting with clients within a day of being notified of a case appointment.

### ***High workloads of pretrial stakeholders***

The workloads of many stakeholders involved in the pretrial process may also affect how quickly a defendant can have a bail hearing.

- Some **court-appointed attorneys** who serve in multiple localities may not be available for bail hearings on any day of the week in a given court. Defendants may therefore experience delays to their bail hearings to accommodate their attorney's schedule.
- Some stakeholders indicated that **commonwealth's attorneys** may be unable to attend first appearances and bail hearings on certain days or need additional time to review case materials and to talk to any witnesses and victims. These limitations can make it hard to schedule a bail hearing for a defendant quickly as well.
- In some localities, **pretrial services offices and law enforcement offices** are unable to complete reports for all detained defendants in time for a first appearance, and judges may not feel comfortable holding bail hearings until this information is available. Stakeholders indicate that the delays in finishing reports may be due to limitations of staff time and resources.

### **Defendants wait slightly longer for bail hearings in rural areas and areas not served by public defenders**

Defendants wait longer for bail hearings, on the median, in rural areas and areas not served by public defenders. Defendants in rural localities and localities not served by public defenders tend to have bail hearings a day later than their counterparts do (Table J-2). Part of this difference may be due to how long defendants wait for bail hearings after filing a motion. Public defenders in rural localities were three times more likely (25 percent) than those in urban localities (8 percent) to report that they typically wait more than three days for a bail hearing after a motion is filed. Additionally, 34 percent of court-appointed attorneys who serve in localities not served by a public defender reported typically waiting more than three days for a bail hearing, compared with 18 percent of court-appointed attorneys serving in at least one locality served by a public defender. None of Virginia's criminal justice data systems track how quickly bail hearings occur after a motion.

**TABLE J-2**  
**Bail hearings happen on the median one day sooner in urban localities and localities served by public defenders**

<b>Median number of days between arrest and the bail hearing</b>	<b>Localities served by public defenders</b>	<b>Localities not served by public defenders</b>
Rural localities	6 days	7 days
Urban localities	5	6

SOURCE: JLARC analysis of data provided by the Office of the Executive Secretary of the Supreme Court, the Department of Criminal Justice Services, and the Virginia State Compensation Board.

NOTE: Analysis includes defendants who were released on bail two to 14 days after arrest from FY16–FY22. Localities were considered urban if they had a population density of 500 or more people per square mile or were considered rural if they had a population density under 500 people per square mile.

Black and white defendants released on bail two to 14 days after arrest appear to have similar pretrial outcomes when controlling for differences across urban and rural localities and localities with and without public defenders. These defendants have similar median wait times until bail hearings and spend about the same amount of time detained on the median. Data limitations prevented JLARC from being able to control for other defendant and charge characteristics.

## Appendix K: Stakeholder perspectives on counsel at first appearance and same-day bail hearings

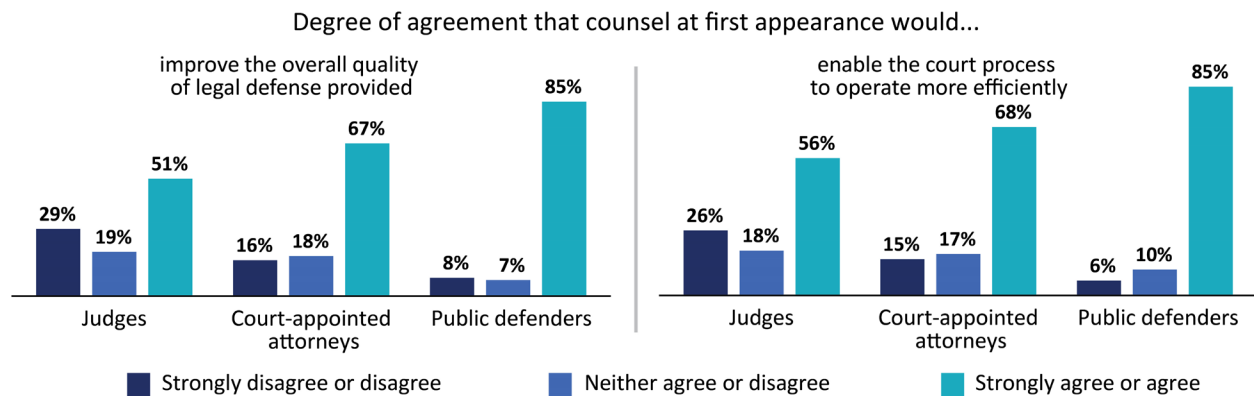
JLARC surveyed Virginia judges, public defenders, and court-appointed attorneys for their perspectives on the potential benefits and implementation challenges associated with the policies of counsel at first appearance and same-day bail hearings.

### Majority of respondents indicated counsel at first appearance could provide benefits but would have implementation challenges

The majority of judges, court-appointed attorneys, and public defenders strongly agreed or agreed that counsel at first appearance could improve the overall quality of legal defense provided to defendants and enhance the efficiency of the court process (Figure K-1).

FIGURE K-1

### Majority of stakeholders expect counsel at first appearance to improve quality of legal defense and enhance court efficiency

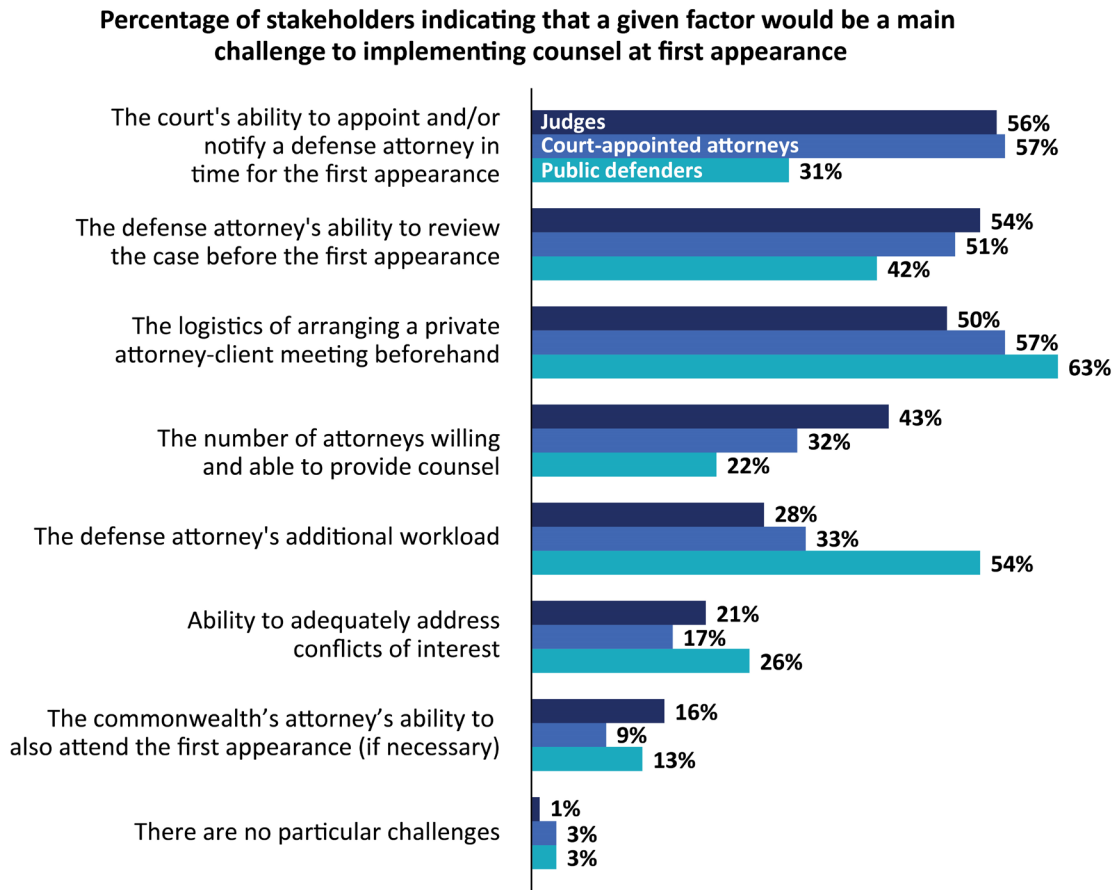


SOURCE: JLARC surveys of Virginia judges, court-appointed attorneys, and public defenders.

NOTE: Percentages may not sum to 100 because of rounding. Responses of "I don't know" were excluded from the analysis.

Nearly all respondents indicated potential challenges to implementation (Figure K-2). The primary challenges relate to the timing of attorney appointments, the ability of attorneys to prepare for the first appearance, and the number of attorneys willing and able to provide counsel at first appearance. Most public defenders also expressed concerns about the additional workload these responsibilities would create.

**FIGURE K-2**  
**Most stakeholders see challenges to counsel at first appearance, particularly in attorney appointments, preparation, and logistics**



SOURCE: JLARC surveys of Virginia judges, court-appointed attorneys, and public defenders.

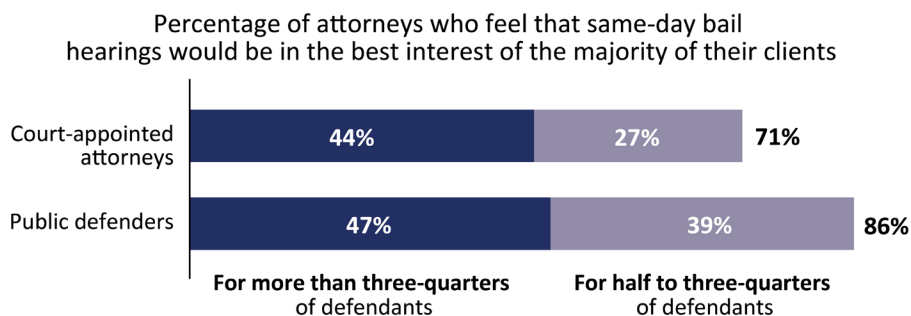
NOTE: Respondents were able to choose up to three responses. Other challenges identified by stakeholders included attorney compensation and stakeholder buy-in.

**Attorneys and judges were divided on benefits of same-day bail hearings; nearly all see challenges to implementation**

Most court-appointed attorneys and public defenders reported that a same-day bail hearing would be in the best interest of a majority of their clients (Figure K-3). Same-day bail hearings may benefit defendants if it leads to an earlier release, but they would not be beneficial if the attorney's inability to fully prepare or the court's lack of access to needed information worsens bail outcomes for defendants.



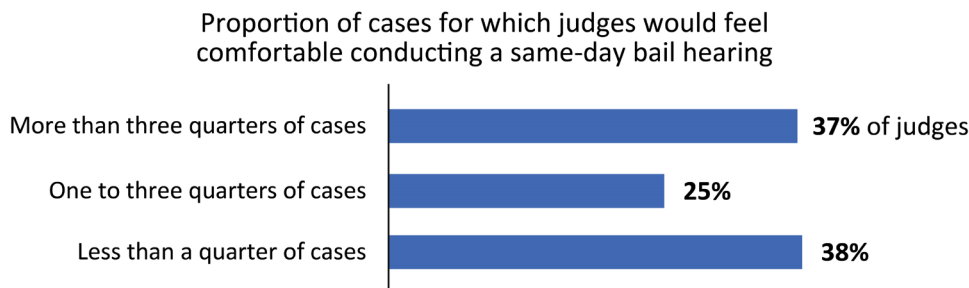
**FIGURE K-3**  
**Most attorneys believe that same-day bail hearings would be in the best interest of the majority of their clients**



SOURCE: JLARC surveys of Virginia court-appointed attorneys and public defenders.  
 NOTE: The remaining attorneys felt same-day bail hearings would be in the best interest of between 0 and 49 percent of their clients. Responses of "I don't know" were excluded from the analysis.

Judges were divided on whether they would feel comfortable conducting a same-day bail hearing (Figure K-4). Judges have the responsibility to ensure that their bail decisions are well informed for the benefit of the defendant and the public. Differences in their comfort with same-day bail hearings may be due to variation in how much information is available to judges by the first appearance as well as differences in judges' preferences.

**FIGURE K-4**  
**Judges divided on comfort with conducting same-day bail hearings**

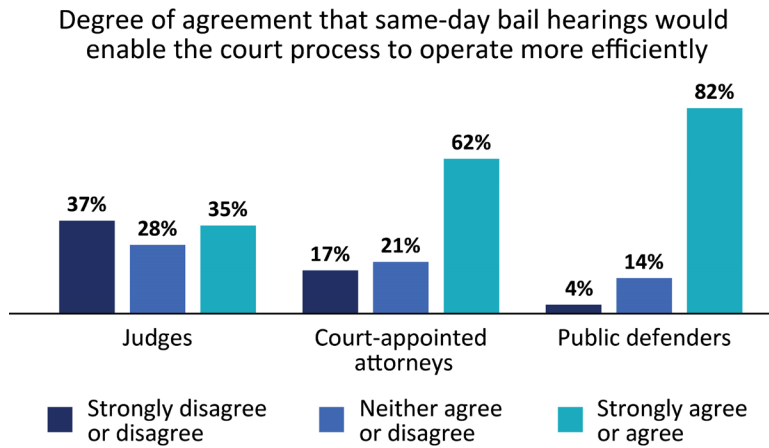


SOURCE: JLARC survey of Virginia judges.

Furthermore, the majority of court-appointed attorneys and public defenders believe same-day bail hearings could improve court efficiency, but judges were again divided in their opinions (Figure K-5).

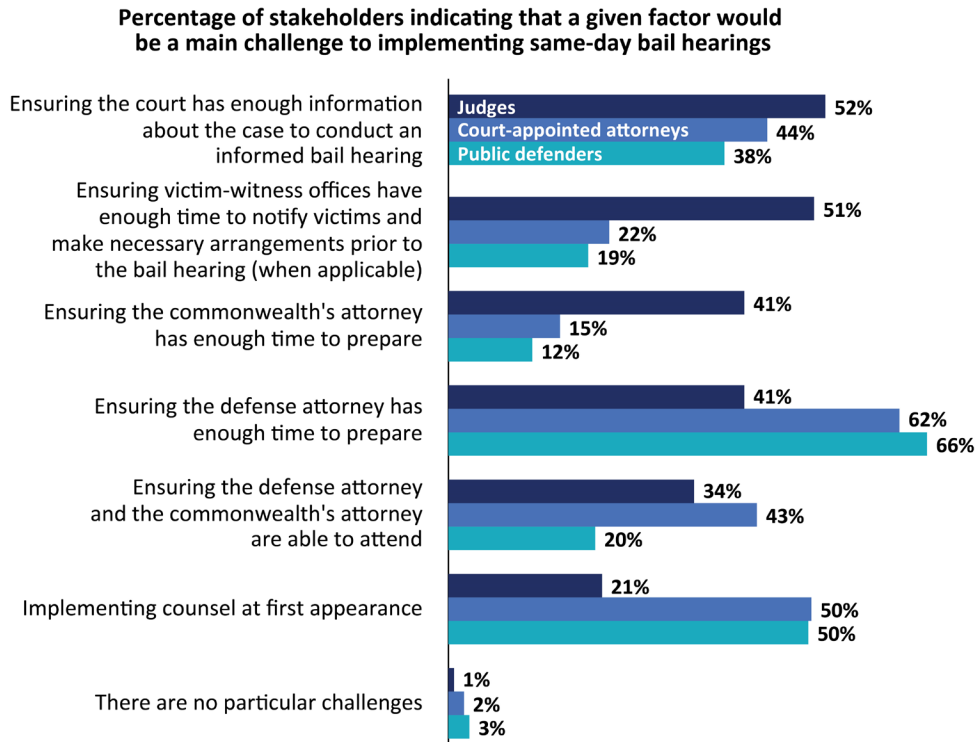
Finally, nearly all stakeholders indicated at least one challenge to implementing same-day bail hearings (Figure K-6). The main challenges include ensuring the court has all information needed for the hearing, safeguarding victims' protections, providing attorneys adequate time to prepare, and implementing counsel at first appearance.

**FIGURE K-5**  
**Most attorneys, but not judges, feel same-day bail hearings could improve court efficiency**



SOURCE: JLARC surveys of Virginia judges, court-appointed attorneys, and public defenders.  
 NOTE: Responses of “I don’t know” were excluded from the analysis.

**FIGURE K-6**  
**Challenges to implementing same-day bail hearings include ensuring information availability, victim notifications and protections, and attorney preparedness**



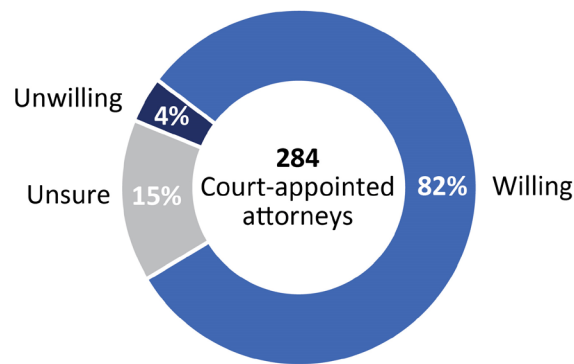
SOURCE: JLARC surveys of Virginia judges, court-appointed attorneys, and public defenders.  
 NOTE: Respondents were able to choose up to three responses. Judges were also provided the option of “impacts to the court docket” (20 percent) and “facilitating the defendant’s presence” (13 percent). Other challenges identified by stakeholders included attorney compensation, ability to adequately check conflicts of interest, stakeholder buy-in, and witness attendance.

**Court-appointed attorneys indicated they would be willing to serve as counsel for first appearance if compensation was appropriate**

If adequately compensated, the vast majority of court-appointed attorneys are willing to provide counsel at first appearance and same-day bail hearings (Figure K-7). Most court-appointed attorneys feel that \$151 or more would be appropriate compensation (Figure K-8).

**FIGURE K-7**  
**Majority of court-appointed attorneys willing to serve as counsel at first appearances and same-day bail hearings**

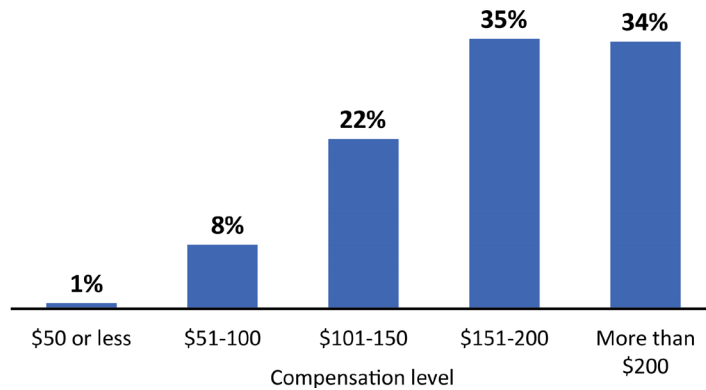
Proportion of court-appointed attorneys willing to provide counsel at first appearance, if adequately compensated



SOURCE: JLARC survey of Virginia court-appointed attorneys.  
 NOTE: Percentages may not sum to 100 because of rounding.

**FIGURE K-8**  
**Two-thirds of court-appointed attorneys feel at least \$151 is needed to compensate for providing counsel at first appearance and same-day bail hearings**

Court-appointed attorneys' views on what level of compensation would be appropriate for counsel at first appearance and same-day bail hearings



SOURCE: JLARC survey of Virginia court-appointed attorneys.  
 NOTE: Compensation would be separate from, or in addition to, the state's existing case compensation amount.

## Appendix L: Options for counsel at first appearance

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Two of the key implementation decisions for counsel at first appearance include how attorneys would be appointed and how attorneys would be compensated. The variety of ways that counsel at first appearance has already been implemented in some Virginia localities and in neighboring states highlights several possible approaches.

### **A duty attorney system could help facilitate earlier appointment of counsel**

Judges and attorneys commonly cited a duty attorney system as one option to improve the feasibility of counsel for first appearance. In a duty attorney system, an attorney is scheduled to be in court on a day when first appearance hearings are held and is available to represent any detained defendants on that day's docket. A duty attorney system would eliminate the need for the court to appoint attorneys on a defendant-by-defendant basis before the first appearance, alleviating the potential challenge of appointing counsel in the short time between a defendant's arrest and first appearance. Under a duty attorney system, the attorney could be appointed to provide representation only at the first appearance or for the entirety of the defendant's case. Attorneys may occasionally find they have a conflict of interest with a defendant whom they are scheduled to represent. When this occurs, clear ethical rules would be needed for how counsel could be provided in the case of a conflict of interest (Chapter 7).

### **Court-appointed attorneys could be compensated for their work in several ways**

A method of compensating attorneys for providing counsel at first appearance would be needed to effectively implement the policy on a wide scale. There are several options and considerations for determining a compensation method. One option is for attorneys to be compensated within the *existing reimbursement structure*, with a rate of \$90 per hour and time applied to the case, subject to relevant statutory reimbursement caps. The estimated 13 minutes of work for this representation would result in compensation of just \$20, on average, for providing counsel at first appearance. This option is the easiest to implement and the least costly but has limitations. Attorneys already meet the statutory reimbursement cap in the majority of their cases and any additional time spent on the case would effectively be uncompensated, which would make it unlikely to attract many attorneys to serve in this role. A second option could be to compensate attorneys at a flat rate. For instance, attorneys could be paid \$90 per case (which is the rate for an hour of work) for providing counsel at first appearance or \$120 (which is the statutory reimbursement cap for the misdemeanor charges). A third option would be to compensate attorneys at the rate they indicated would be appropriate for providing counsel at first appearance, according to the JLARC survey of court-appointed attorneys. The majority of attorneys indicated that \$151 or greater would be appropriate compensation, making it the most costly option for the state.

If implemented statewide, an estimated 15,000–27,000 defendants may need a court-appointed attorney to provide counsel at their first appearance, resulting in an annual cost of \$300,000 to \$5.4 million for attorney reimbursement based on the various options (Table L-1).

**TABLE L-1**  
**Range of court-appointed attorney compensation costs to provide counsel at first appearance and same-day bail hearings**

	\$20 per case <sup>a</sup>	\$90 per case <sup>b</sup>	\$120 per case <sup>c</sup>	\$200 per case <sup>d</sup>
15,000 cases <sup>e</sup>	\$300,000	\$1.4 million	\$1.8 million	\$3.0 million
27,000 cases <sup>f</sup>	540,000	2.4 million	3.2 million	5.4 million

SOURCE: JLARC analysis of data provided by the Office of the Executive Secretary of the Supreme Court (OES), the Department of Criminal Justice Services, and the Virginia State Compensation Board; OES reports; Virginia Indigent Defense Commission reports; and JLARC surveys of court-appointed attorneys.

NOTE: <sup>a</sup>Case payment assumes an average of 13 minutes of work per case at the current pay rate of \$90 per hour. <sup>b</sup>Case payment assumes a flat rate of \$90. <sup>c</sup>Case payment assumes the maximum rate for misdemeanor representation. Under recently proposed legislation on counsel at first appearance, court-appointed attorneys would have been compensated at the misdemeanor representation rate, which is currently \$90 per hour with a cap of \$120 and the option for a fee waiver. <sup>d</sup>The majority of court-appointed attorneys reported that \$151-\$200 or more than \$200 would be adequate compensation (Appendix K), indicating that a rate of \$200 would be acceptable to most court-appointed attorneys. <sup>e</sup>Case number estimate assumes public defenders would be able to cover all cases requiring counsel at first appearance and a same-day bail hearing in their localities, or about 70 percent of the approximately 50,000 cases. Public defenders may be unable to handle all 70 percent of cases because of conflicts of interest. <sup>f</sup>Case number estimate assumes court-appointed attorneys would provide counsel at first appearances and same-day bail hearings for the same percentage of cases as what they currently cover of criminal charges annually (54 percent).

Public defenders may not need additional funding to provide counsel at first appearance and same-day bail hearings. Even without optimal staffing, about two-thirds of public defender's offices are already providing this service to at least some extent. According to the Virginia Indigent Defense Commission, public defenders could provide counsel at first appearance across all cases in their locality if they were able to fully staff the positions allocated to the public defender system. Therefore, any efforts taken to fill existing vacant positions or add additional public defender positions would further facilitate their ability to manage the workload associated with counsel at first appearance.

### **Implementation varies across Virginia localities and other states**

Some Virginia localities and neighboring states offer examples for implementing counsel at first appearance and/or same day bail hearings. The courts served by the Staunton public defender's office and Williamsburg-James City County courts are examples in Virginia. In Maryland and West Virginia, state statute requires counsel at first appearance. In Kentucky, counsel at first appearance is not required by statute but is a priority of the Kentucky Department of Public Advocacy, which manages the state's public defenders.

The National Association for Criminal Defense Lawyers plans to begin piloting counsel at first appearance programs in four additional Virginia localities in 2024, with a final report on defendant outcomes, court efficiency, and implementation costs completed in fall 2025.

### **CASE STUDY L-1**

#### **Staunton public defender's office provides counsel at first appearance in localities it serves (Virginia)**

Public defenders and commonwealth's attorneys make themselves available at pre-scheduled times for first appearances. All pretrial stakeholders work together over email to identify conflicts early, which often enables court-appointed attorneys to be appointed and present in time for first appearances when needed. The pretrial investigative report is completed and available to all stakeholders before the first appearance. At the first appearance, the defense attorney and commonwealth's attorney confer informally on bail, while the judge reads the defendant their rights. If the commonwealth's attorney and defense attorney are unable to reach a consensus, the judge will hold a bail hearing, which usually lasts five to 10 minutes, immediately following the first appearance.

### **CASE STUDY L-2**

#### **Williamsburg-James City County courts provide counsel at first appearance with court-appointed attorneys (Virginia)**

Court-appointed attorneys are generally assigned to cover first appearances two weeks throughout the year (with six months' notice and the flexibility to switch days if needed). Court-appointed attorneys must be available each weekday morning during this period for any first appearances held for detained defendants as well as the weekly non-custody first appearance docket. In cases involving co-defendants or conflicts of interest, judges will reach out to another court-appointed attorney to fill in. Otherwise, unless the defendant retains private counsel, the court-appointed attorney serves as counsel for the entirety of the case. At the first appearance, the attorney meets with their client, and they decide whether they would like to hold the bail hearing that morning or at a later date if more information is needed. Commonwealth's attorneys prepare for same-day bail hearings for all detained defendants on the assumption that the bail hearing will be held. In the majority of cases, the pretrial investigative report is completed and shared with the relevant stakeholders in time for the same-day bail hearing.

**CASE STUDY L-3****Maryland**

Commissioners (i.e., magistrates) determine at commissioner hearings if defendants are eligible for counsel. Eligible defendants are entitled to receive limited representation at commissioner hearings from court-appointed attorneys through a program run by the Maryland Judiciary. Unless the defendant waives counsel, these attorneys will meet briefly with defendants and then represent them at the commissioner hearing while the commissioner considers bail. In recent years, these attorneys have completed this work fully by phone. The representation is limited to the commissioner hearing; the Maryland Office of the Public Defender will appoint a different indigent defense attorney to the defendant for the rest of their case.

**CASE STUDY L-4****West Virginia**

In West Virginia, magistrates initiate the counsel appointment process at “presentation” (e.g., the magistrate hearing) by having the defendant fill out an affidavit, which will then be reviewed by the party who will make the actual appointments (a public defender, judge, or court administrator—depending on the locality). That process generally allows counsel to be notified of the appointment, to check for conflicts, and to meet with the defendant in time for the defendant’s first hearing before a judge.

**CASE STUDY L-5****Kentucky**

Public defenders are usually present in court on days when any first appearances are held for detained defendants, even though the court has not yet determined whether the defendant is eligible for court-appointed counsel. Often, pretrial services staff are able to give the public defenders some indication of the defendants’ eligibility in advance. Public defenders check for conflicts and may provide limited representation in cases of co-defendants for motions to reduce bail. Public defenders try to meet with clients where possible, but even if they cannot, they will try to provide the court with support for their clients’ release at the first appearance.