

COURT-APPOINTED ATTORNEYS, PUBLIC DEFENDERS, AND COMMONWEALTH'S ATTORNEYS

Criminal Indigent Defense and Commonwealth's Attorneys, 2023

RECOMMENDATIONS

Ensuring integrity of court-appointed attorney payment requests ► The General Assembly may wish to consider amending §19.2-163 of the Code of Virginia to require the Judicial Council of Virginia and the Committee on District Courts to set criteria the Office of the Executive Secretary of the Supreme Court of Virginia should use to review payment requests from court-appointed attorneys to identify attorneys with potentially unreasonably high court-appointed workloads or who request payment for an illegitimate number of hours worked. (Recommendation 3)

Reporting unreasonable or potentially illegitimate court-appointed attorney payment requests ► The General Assembly may wish to consider amending §19.2-163 of the Code of Virginia to direct the Office of the Executive Secretary of the Supreme Court of Virginia to review court-appointed attorney payment requests on a quarterly basis and notify the chief judge of the courts in which any court-appointed criminal defense attorney actively practices when a quarterly review of attorney payments shows unreasonably high court-appointed workloads or request for a potentially illegitimate number of hours worked, according to criteria set by the Judicial Council of Virginia and the Committee on District Courts. (Recommendation 4)

Additional support positions for public defenders offices ► The General Assembly may wish to consider including funding in the Appropriation Act for additional mitigation specialist and paralegal positions to lessen public defender office attorney workload. (Recommendation 5)

Clarifying authority to affirm defendants' indigency ► The General Assembly may wish to consider amending § 19.2-159 of the Code of Virginia to clarify that magistrates, notarized pretrial services officers, and notarized jail staff members have the authority to affirm a defendant's sworn financial eligibility statement and request for appointment of a lawyer statement and transmit those statements to the court. (Recommendation 6)

POLICY OPTIONS

Increasing career prosecutor positions ► The General Assembly could include language and funding in the Appropriation Act for the Virginia Compensation Board to increase state funds for career prosecutor pay stipends, limiting the new stipends to qualified attorneys in offices in which attorneys do not receive local salary supplements. (Option 1)

Increasing senior trial attorney positions in public defenders offices ► The General Assembly could include language and additional funding in the Appropriation Act for the Virginia Indigent Defense Commission to expand the number of existing positions designated as senior trial attorney positions across public defender offices. (Option 2)

Establishing pay bands for public defender attorney positions ► The General Assembly could include language and funding in the Appropriation Act for the Virginia Indigent Defense Commission to establish pay bands for public defender attorney positions. (Option 3)

Assessing judges' interest in same-day bail hearings and counsel at first appearance ► The General Assembly could include language in the Appropriation Act directing the Office of the Executive Secretary of the Supreme Court of Virginia to solicit input from the chief judges of all courts on behalf of all affected stakeholders on (i) interest in implementing counsel at first appearance and same-day bail hearings if state funding was available to address barriers; and (ii) logistical barriers that could be addressed if funds were made available. (Option 4)

Helping ensure timely bail decisions ► The General Assembly could amend 19.2-158 of the Code of Virginia to allow defendants who have already presented a bail argument at the first appearance hearing to still request a formal bail hearing in the same court. (Option 5)