

Recommendations and Options: Indigent Criminal Defense and Commonwealth's Attorneys

JLARC staff typically make recommendations to address findings during reviews. Staff also sometimes propose policy options rather than recommendations. The three most common reasons staff propose policy options rather than recommendations are: (1) the action proposed is a policy judgment best made by the General Assembly or other elected officials, (2) the evidence indicates that addressing a report finding is not necessarily required, but doing so could be beneficial, or (3) there are multiple ways in which a report finding could be addressed and there is insufficient evidence of a single best way to address the finding.

Recommendations

RECOMMENDATION 1

The General Assembly may wish to consider amending the Code of Virginia to set higher pay caps for court-appointed criminal defense attorneys representing indigent clients. (Chapter 3)

RECOMMENDATION 2

If the General Assembly chooses to increase court-appointed criminal defense attorney pay caps, it may wish to consider amending the Code of Virginia to establish the following new offense categories for court-appointed attorney payment: (i) violent felonies, (ii) nonviolent felonies, (iii) misdemeanor DWIs, (iv) non-DWI misdemeanors, and (v) juvenile charges. (Chapter 3)

RECOMMENDATION 3

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. (Chapter 3)

RECOMMENDATION 4

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. (Chapter 3)

RECOMMENDATION 5

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. (Chapter 4)

RECOMMENDATION 6

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. (Chapter 7)

RECOMMENDATION 7

The Virginia State Bar ethics committee should study limited representation at first appearances and same-day bail hearings, and if deemed to be appropriate, refer a rule of professional conduct on limited representation at first appearance and same-day bail hearings to the Virginia State Bar Council for review and approval. (Chapter 7)

Policy Options to Consider

POLICY OPTION 1

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. (Chapter 6)

POLICY OPTION 2

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. (Chapter 6)

POLICY OPTION 3

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. (Chapter 6)

POLICY OPTION 4

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. (Chapter 7)

POLICY OPTION 5

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. (Chapter 7)
