



VIRGINIA DEFENDERS

INDIGENT DEFENSE COMMISSION



2021

ANNUAL REPORT

FY21 - COMMISSION MEMBERS AND APPOINTING AUTHORITIES

Chair

Carolyn Grady (Virginia State Bar)

Steven D. Benjamin (Senate of Virginia)

Nicholas Braswell (Governor)

Henry Chambers (Governor)

The Honorable Creigh Deeds (Senate of Virginia)

John G. Douglass (Virginia State Bar)

Artisha Gregg (Senate of Virginia)

Karl R. Hade (Executive Secretary of the Supreme Court)

Charniele L. Herring (Virginia House of Delegates)

Guy W. Horsley, Jr. (Speaker of the House)

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

David D. Walker (Speaker of the House)

Carmen B. Williams (Speaker of the House)

COMMISSION STAFF

Executive Director

David J. Johnson

Deputy Director

Maria Jankowski

Information Technology Director

Jason Hodges

Human Resource Director

Donna Moore

Budget and Finance Director

Solomon Girmay

PUBLIC DEFENDER OFFICES

OFFICE	LOCALITIES SERVED	YEAR ESTABLISHED
Alexandria	City of Alexandria	1987
Arlington	County of Arlington and City of Falls Church	2005
Bedford	City/County of Bedford	1989
Capital Defender (Central)	Cities of Bedford, Charlottesville, Colonial Heights, Emporia, Hopewell, Lynchburg, Petersburg, Richmond, and Counties of Albemarle, Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Caroline, Charles City, Charlotte, Chesterfield, Cumberland, Dinwiddie, Essex, Fluvanna, Goochland, Greensville, Halifax, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond, Surry, Sussex, Westmoreland	2002
Capital Defender (North)	Cities of Alexandria, Fredericksburg, Winchester and Counties of Arlington, Clarke, Culpeper, Fairfax, Fauquier, Frederick, Greene, Harrisonburg, King George, Loudoun, Madison, Orange, Page, Prince William, Rappahannock, Rockingham, Shenandoah, Spotsylvania, Stafford, Warren	2003
Capital Defender (Southeast)	Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and Counties of Accomack, Gloucester, Isle of Wight, James City, Mathews, Middlesex, Northampton, Southampton, York	2003
Capital Defender (Western)	Cities of Bristol, Buena Vista, Covington, Danville, Galax, Lexington, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, Waynesboro and Counties of Alleghany, Augusta, Bath, Bland, Botetourt, Buchanan, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe	2003
Charlottesville	City of Charlottesville and County of Albemarle	1998
Chesapeake	City of Chesapeake	2005
Danville	City of Danville	1990
Fairfax	City and County of Fairfax	1987
Franklin	City of Franklin and Counties of Isle of Wight and Southampton	1989
Fredericksburg	City of Fredericksburg and Counties of King George, Stafford, and Spotsylvania	1990
Halifax	Counties of Halifax, Lunenburg, and Mecklenburg	1990
Hampton	City of Hampton	2005

Leesburg	Counties of Fauquier, Loudoun, and Rappahannock	1988
Lynchburg	City of Lynchburg	1991
Martinsville	City of Martinsville and Counties of Henry and Patrick	1992
Newport News	City of Newport News	2005
Norfolk	City of Norfolk	2002
Petersburg	City of Petersburg	1979
Portsmouth	City of Portsmouth	1986
Prince William	County of Prince William	2020
Pulaski	City of Radford and the Counties of Bland, Pulaski, and Wythe	1988
Richmond	City of Richmond	1986
Roanoke	City of Roanoke	1976
Staunton	Cities of Buena Vista, Lexington, Staunton, and Waynesboro and the Counties of Augusta and Rockbridge	1972
Suffolk	City of Suffolk	1989
Virginia Beach	City of Virginia Beach	1973
Winchester	Counties of Clarke, Frederick, Page, Shenandoah, and Warren, and the City of Winchester	1989

OUR MISSION

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



ABOUT

The Virginia Indigent Defense Commission (VIDC), in conjunction with court-appointed private attorneys, provides legal representation for indigent people accused of criminal offenses.¹

The VIDC oversees 28 public defender offices and 2 satellite offices across Virginia, with a central administrative office that manages the certification of public defenders, as well as private attorneys, seeking court-appointment in criminal cases. The VIDC provides high-quality training to all certified attorneys to continually improve criminal defense representation to vulnerable citizens of Virginia who are not able to hire an attorney of their choosing.



CLARENCE EARL

GIDEON

Clarence Earl Gideon's handwritten petition to the U.S. Supreme Court resulted in a landmark decision on March 18, 1963 that a poor person has the right to a lawyer. At his retrial, Gideon was given a public defender and acquitted.

¹ U.S. Const. Amend. VI. Note that the death penalty was abolished in Virginia effective July 1, 2021.

FY 2021

This was another unprecedented year for the VIDC. After an extensive campaign to educate lawmakers about the agency, its mission, and needs, the agency was given 59 new attorney positions in the FY21 budget. Sadly, the COVID-19 pandemic resulted in the new positions being unallotted in the Spring of 2020.

The late summer and fall of 2020 saw the General Assembly reconvened for a Special Session and the VIDC was thrilled to learn that the new attorney positions were re-allotted with the majority, but not all, of the funding pushed to FY22. The offices with the most acute needs were able to hire immediately, while also allowing all offices to engage in broader recruitment.

Public Defender Offices were able to recruit in the winter and spring to hire for the summer and fall. This allowed the offices to recruit and entice candidates from across the country. All Public Defenders indicated that they experienced the best candidate pool in the agency's history. The new staffing and the ability to recruit in advance led directly to this opportunity.



59

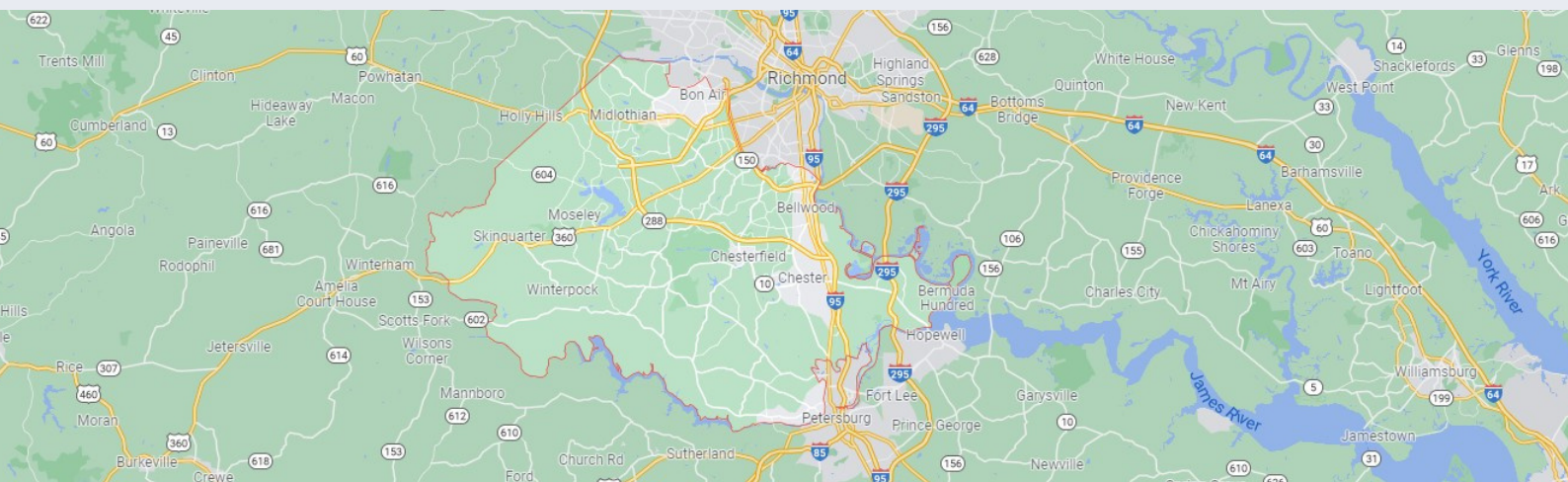
**new attorney positions
in the FY21 budget**



NEW PUBLIC DEFENDER OFFICE

This year saw the General Assembly establishing another new Public Defender Office, this time in Chesterfield County. My'chael Jefferson-Reese was selected to lead this new office.

CHESTERFIELD COUNTY



MY'CHAE JEFFERSON-REESE

Ms. Jefferson-Reese was the Deputy in the Richmond Public Defender Office and has previously served in the Petersburg Public Defender Office. Ms. Jefferson-Reese was born and raised in Chesterfield and currently lives with her family in Chesterfield. She brings a wealth of experience and knowledge to this new role.

NEW LEADERSHIP

Largely due to the pandemic, VIDC saw a record number of retirements this year, many at the Public Defender position. As such, this year the VIDC welcomed an unprecedented seven new Chief Public Defenders.



VIKRAM KAPIL

In the Southwest in Halifax, Vikram Kapil replaced Buddy Ward upon his retirement. Mr. Ward served the VIDC for over 30 years. His legacy in the area cannot be understated. He employed, trained and mentored many of the lawyers, prosecutors and judges in that region. Mr. Kapil was the long serving Deputy Public Defender in Martinsville.



MICHAEL LONCHAR

In Bedford, Michael Lonchar replaced Webster Hogland upon his retirement. Mr. Hogland served the VIDC for over 30 years. He founded the Bedford Office and built it into the solid institution it is today. Mr. Lonchar was the long serving Deputy Public Defender. Both Mr. Lonchar and Mr. Kapil have decades of experience in training and supervising and have excellent trial reputations.

NEW LEADERSHIP



LAKISHI STEVENSON

In Tidewater, LaKishi Stevenson became the new Public Defender in Chesapeake. Ms. Stevenson was the highly regarded and long serving Deputy in Portsmouth. She is a passionate, relentless advocate for her clients and will be an inspirational leader for the office.



ALTHEA MEASE

In Portsmouth Althea Mease replaced Brenda Spry upon her appointment to the Circuit Court bench. Ms. Mease has previously served in every attorney role, starting in Portsmouth then Hampton and finally in Chesapeake. Ms. Mease brings a wealth of trial, supervising and training experience.



LAUREN WHITLEY

In Central Virginia, Lauren Whitley replaced Allen Bareford in Fredericksburg. Ms. Whitley was a Deputy in the Richmond Office and previously served as a Senior Supervisor in the Fairfax Office. With Ms. Jefferson-Reese leading the new Chesterfield office, the Richmond Public Defender Office saw both Deputies advancing after years of outstanding work.

NEW LEADERSHIP



SHAUN HUBAND

In Petersburg, Shaun Huband will replace David Lett August 1, 2021. Mr. Huband is the long serving Deputy in Petersburg and has spent the majority of his legal career in Petersburg. The entire legal community has welcomed Mr. Huband and the transition is expected to be seamless.

Finally, the Commission took the unprecedented step of separating the Leesburg office from the Warrenton Office.

Warrenton, which serves Fauquier and Rappahannock counties, had long functioned as a satellite, but mostly independent, office. In the 33 years since the Leesburg office was established in 1988, the area has completely transformed. Population growth and the resulting traffic and development, as well as demographic changes, made maintaining Warrenton as a satellite office untenable. Both offices were fully staffed as independent offices so the official separation was a smooth transition.

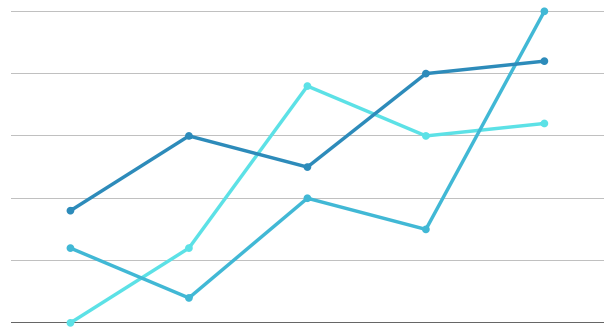


RYAN RUZIC

Ryan Ruzic, the long serving Deputy and de facto Public Defender was selected to continue to lead the Warrenton office.

STAFF SURVEYS

Annual staff satisfaction surveys indicate all new Public Defenders are excelling.



POLICY ENGAGEMENT

Community and policy engagement continued in 2021. In addition to the tens of thousands of cases handled every year across the Commonwealth by the Public Defender offices, the Executive Director, Deputy Director, and many Public Defenders serve on various boards, commissions, committees, and other groups working toward improving the criminal justice system both statewide and in their communities.

The VIDC appreciates the opportunity to engage with other stakeholders to ensure that the unique challenges facing indigent defendants in the Commonwealth are not overlooked.



EQUITY, DIVERSITY & INCLUSION

This new group of Public Defenders is the most diverse group in the agency's history, with four of the seven identifying as minority, and over half are women. Starting in 2020, the VIDC authorized the creation of an Equity, Diversity and Inclusion (EDI) Attorney position.

As mentioned, recruitment, aided by advanced knowledge of staffing increases, was further enriched by this dedicated EDI attorney who was able to cultivate relationships with HBCU law schools and participate at the national level in highly sought-after public interest job fairs. The reallocation of the new positions, in conjunction with the new EDI attorney's work, has greatly advanced the agency's goal of greater diversity.

CAPITAL PUNISHMENT

ABOLISHED IN VIRGINIA

Finally, the single most significant change in 2021 for the VIDC, the Commonwealth, and making news across the country, was the abolition of the death penalty in Virginia. This groundbreaking historic event was due in large part to the decades of phenomenal work of the Capital Defenders. Capital Defenders Steven Milani, Daniel Goldman, Jennifer Stanton and Richard Johnson led an extraordinary group of attorneys, investigators, mitigation specialist and support staff in effectively ending the death penalty in Virginia.

Mr. Milani was the longest serving Capital Defender, founding the office and ending his career “winning” every case, meaning for the entirety of his tenure starting in 2005, no capital defendants received the death penalty. All other offices saw similar success.

VIDC was fortunate to be able to keep many of the Capital Defender Office employees who transitioned to positions in the Public Defender offices. A few opted to take a well-earned retirement. The closing of these offices involved tremendous administrative work on the part of our IT, procurement and lease administrator, but all offices were shut down effective Jun 30, 2021.

As Professor Corinna Lain of University of Richmond's School of Law said in a recent essay “... what Virginia’s dedicated capital defenders have done. They saw who was getting the death penalty in Virginia, and they figured out how to effectively show that these people weren’t the worst of the worst—sometimes to juries, but often to the prosecutors who were pushing death in the first place. Indeed, a large part of the reason why Virginia’s abolition of the death penalty was possible was the fact that Capital Defenders had rendered it largely elusive in any event. Virginia hasn’t seen a new death sentence in ten years, since 2011—and that was reversed on appeal. With the advent of dedicated Capital Defenders, ‘the playing field was leveled,’ explained David Johnson, Executive Director of the Virginia Indigent Defense Commission, adding, ‘and with a level playing field, the death penalty was going away.’ And so it did.”

Source: <https://lawreview.wlulaw.wlu.edu/three-observations-about-the-worst-of-the-worst-virginia-style/>

VIRGINIA CODE § 19.2-163.01

STATUTORY MANDATES

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

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

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

VIRGINIA CODE § 19.2-163.01(A)(2) - Develop initial training courses for attorneys who wish to begin serving as court-appointed counsel, and to review and certify legal education courses that satisfy the continuing requirements for attorneys to maintain their eligibility for receiving court appointments.

The VIDC continues to offer Initial Certification training for attorneys wanting to do court-appointed indigent criminal defense work. Typically this training is offered live three times a year. However, due to the COVID-19 pandemic, all of our Initial Certification training in FY2021 was held via video replay. One hundred and twenty private attorneys seeking initial certification watched the video replay in FY2021. This training is staffed with seasoned public defenders and other VIDC resource attorneys, including our Chief Appellate Counsel, Immigration Attorney, and Certification Attorney.

In addition to content updates and improvements, valuable practice tips are provided throughout the program. This year all the materials were carefully reviewed by multiple experienced attorneys both to ensure they were up-to-date and always with an eye for improvement. The VIDC attorney resource website and other free resources are highlighted for the attendees.

The VIDC continues to provide quality training, free of charge, to the private court-appointed attorneys. All VIDC training is MCLE (Mandatory Continuing Legal Education) approved by the Virginia State Bar. In FY2021, all of our training was done via webcast and open to all certified court-appointed attorneys. This year we offered 37.5 live virtual hours of CLE to over 1,400 private court-appointed attorneys across the state. All VIDC sponsored trainings are eligible to be used by attorneys to maintain their certification status for court appointments. Additionally, the VIDC reviews and approves legal education courses provided by other organizations to determine whether the courses satisfy the requirements for attorneys to maintain their eligibility for court appointments.

A current list of Commission and MCLE-approved courses is provided on the VIDC website at <http://www.vadefenders.org/recertification/> and is updated as new courses are approved.

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

VIRGINIA CODE § 19.2-163.01(A)(3) - Maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed counsel for indigent defendants based upon the official standards. Disseminate the list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of the Supreme Court for distribution to the courts.

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

As of July 15, 2021, the number of certified attorneys totaled 1,802 and the total attorneys certified by case type were as follows: (NOTE: An attorney may be certified for more than one case type.)

Certified Attorneys by Case Type

	2021	2020	Annual Change %
Felony	1557	1578	-1
Misdemeanor	1768	1794	-5
Juvenile	807	847	-1



A list is sent to the Office of the Executive Secretary every four months advising of attorneys who have not been re-certified or who have been removed from the certified counsel list for other reasons. The most recent list of ineligible attorneys was provided on June 1, 2021.

VIRGINIA CODE § 19.2-163.01(A)(4) - Establish official standards of practice for court-appointed counsel and public defenders to follow in representing their clients and guidelines for the removal of an attorney from the official list. Notify the Office of the Executive Secretary of the Supreme Court of any attorney whose name has been removed from the list.

The Standards of Practice for Indigent Defense Counsel in non-capital cases are outlined on the VIDC website. The Standards of Practice complaint process and the complaint form are also located on the website. The Standards of Practice are highlighted in the live certification training and beginning in June 2018 the complete Standards of Practice were included in the manual provided to every attendee.

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

VIRGINIA CODE § 19.2-163.01(A)(5) - Develop initial training courses for public defenders and to review and certify legal education courses that satisfy the continuing requirements for public defenders to maintain their eligibility.

All public defenders must receive the same certification training as any attorney seeking to serve as court-appointed counsel. Public defenders are encouraged to attend one of the live Certification training, however, in an effort to get new public defenders certified as quickly as possible, they are always able to watch a video replay.

In FY2021 all public defenders watched video replays of Initial Certification due to the COVID-19 pandemic. In keeping with the revised Standards of Practice, all public defenders must also complete a three-hour training on defending non-citizens. All public defenders serving as their office's appellate supervisor must attend a specialized appellate training and all public defenders must complete a two-part online appellate training once hired and before handling their first appeal. Finally, every public defender must attend the annual conference.

All newly hired attorneys must attend an intensive week-long "New Public Defender Boot Camp". This training emphasizes trial skills and addresses the rewards and challenges of public defense with the goal of developing a client-centered practice. The program remains staffed by experienced public defender leaders as well as Senior Trial Attorneys who specialize in training. The "Boot Camp" program is one part of an overall strategy to recruit, train, and retain quality attorneys who want to serve as public defenders. In FY2021, we held two virtual boot camps. Each virtual training was four days long and a total of 67 new public defenders were trained.

The 2020 Annual Public Defender Conference was cancelled due to the pandemic. In place of the conference, the Training Department offered a variety of live CLE webcasts throughout FY2021. All of the 37.5 live CLE webcast hours were open to all public defenders, mitigation specialists, paralegals and investigators. These webcasts and the materials were made available to the public defenders through our Sprout Video Replay library as well.

VIRGINIA CODE § 19.2-163.01(A)(6) - Periodically review and report to the Virginia State Crime Commission, the House and the Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the caseload handled by each public defender office.

The VIDC counts cases by the number of individual clients represented, rather than by the number of charges defended. Many cases involve more than one charge. (*See Appendix A, VIDC FY21 Caseload and Charge Data*). These totals include appeals to both the Court of Appeals of Virginia and Supreme Court of Virginia.

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

The VIDC adopted its policies and procedures in November 2006. The policies and procedures are reviewed and updated as necessary, but no less than annually. This year the Commission voted on a new grievance and termination policy as well as a new policy mandating posting and recruiting for all supervisory positions. This last change was in response to employee desire to be made aware of all opportunities for advancement. The policies are accessible electronically to all employees via the VIDC intranet and MOAT, the IT security training program. All employees must acknowledge receipt of the Policies as part of the annual IT security training.

VIRGINIA CODE § 19.2-163.01(A)(14) - Report annually on or before October 1 to the Virginia State Crime Commission, the House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed pursuant to §19.2-159 or subdivision B2 of §16.1-266.

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

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

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

State-to-state comparisons are difficult because the structure and funding of indigent defense systems vary nationwide. Pursuant to Va. Code § 19.2-163, an attorney appointed to represent an indigent defendant in Virginia is compensated at an hourly rate set by the Supreme Court. The total amount or cap to be paid is set by statute and may not exceed \$120.00 for a misdemeanor in general district court, \$1,235.00 for a felony charge where the maximum period of confinement is more than 20 years, and \$445.00 for any other felony in circuit court. Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 years or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases. These caps, even with the initial waiver, remain some of the lowest in the nation. For a comparative look at the states see (Appendix B, *State Comparisons Chart*).

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

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

According to the Supreme Court, during the writ stage each appeal is looked at on its own basis. Where there is a dismissal based on a procedural default the attorney receives nothing. Otherwise, generally, there is a minimum payment of \$400 and maximum of \$1200. In the case of a guilty plea, Alford plea, Anders petition, or probation violations there is a flat rate of \$400, whether or not there is oral argument. For other types of writ cases, there is a base rate of about \$400, where there is no oral argument. The attorney will receive \$400 if the petition is generally the same as the petition filed in the Court of Appeals. If there is a new petition, where the attorney substantively addresses the Court of Appeals in the argument sections, there will be a bump of, generally, \$100. If it is a complicated case, like a capital non-death or a case with voluminous transcripts, additional money may be considered. If there is an oral argument, whether before the panel of Justices or Chief Staff Attorney, there is another increase of, generally, \$100. However, to get the \$100, it has to be more than just showing up for the argument and relying on brief. There are slight adjustments downward if the case is only a misdemeanor.

What results in the difference between the range of \$400 and \$1200 is type of appeal; substantive oral argument; and whether there is a "new" petition in the Supreme Court. All this is only for the writ stage not for merit cases in the Supreme Court of Virginia.

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

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

APPENDIX A: VIDC FY21 CASELOAD DATA

Office Caseload FY2021 (including Appeals)

Office	Total Cases	Charges
Alexandria	1132	2151
Arlington	1477	2645
Bedford	756	1476
Charlottesville	1647	3051
Chesapeake	3279	6955
Danville	1707	2958
Fairfax	4892	8408
Franklin	956	2235
Fredericksburg	4878	10301
Halifax	1200	2219
Hampton	2516	4394
Leesburg	3158	4955
Lynchburg	1934	3746
Martinsville	1585	2617
Newport News	4132	8902
Norfolk	4016	7918
Petersburg	1326	2610
Portsmouth	2722	5750
Prince William	3667	7657
Pulaski	1622	2942
Richmond	5398	10234
Roanoke	2839	5045
Staunton	3516	7056
Suffolk	1798	4125
Virginia Beach	6332	10673
Winchester	2378	4044

APPENDIX B: STATE COMPARISONS CHART

STATE	HOURLY RATE	CAPS	AUTHORITY/NOTES
Alabama	\$70	Capital Case: No cap Class A Felony: \$4,000 Class B Felony: \$3,000 Class C Felony: \$2,000 Juvenile: \$2,500 All Other Cases: \$1,500	Code of Ala §15-12-21 (2016) Counsel shall be entitled to reimbursement of non-overhead expenses, with expenses exceeding \$300 subject to advance approval by the trial court.
Alaska	\$60 in-court \$50 out-of-court	Misdemeanor - Guilty Plea, No Contest Plea, or Dismissal: \$400 Misdemeanor - Trial: \$800 Felony - Guilty Plea, No Contest Plea, or Felony - Trial: \$4,000 Probation Violation - Misdemeanor: \$350 Probation Violation - Felony: \$1,000	2 AAC 60.010 (1986) (Alaska Administrative Code)
Arizona	Varies	Varies (Judicial discretion)	A.R.S. § 13-4013 (2005) "Compensation for services
Arkansas	\$90-\$110 - Capital \$70-\$90 - Homicide, Class Y or A \$60-\$80 - Other Felony \$50-\$80 - District, Juvenile, or Probate	N/A	A.C.A. § 16-87-211 (2001) Statute directs the Arkansas Public Defender Commission to set guidelines for court-appointed attorney compensation. Hourly rates provided by the Arkansas Public Defender Commission (2012).
California	Varies	Varies	Cal Pen Code § 987.2 (2002) Ca. Pen Code § 987.3 (1973) The court determines reasonable compensation.
Colorado	\$95 - Capital Cases \$85 - Type A Felony \$80 - Type B Felony, Juvenile \$75 - Misdemeanor, Traffic \$75 - Travel	Class 1 Felony & unclassified felonies Class 2 Felony, DF 1 felonies: \$13,000 Class 3-6 Felonies, DF 2-4 felonies: \$8,000 Misdemeanors, Traffic, & Petty Offenses: \$3,000 (with trial), \$1,500 (without trial) Juvenile: \$5,500 (trial)/\$2,750 (without trial)	C.R.S. 21-2-101 (2007) C.R.S. 21-2-103 (2018) Describing when alternate defense counsel (as opposed to a public defender) would be appointed to represent an indigent defendant. Chief Justice Directive 04-04 (Amended July 2018) Provides alternate defense counsel hourly rates and fee caps.
Connecticut	\$75 - Felonies, serious Juvenile \$50 - Misdemeanor \$100 - Capital felony	Where flat rate compensation contracts Judicial District cases: \$1,000 Geographical Area cases: \$350 Juvenile Delinquency cases: \$350	Conn. Gen. Stat. § 51-291 (2012) By statute, the Chief Public Defender establishes the compensation for court-appointed attorneys. Division of Public Defender Services, Assigned Counsel Frequently Asked Questions (last visited July 2019) Cases are paid on an hourly rate or a flat fee and are assigned as such pursuant to the contract with the attorney. The bulk of case assignments are done through flat rate contract agreements.
Delaware	\$60 in Superior Court \$50 in Supreme Court	Felony: \$2,000 (per attorney) Misdemeanors: \$1,000 (per attorney)	Delaware Rules of Criminal Procedure, Rule 44 (2016) & Rules of the Supreme Court of the State of Delaware, Rule 26 (2019). Rules includes provisions for exceeding caps.
District of Columbia	\$60 - in-court \$40 - out-of-court Can seek up to \$75 in certain cases	Felony: \$7,000 (per attorney) Misdemeanor: \$2,000 (per attorney)	18 U.S.C. § 3006A (2010) "The compensation maximum amounts...shall increase simultaneously by the same percentage, rounded to the nearest multiple of \$100, as the aggregate percentage increases in the maximum hourly compensation rate paid pursuant to paragraph (1) for time expended since the case maximum amounts were last adjusted" - Statute includes provisions for exceeding caps.
Florida	Flat Fees	Capital: \$25,000 Life Felonies: \$9,000 Noncapital, Nonlife Felonies: \$6,000 Misdemeanors & Juveniles: \$1,000 Appeal: \$9,000	Fla. Stat. § 27.5304 (2018) Statute includes provisions for exceeding caps.
Georgia	By contract	By contract	O.C.G.A. § 17-12-22 (2011) Georgia Public Defender Standards Council contracts with individual attorneys for conflict appointment. State Bar of Georgia: Appointed Work for Attorneys. Certain localities which have opted out of the state system set their own compensation rates for court-appointed attorneys.

Hawaii	\$90	Felony: \$6,000 Misdemeanor (jury trial): \$3,000 Misdemeanor (jury waived): \$1,500 Petty Misdemeanor: \$900 Appeals: \$6,025.50	HRS § 802-5 (2015) Statute includes provisions for exceeding caps.
Idaho	Set by contract either by the local board of county commissioners or by the court	Set by contract either by the local board of county commissioners or by the court	Idaho Code § 19-859 (2014) Compensation varies by each locality, largely set by the board of county commissioners, but judges can set the compensation rates in individual cases.
Illinois	Reasonable Fee as set by the Court In Counties with populations greater than 2 million people: \$40 - in-court \$30 - out-of-court	Reasonable Fee as set by the Court In Counties with populations greater than 2 million people: Felony: \$1,250 Misdemeanor: \$150	725 ILCS 5/113-3 (2000) Statute includes provisions for exceeding caps.
Indiana	Set by the Court – per the Indiana IDC, hourly rates range from \$30-\$60, with the majority of counties going with \$40 for out-of-court time and \$50 for in-court time The Indiana Public Defender Commission requires a \$90/hour rate in all Commission counties (roughly 2/3 of counties in Indiana) \$124 - Death Penalty \$73 - Class A Felony \$68 - Class B Felony \$63 - All other cases	N/A	Burns Ind. Code Ann. § 33-40-8-2 (2004) states that “a judge shall establish the fee to be paid to an attorney or attorneys for providing services to poor people.” Indiana Public Defender Commission can recommend standards for indigent defense.
Iowa		Adult Cases: Class A Felony: \$18,000 Class B Felony: \$3,600 Class C Felony: \$1,800 Class D Felony: \$1,200 Aggravated Misdemeanors: \$1,200 Serious Misdemeanors: \$600 Simple Misdemeanors: \$300 Misdemeanor appeals to District Court: Contempt/Show Cause: \$300 Probation/Parole violations: \$300 Juvenile Cases : Delinquency: \$1,200 Juvenile Court Review: \$300 Judicial Bypass Hearings: \$180 Juvenile Commitment Hearings: \$180 Juvenile Petition on Appeal: \$600 Motion for Further Review after Petition	Iowa Code § 13B.4 (2017) - Flat fee contracts Iowa Code § 815.7 (2019) - Hourly rates Iowa Code § 815.10A (2013) Statute includes provisions for exceeding caps. State Public Defender Administrative Rules Chapter 12.6 (2017) Provides the attorney fee caps.
Kansas	\$80 (Negotiable) \$75 - Assigned Attorneys	Non-tried cases - Felony 1-5: \$1,500 Felony 6-10: \$1,125 Probation Revocations: \$400 Tried cases - Felony 1-3, off-grid felony offenses, felony Felony 4, felony drug offenses 2-5: \$3,000 Felony 5-10: \$2,4000	K.S.A. § 22-4507 (2007) The Court can negotiate a lower hourly rate with attorneys willing to accept court appointments. If appropriations for payments are insufficient, the state board of indigent’s defense services can establish a formula for pro rata payments. Kansas Administrative Regulations 105-5-2, -6, -7, -8. Provides generally for the hourly rates and caps, as well as provisions for exceeding caps. It appears that localities set caps for misdemeanor cases. See Douglas County Kansas Rules and Suggestions for Completing Misdemeanor Vouchers
Kentucky	Set by contract by the Department of Public Advocacy	Set by contract by the Department of Public Advocacy	KRS § 31.235 (2002) The court shall pay reasonable and necessary fees but not in excess of fees established by the Department of Public Advocacy.
Louisiana	Flat fee contracts	Flat fee contracts	La. R.S. 15:147(C)(1) (2017) The Louisiana Public Defender Board enters into contracts with attorneys to provide indigent defense services.

Maine	\$60	Murder: Fee set by Executive Director Class A: \$3,000 Class B and C (against person): \$2,250 Class B and C (against property): \$1,500 Class D and E (Superior or Unified Criminal Court): \$540 Probation Revocations: \$540 Juvenile: \$540	15 M.R.S. § 810 (2018) 4 M.R.S. § 1804(3)(F) (2019) The Maine Commission on Indigent Legal Services sets the rate for court appointed counsel. Code of Maine Rules § 94-649, Chapter 301 (2011). Provides the hourly rates and caps.
Maryland	Same hourly rate as federal panel attorneys. Panel attorneys are paid \$50 for most cases and \$75 cases involving potential life sentence	District Court - federal misdemeanor Circuit Court - federal felony Juvenile Court - federal felony	Md. Criminal Procedure Code Ann. § 16-207 (2008) The Public Defender prepares schedules for fees and expenses for panel attorneys. Code of Maryland Regulations 14.06.02.06 (2018). Attorneys are compensated at the same hourly rate as federal panel attorneys.
Massachusetts	\$100 - Homicide \$68 - Superior Court non-homicide \$50 - District Court \$53 - Children/Family Law, Sex Offender, Mental Health	Annual cap on billable hours: 1,650	ALM Gl ch. 211D, §11 (2018) <i>Note: Counsel may not accept new appointments or assignments after billing 1,350 billable hours, except in homicide cases. Care and Protection cases which are handled by Children and Family Law division are paid \$55/hr, while Children in Need of Services are paid at the \$53/hr. there is a waiver provision allowing the Chief Counsel to increase the annual hours to 1,800 in Care and Protection cases.</i>
Michigan	Set by the Court	Set by the Court	MCLS § 775.16 (2013) The statute covers appointment of counsel, but the case law notes following the statute state that the court sets the rates.
Minnesota	State Board of Public Defense determines rates	State Board of Public Defense determines rates	Minn. Stat. §611.215(2)(c)(3) (2007) State Board of Public Defense responsible for appointment of counsel and collection of costs. Minn. Stat. §611.27 (2014). The state's obligation for the costs of the public defender services (including court-appointed attorney fees) is limited to the appropriations made to the Board of Public Defense.
Mississippi	Set by the Court	Circuit Court: \$1,000 Court not of record: \$200 Capital Cases: \$2,000 Appeals to State Supreme Court: \$1,000	Miss. Code Ann. §99-15-17 (1980)
Missouri	Flat fee contracts Jury Trial - \$1,500 for 1st day, \$750 for each additional day (partial days prorated) Bench Trial - \$750/day, prorated	Murder first degree: \$10,000 Other homicide: \$6,000 Felony Class A/B - Drugs: \$750 Felony Class A/B - Other: \$1,500 Felony Class A/B - Sex: \$2,000 Felony Class C/D/E - Drugs: \$750 Felony Class C/D/E - Other: \$750 Felony Class C/D/E - Sex: \$1,500 Misdemeanor: \$375 Juvenile - Non-violent offense: \$500 Juvenile - Violent offense: \$750 Probation Violation: \$375 Direct Appeal: \$3,750	§600.042 R.S.Mo. (2019) The state Public Defender contracts with private attorneys for legal services. §600.021 R.S.Mo. (1986) The commission contracts with private attorneys to provide defense services. Missouri State Public Defender Website – https://publicdefender.mo.gov/private-counsel-opportunities/mspd-contracting/panel-rates/
Montana	Non-Capital - \$56	Statute allows for fixed fee contracts	47-1-121, MCA (2019) The Public Defender Commission adopts rules to provide
Nebraska	Set by Court or Public Defender Commission	N/A	R.R.S. Neb. §29-3927 (2014) Public Defender Commission is responsible for determining compensation rates for contracting attorneys and court-appointed attorneys. R.R.S. Neb §29-3905 (1990) Allows the court to fix reasonable expenses and fees.

Nevada	\$125 - Capital cases \$100 - all other cases	Capital, or life case: \$20,000 Felony not punishable by death or life in Misdemeanor: \$750 Gross Misdemeanor or Felony Appeal: Misdemeanor Appeals: \$750	Nev. Rev. Stat. Ann. §7.125 (2013) Statute includes provisions for exceeding caps.
New Hampshire	\$100 – Major Crimes \$60 – all others	Homicides under RSA 630:1-2 (per co-Felony – Sexual Assault: \$8,000 Felony: \$4,100 Misdemeanor: \$1,400 Supreme Court Appeals: \$2,000	Rules of the Supreme Court of the State of New Hampshire, Rule includes provisions for exceeding caps.
New Jersey	\$60 - in-court \$50 - out-of-court \$252 - full day (per diem) \$60 – in-court (appellate cases) \$50 – out-of-court (appellate cases) \$250 – oral argument (appellate cases)	N/A	N.J. Stat. §2A:158A-7 (1994) Public Defender establishes compensation with contract attorneys. OPD Pool Attorney Application Process (2019) These guidelines set the current rates.
New Mexico	Flat-fee contracts generally First degree murder and first degree felonies – \$85 \$42.50 travel time	Can vary by district 1 st Degree Murder: \$5,400 1 st Degree Felony (Life Imprisonment): 1 st Degree Felony: \$800 or \$750 2 nd Degree Felony: \$780 or \$700 3 rd Degree Felony: \$750 or \$645 4 th Degree Felony: \$650 or \$540 Juvenile: \$350 or \$300 Misdemeanor Trial: \$180 Retrial: Half the Original Fee	N.M. Stat. Ann. §31-15-7 (2014) Public Defender to establish fee schedule for court appointed counsel. Public Defender Contract Counsel Sample Contract (2018) Lists flat fee schedules on pages 19-20.
New York	\$75 – Felony both in and out of court \$60 – Misdemeanor both in and out of	Felony: \$4,400 Misdemeanor: \$2,400	NY CLS County §722-b (2004) Statute includes provisions for exceeding caps.
North Carolina	\$90 - Capital Cases, Appeals, & post-conviction \$75 - Class A-D felony \$60 – Class E-I felony \$55 - All other cases resolved in District court \$60 - All other cases resolved in Superior Court \$60 - Parole and post-release revocation hearings \$55 – Competency Cases \$75 – Non-Capital Appeals and Post-Conviction (A-D Felony) \$60 – All other Non-Capital Appeals and Post-Conviction	No caps in general Capital – cannot bill more than \$35,000 pre-trial, \$10,000 for mitigation, or \$10,000 for investigation	N.C. Gen. Stat. § 7A-498.5 (2015) Office of Indigent Defense Services responsible for setting rates. Private Assigned Counsel Rates were updated December 1, 2018.
North Dakota	By contract, flat fee or hourly rates According to Commission office, standard monthly contract rate is \$75/hr.	Felony - \$575 Misdemeanor - \$300 Juvenile - \$450 Post-conviction - \$1350 Appeal - \$2,250	N.D. Cent. Code, § 54-61-02 (2017) Commission on Legal Counsel has authority to set fees. N.D. Cent. Code, § 29-07-01.1 (2013) Lawyers representing indigent persons must be compensated at a reasonable rate determined by the commission on legal counsel for indigents. Presumed Rate for Attorney Fee Reimbursement (2019) Provides the presumed rates for cases as determined by the Policy on Payment of Extraordinary Attorney Fees (last Provides policy for exceeding caps, as well as the caps themselves.

Ohio	\$75 - in-court or out-of-court \$125 - death penalty cases, both in-	Adult Aggravated Murder (w/ specs) - no fee Aggravated Murder (w/o specs) - Murder - \$10,000 Felony with Possible Life Sentence/Repeat Felony (degrees 1-2) - \$8,000 Felony (degree 3) - \$5,000 Felony (degrees 4-5 - \$3,500 Misdemeanor (degrees 1-4) - \$2,000 Misdemeanor OVI/BAC - \$2,500 Contempt - \$500 Probation violations - \$750 Preliminary Hearings - \$300 Sex Offender - \$750 Juvenile Aggravated Murder (w/ specs) - no fee Aggravated Murder (w/o specs) - \$7,500/1 Murder - \$6,000 Felony (degrees 1-2) - \$5,000 Felony (degrees 3-5) - \$3,500 Misdemeanor - \$2,000 Misdemeanor OVI/BAC - \$2,500 Contempt - \$500 Probation violations - \$750 Sex Offender - \$750 Appellate Level Proceedings Death Sentence - no fee maximum Cumulative Minimum Sentence exceeds 25 Felony (degrees 1-2) - \$5,000 Felony (degree 3) - \$3,500 Felony (degrees 4-5 - \$2,500 Felony Plea - \$1,500 Misdemeanors - \$2,000 Felony: \$3,500 Misdemeanor, Juvenile, Traffic: \$800	ORC Ann. 120.33 (2017) The Board of County Commissioners shall establish a schedule of fees by case or an hourly basis. The County must file an up-to-date fee schedule with the Ohio Public Defender, who then will reimburse up to the maximum set by the Ohio Public Defender State Maximum Fee Schedule. Statute includes provisions for exceeding caps. Ohio Public Defender Standards and Guidelines for Appointed Counsel Reimbursement (2019). Manual on Ohio Public Defender's website that provides the hourly rates and caps. https://analytics.das.ohio.gov/t/PUBPUB/views/OhioFeeSchedulesStory3/Story1?iframeSizedToWindow=true&:embed=y&:showAppBanner=false&:display_count=no&:showVizHome=no&:render=true
Oklahoma	Flat-fee contracts		22 Okl. St. §1355.8 (2001) Statute includes provisions for exceeding caps.
Oregon	\$61 - Capital lead counsel \$46 - Capital co-counsel \$46 - Non-capital cases	N/A	ORS §151.216 (2018) The Public Defense Services Commission adopts guidelines regarding the fair compensation of appointed counsel. Public Defense Payment Policy and Procedures (2019)- Provides guidelines for obtaining an increase in the set hourly rates (section 2.2). Also sets out the hourly rates (Exhibit 2).
Pennsylvania	Set by the Court	Set by the Court	16 P.S. §9960.7 (1969) Attorney to be rewarded reasonable compensation to be fixed by the Court.
Rhode Island	\$100 - Murder \$90 - Class 1 Felony \$60 - Class 2 Felony \$50 - Misdemeanor Appeal (Superior \$30 - Violation of Court Order (non- \$85 – Criminal Appeal \$85 – Misc. Appeals & Petitions Some courts provide \$200/day or Family Court: \$30 – \$50 – DUI \$50 – Misdemeanor	Murder: \$30,000 Class 1 Felony: \$10,000 Class 2 Felony: \$5,000 Misdemeanor Appeal (Superior Court): Violation of Court Order (non-payment of Criminal Appeal: \$5,200 Misc. Appeals & Petitions: \$5,200 Family Court Dependency/etc.: \$1,000 DUI: \$2,500 Misdemeanor: \$1,500	General Laws of Rhode Island §8-15-2 (1969) Statute cited in Executive Order (see below) which provides chief justice of the court to ensure that court-appointed attorneys are paid in a fair and equitable fashion. Supreme Court Executive Order re Indigent Defense Service Payment Rates (2019) - Provides the hourly rates and caps. Additional case types included beyond those listed.
South Carolina	\$60 - in-court \$40 - out-of-court	Felony: \$3,500 Misdemeanor: \$1,000	S.C. Code Ann. §17-3-50 (2007) Includes provisions for exceeding hourly rates and caps. In 2013 SC created a contract program which contracts with private attorneys to handle non-capital criminal conflict cases for a flat fee. Therefore the hourly rates and caps are rarely if ever apply anymore.

South Dakota	\$97	N/A	S.D. Codified Laws § 23A-40-8 (1983) Reasonable amount to be paid based upon guidelines established by the presiding judge of the circuit court. Office of the State Court Administrator re 2019 Court-Appointed Attorney Fees and Mileage Provides the hourly rate.
Tennessee	<i>Non-Capital Cases</i> \$50 - in and out of court <i>Capital Cases</i> Lead Counsel: \$100 Co-Counsel: \$80 Post-conviction: \$80	First Degree Murder or Class A or B felony Felony other than First Degree Murder or Class A or B felony: \$4,000 Preliminary hearings for felonies, juvenile charged w/non-capital felony: \$1,500 Misdemeanor, probation violation: \$1,000 Contempt of Court, parole revocation:	Tennessee Supreme Court Rule 13 (checked 2019) Rule includes provisions for exceeding caps (see specifically section 2(e)(1)).
Texas	Court sets rate	Court sets fee	Texas Code of Criminal Procedure Article 26.05 (2019) Counsel to be paid a reasonable fee as set by the court.
Utah	Rate per guidelines set by the county or municipality	Rate per guidelines set by the county or municipality	Utah Code Ann. § 78B-22-302 (2019) Utah Code Ann. § 78B-22-203 (2019) Attorney shall be paid reasonable compensation by the court.
Vermont	\$50	Felony with possible life sentence or death penalty: \$25,000 Other major felony: \$5,000 Minor felony or Juvenile: \$2,000 Misdemeanors & all other proceedings: \$1,000 Appeals: \$2,000	13 V.S.A. § 5205 (1982) The Supreme Court shall set reasonable rates of compensation. Vt. A.O. 4 § 6 (1993) Administrative Order of the Supreme Court. Provides the hourly rates and caps, as well as provisions for exceeding the caps.
Virginia	\$90	Felony with 20 years or more sentence (resolved in district court or circuit court): \$1,235 Other felony (resolved in district court or circuit court): \$445 Misdemeanor in Circuit Court: \$158 District Court cases (misdemeanors, felony preliminary hearings where the felony was not resolved in district court): \$120	Va. Code § 19.2-163 (2009) Fee cap waivers are available up to an additional \$120 for misdemeanors or juvenile cases in the district court (unless the juvenile case is a class 2 felony, then the waiver amount could equal up to an additional \$650). Felony charges with a penalty of 20 year or more can receive an additional waiver of up to \$850. Other felony charges may receive an additional waiver of up to \$155. With approval of the judge, Virginia also allows for a second level waiver in certain cases. Rev. Code Wash. (ARCW) §36.26.090 (1969) The court shall provide reasonable compensation to a court-appointed attorney.
Washington	Set by Court	Set by Court	W. Va. Code §29-21-13a (2019) Statute includes provisions for exceeding caps.
West Virginia	\$80 - in-court \$60 - out-of-court	Felony offenses with possibility of life in prison: court discretion All other cases: \$3,000	Wis. Stat. § 977.08 (2018)
Wisconsin	\$70 - in-court and out-of-court.	N/A	Wyoming Rules of Criminal Procedure Rule 44(e) (2019)
Wyoming	\$100 - in court \$35-\$60 - out-of-court	N/A	