



**VIRGINIA  
DEFENDERS**

VIRGINIA INDIGENT DEFENSE COMMISSION

# INDIGENT CRIMINAL DEFENSE OVERVIEW

VIRGINIA STATE GOVERNMENT  
JUDICIAL BRANCH



**INDEPENDENT**  
STATE AGENCY OF VIRGINIA

# VIRGINIA STATE GOVERNMENT

The Virginia State Government is made up of **three parts called branches**. Each branch has a different function, or purpose. These branches make sure that Virginia laws agree with the state constitution.

## LEGISLATIVE BRANCH

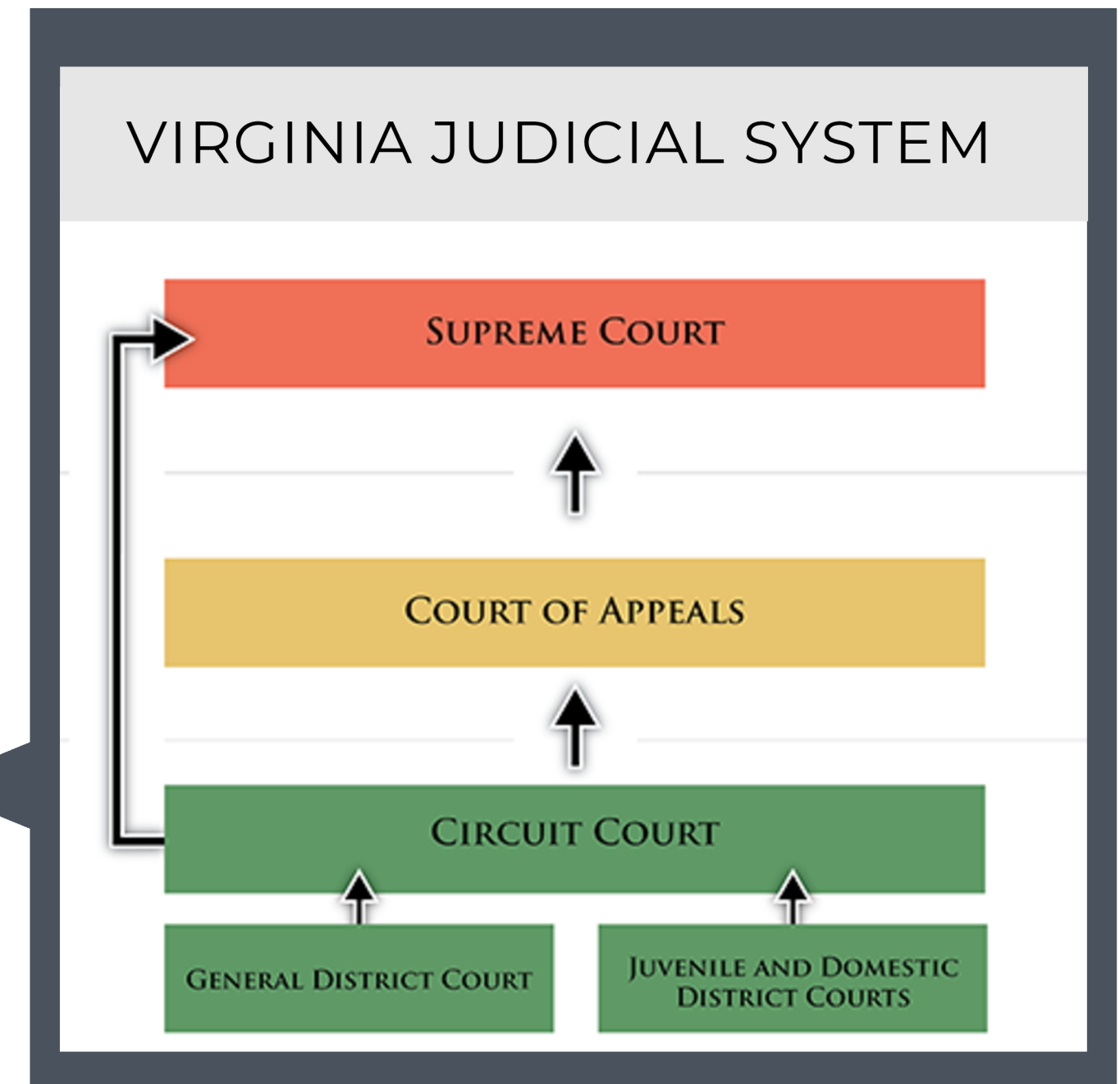
The General Assembly is the legislative branch of Virginia's government. It is divided into two parts: the Senate and the House of Delegates. The Senate has 40 members called senators and the presiding officer is the Lieutenant Governor. Senators are elected to serve for four years. The House of Delegates has 100 members called delegates who are elected to serve for two years. The presiding officer is the Speaker. This branch of government makes state laws.

## EXECUTIVE BRANCH

The Governor heads the executive branch of the state government and is elected for a four-year term. He or she makes sure that state laws are carried out. The governor also is responsible for signing all new laws.

## JUDICIAL BRANCH

The judicial branch of Virginia is the court system. The highest officials in the judicial branch include justices and judges. The courts decide cases about people accused of breaking the law and whether or not a law agrees with Virginia's constitution.



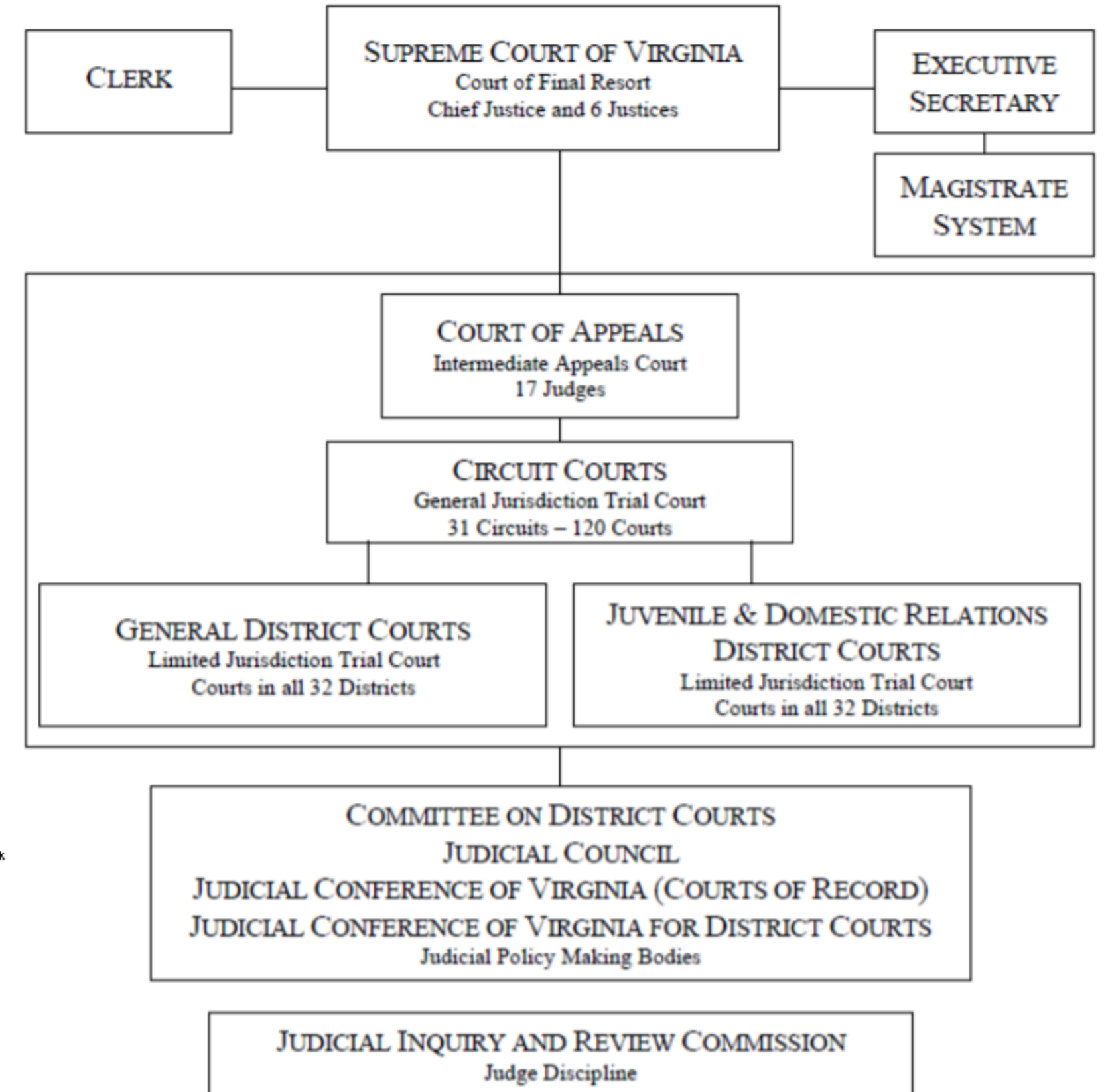
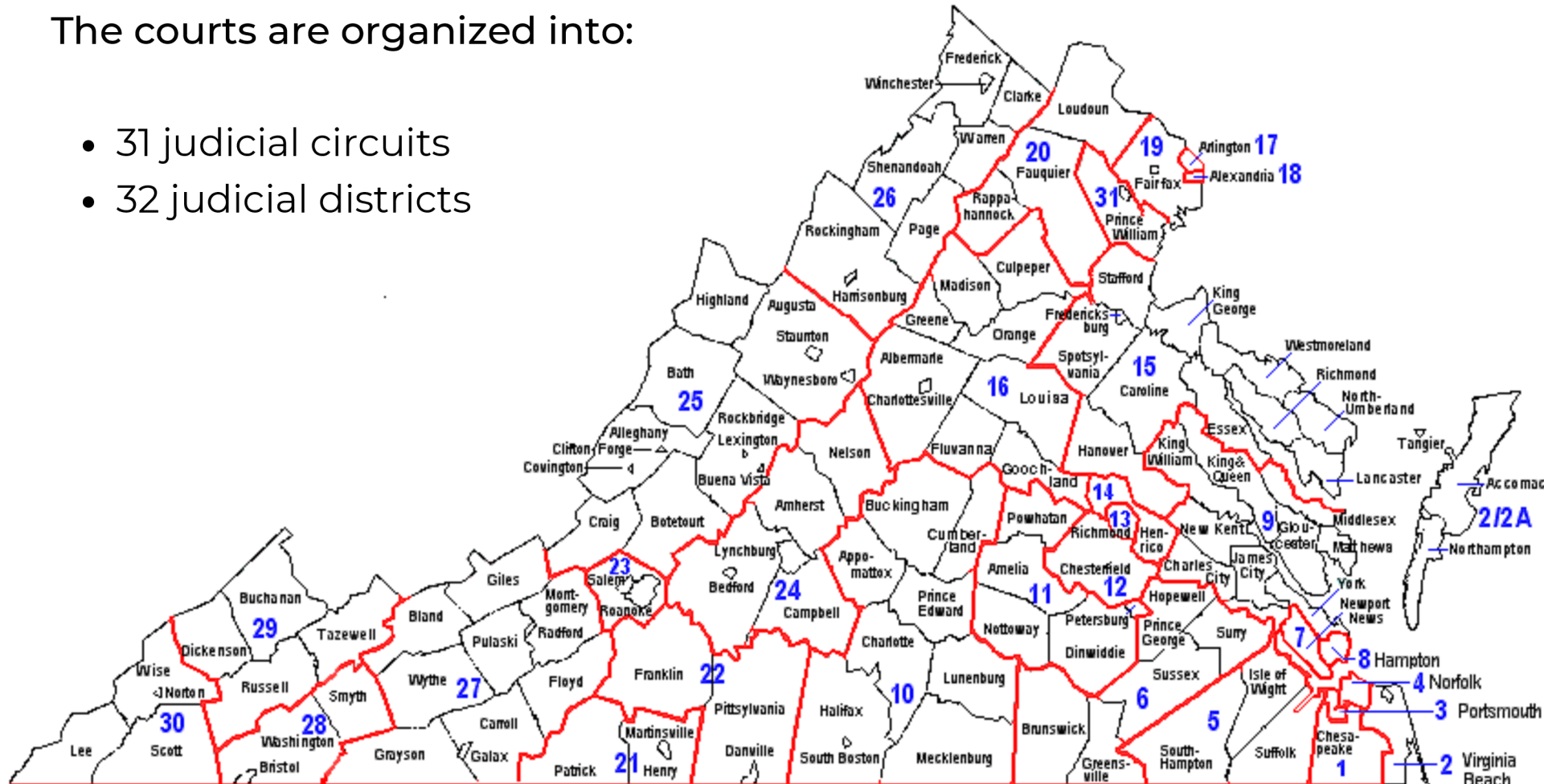
# VIRGINIA COURT SYSTEM

The present system consists of four levels of courts:

- Supreme Court
- Court of Appeals
- Circuit Courts
- District Courts

The courts are organized into:

- 31 judicial circuits
- 32 judicial districts





# DISTRICT COURTS

Within the 32 districts of the state, there are district courts in every city and county. Virginia's unified district court system consists of:

- **General District Courts**
- **Juvenile and Domestic Relations District Courts**

## GENERAL DISTRICT COURT

The General District Court hears all criminal cases involving misdemeanors under state law and offenses that are violations of ordinances and laws of the county or city where the court is located. A misdemeanor is any charge that carries a penalty of up to one year in jail or a fine of up to \$2,500, or both. District courts do not conduct jury trials.

The General District Court also holds preliminary hearings in felony cases, which are cases involving offenses that may be punishable by imprisonment of more than one year. At a preliminary hearing, the court determines whether there is sufficient evidence to justify holding the defendant for a grand jury hearing. The grand jury determines whether the accused will be indicted and held for trial in the circuit

The general district court also hears cases in which a person is charged with a traffic infraction as well as civil cases in which the amount in question does not exceed \$25,000, except for personal injury and wrongful death cases in which the amount in question does not exceed \$50,000. *\*Civil matters are NOT eligible for court-appointed counsel.*





# JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

The Juvenile and Domestic Relations District Court in Virginia handles cases involving:

- children accused of delinquent acts, traffic violations or status offenses
- children in need of services or supervision
- children who have been subjected to abuse or neglect, or abandoned
- children whose custody, visitation, support, or parentage is before the court
- children in foster care and former foster youth in the Fostering Futures Program
- children for whom relief of custody or termination of parental rights is sought
- children seeking emancipation or work permits
- children whose eligibility for federal or state benefits requires certain findings by the court
- family or household members who have been subjected to or accused of abuse
- adults accused of child abuse or neglect, or of offenses against a family or household member
- spouses seeking support after separation
- enforcement of support orders
- court-ordered rehabilitation services
- court consent for certain medical and mental health treatments
- court-ordered blood testing of minors

As with the general district courts, all parties subject to a juvenile and domestic relations district court order or judgment may appeal the decision to the circuit court.

## TERMS DEFINED

- A child is any person under the age of 18.
- A child is adjudicated “delinquent” when a court finds that the child has committed an act that would be a crime if committed by an adult.
- A “status offender” is a child who has committed a certain action that, if committed by an adult, would not be considered a criminal offense - such as a curfew violation.
- A “child in need of supervision” is one who habitually and unjustifiably is absent from school or runs away from home.
- A “child in need of services” needs treatment, rehabilitation or services to keep the child or his family safe, and the intervention of the court is required.
- “Child abuse and neglect” cases involve the improper care or injurious treatment of children.

# CIRCUIT COURTS

The only **trial court** of general jurisdiction in Virginia is the circuit court. The Circuit Court has jurisdiction over the following:

## CRIMINAL CASES

- all felonies, which are offenses that may be punished by imprisonment of more than one year
- misdemeanor offenses that were appealed from district court or originated from a grand jury indictment
- transfer or certification of felony offenses committed by juveniles

## APPEALS

- appeals from the general district court or juvenile and domestic relations district court (heard de novo)
- appeals from administrative agencies

## CIVIL ACTIONS

- shared jurisdiction with general district courts of monetary claims of more than \$4,500 but not exceeding \$25,000 and claims not exceeding \$50,000 in personal injury and wrongful death cases
- exclusive original jurisdiction of most monetary claims exceeding \$25,000
- attachments
- validity of a county or municipal ordinance or corporate bylaw
- divorce proceedings
- wills, trusts and estate matters
- property disputes
- adoption proceedings

\*Civil matters are NOT eligible for court-appointed counsel.

# COURT OF APPEALS OF VIRGINIA

The Court of Appeals of Virginia provides appellate review of circuit court decisions in civil, criminal, and administrative agency cases, and final decisions of the Virginia Workers' Compensation Commission.

The Court of Appeals consists of seventeen judges. The Court sits in panels of at least three judges, and panel membership rotates on a random basis. Although the Clerk's Office is based in Richmond, the Court hears arguments in four regions to provide litigants throughout the Commonwealth convenient local access to the Court.

Most appeals to the Court of Appeals are a matter of right. The Commonwealth must petition the Court of Appeals if it wishes to appeal a decision in a criminal case pursuant to Virginia Code §17.1-406(A). The Court of Appeals also has jurisdiction to hear interlocutory appeals and petitions for review of injunctions through a discretionary petition process. The Court has original jurisdiction to issue writs of mandamus (ordering a public official to perform their duty), prohibition (ordering a public official to stop an action), and habeas corpus (ordering the official with custody to produce the detained person to the Court so it can determine whether such custody is proper) in any case over which the Court would have appellate jurisdiction. It also has jurisdiction in writs of actual innocence based on nonbiological evidence.

The decisions of the Court of Appeals are final in pre-trial Commonwealth's appeals, appeals involving involuntary treatment of prisoners, and appeals involving denial of a concealed handgun permit. In pre-trial Commonwealth's appeals, however, if a defendant is convicted, he or she may seek review of the pre-trial appeal ruling on direct appeal. All other decisions of the Court of Appeals are appealable to the Supreme Court.



# SUPREME COURT OF VIRGINIA

Although the Supreme Court of Virginia possesses both original and appellate jurisdiction, its primary function is to review decisions of lower courts. Virginia does not allow an appeal to the Supreme Court as a matter of right except in cases involving the State Corporation Commission and the disbarment of an attorney.

The Court's original jurisdiction is limited to cases of habeas corpus (ordering one holding custody to produce the detained person before the Court for the purpose of determining whether such custody is proper), mandamus (ordering the holder of an office to perform his duty), prohibition (ordering a public official to stop an action), and actual innocence (based on biological testing). The Supreme Court also has original jurisdiction in matters filed by the Judicial Inquiry and Review Commission relating to judicial censure and retirement, and removal of judges.

## ADMINISTRATION

The Chief Justice of the Supreme Court serves as the administrative head of Virginia's Judicial System. The Chief Justice is charged with overseeing the efficient and effective operation of the entire system. Assisting in this task is the Executive Secretary of the Supreme Court, who is the state court administrator.

The Office of the Executive Secretary (OES) provides administrative assistance to the courts of the Commonwealth and to Virginia's magistrates through its eleven departments.

# COURT-APPOINTED COUNSEL



indigent adjective

 Save Word

in·di·gent | \ 'in-di-jənt  \

Definition of *indigent*

1 : suffering from extreme poverty : IMPOVERISHED

## ELIGIBILITY FOR COURT-APPOINTED COUNSEL

Eligibility for court-appointed counsel is based on the total amount of available funds of the accused (including net income and assets) as described in § 19.2-159. See next page

Total available funds must be equal to or below 125% of the federal poverty income guidelines prescribed for the size of the household of the accused.

		HOUSEHOLD SIZE*							
		1	2	3	4	5	6	7	8
19,563	WEEKLY (52)	376	508	641	773	905	1,037	1,169	1,302
	2 WEEKS (26)	752	1,017	1,281	1,546	1,810	2,075	2,339	2,603
	2X MONTH (24)	815	1,102	1,388	1,675	1,961	2,247	2,534	2,820
	MONTHLY (12)	1,630	2,203	2,776	3,349	3,922	4,495	5,068	5,641
	ANNUALLY (1)	19,563	26,438	33,313	40,188	47,062	53,938	60,813	67,688

\* Federal Poverty Guidelines plus 25% (Source: Federal Register / Vol. 90/ January 17, 2025/ pp. 5917-5918)

(Add \$6,875 for each additional member in households of more than eight.)

\*Household Size: includes total number of persons residing in the home that the defendant has financial responsibility for, including the defendant.

## § 19.2-159 Determination of indigency; guidelines; statement of indigence; appointment of counsel

A. If the accused shall claim that he is indigent, and the charge against him is a criminal offense that may be punishable by confinement in the state correctional facility or jail, subject to the provisions of § 19.2-160, the court shall determine from oral examination of the accused or other competent evidence whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

B. In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

1. The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

2. All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments.

The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in the first paragraph of this subdivision.

3. If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.



# COURT-APPOINTED COUNSEL IN VIRGINIA

## PUBLIC DEFENDERS VS PRIVATE CERTIFIED ATTORNEYS


### COURT DETERMINATION:

The defendant is determined to be indigent and therefore eligible for court-appointed counsel.



### OFFICE OF THE PUBLIC DEFENDER:

The client is accepted for representation by the Office of the Public Defender.



**EXCEPTIONS:** If the jurisdiction lacks a public defender office, the public defender is unable to represent the defendant by reason of conflict of interest, or the court finds that appointment of other counsel is necessary to attain the ends of justice, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01.

### PRIVATE CERTIFIED COURT-APPOINTED ATTORNEYS

These private attorneys have completed the required VIDC Initial Certification process in order to be considered on the list for court-appointed cases. Private certified attorneys typically take court-appointed cases in addition to cases accepted through their private practice. Private certified attorneys are NOT employed by the VIDC nor do they work in an Office of the Public Defender. However, they are required to complete the same training and certification requirements as our Public Defenders. Private certified attorneys are also required to comply with the VIDC Standards of Practice.

# COURT-APPOINTED ATTORNEY CERTIFICATION

## § 19.2-163.03. Qualifications for court-appointed counsel (and public defenders)

### INITIAL CERTIFICATION REQUIREMENTS

#### MISDEMEANOR CASES

- Be an active member of the Virginia State Bar
- Complete the VIDC Initial Certification Training - Part 1 (8.0 hours)  
Misdemeanor/Felony

#### FELONY CASES

- Be an active member of the Virginia State Bar
- Complete the VIDC Initial Certification Training - Part 1 (8.0 hours)  
Misdemeanor/Felony
- Demonstrate participation as either lead counsel or co-counsel in four (4) felony cases from their beginning through to their final resolution, including appeals if any

#### JUVENILE CASES

- Be an active member of the Virginia State Bar
- Complete the VIDC Initial Certification Training - Part 1 (8.0 hours)  
Misdemeanor/Felony AND Part 2 (4.0 hours) Juvenile (12.0 hours total)
- Be previously Felony Certified or simultaneously seeking Felony Certification
- Demonstrate participation as either lead counsel or co-counsel in four (4) Juvenile cases in JDR from their beginning through to their final resolution, including appeals if any

### RE-CERTIFICATION REQUIREMENTS

Court-Appointed Counsel Certification expires after two (2) years.

Virginia Indigent Defense Commission (VIDC) approved MCLE courses completed within the past two (2) years can be used towards Re-Certification.

#### MISDEMEANOR & FELONY CASES

- Requires 8 hours of approved CLE credit
- Two (2) of the hours mentioned above shall cover the representation of individuals with behavioral or mental health disorders and individuals with intellectual or developmental disabilities as defined in § 37.2-100

#### JUVENILE CASES

- Requires the previously mentioned 8 hours + 4 hours of approved CLE on representing juveniles (12 hours total)