



2013 Appropriation Act Language

Item 72. D of the 2013 Appropriation Act allows for delinquent fees to be adjusted to reflect the costs of collections (up to 17% initially and up to 25% after 180 days)

Item 72.D

“In accordance with the provisions of § 19.2-349, Code of Virginia, attorneys for the Commonwealth may, in addition to the options otherwise provided by law, contract with or employ individuals, or other state or local agencies, to assist in collection of outstanding fines, costs, forfeitures, penalties, and restitution. Notwithstanding any other provision of law, the amounts owed and collected shall be increased, up to a maximum of seventeen percent, to reflect the costs associated with employing or contracting with such agencies or individuals. The attorneys for the Commonwealth are authorized to increase the amount up to twenty-five percent if the amount owed is more than 180 days delinquent. These fees shall be paid on a contingency basis out of the proceeds of the amounts collected..”

Recommendations Regarding Fines and Costs Collections

- The amount of the additional fine should be uniform throughout the Commonwealth. We suggest that the language be amended to state that “the amounts owed and collected shall be increased by seventeen percent, to reflect the costs associated with employing or contracting with such agencies or individuals.”

Recommendation #2: Eliminate Increase in Collection Charge After 180 Days

- ~~“The attorneys for the Commonwealth are authorized to increase the amount up to twenty-five percent if the amount owed is more than 180 days delinquent”~~

Recommendation #3

Write-off Uncollectable Debts

- **Classic examples of debts that may never be collected:**
- Death row inmate owes the Commonwealth over \$2 million in fines, court costs, restitution, and attorney's fees.
- Defendant is currently incarcerated serving an extended sentence, has multiple felony convictions, and no real prospect of employment upon release.
- Habitual offenders who continue to receive convictions and fines for driving suspended or revoked. These individuals are often low income (or unemployed), were initially suspended for failure to pay fines, continued to drive and receive further convictions and suspensions of their driver's license. They enter into a vicious cycle of owing additional monies and receiving additional suspensions. They cannot extricate themselves from these circumstances.

Recommendation #4:

Extend the time period in which an account is designated as delinquent from 30-60 days, thereby saving collection costs.



2010 Appropriation Act

The 2010 Appropriation Act assumed savings of \$3.5 million each year from the Criminal fund as a result of:

The Committee on District Courts, in consultation with the Virginia Association of Commonwealth's Attorneys and the Virginia Indigent Defense Commission, developed policies and procedures to reduce the number of misdemeanor charges for which the Commonwealth would seek incarceration, thereby reducing expenditures through the Criminal Fund for court-appointed counsel or for public defenders.

Tracking Waivers of Jail Time on Misdemeanor Offenses

- Allocated between fifty-six jurisdictions, Commonwealth's Attorneys waive jail time an average of 1,107 cases per week. This translates to a minimum savings of **\$6,907,680 per year**, not including fee waivers. This amount **DOES NOT** include waivers from the remaining sixty four jurisdictions so the true savings is likely **DOUBLE**.

Tracking Waivers of Jail Time

- Appointing counsel after the Commonwealth has waived jail time:
 - Wastes tax payer money
 - Creates more work for general district court clerks, who must then fill out the court appointed paper work as well as time sheets and fee cap waiver forms.
- It is important to develop a mechanism for both tracking monies saved and for insuring that scarce resources are not wasted.

Other Areas for Potential Savings

CONFLICT OF INTEREST CASES

“However, if the Circuit Court determines that the appointment of such attorney for the Commonwealth is not appropriate or that such attorney is unavailable, or *for other good cause*, then the circuit court may appoint an attorney-at-law who shall be compensated pursuant to §19.2-332.”

§19.2-155 Disqualification or temporary disability of Commonwealth;
appointment of substitute

Commonwealth's Attorneys should handle ALL special prosecutions

- Some judges resist appointing Commonwealth's Attorneys to handle conflict of interest cases and other special prosecutions.
- Appointing Commonwealth's Attorneys or their Assistants rather than private attorneys to special prosecutions saves the Commonwealth millions of dollars each year.

Examples of Cost Savings:

- In 2007, Botetourt County Commonwealth's Attorney prosecuted election fraud charges against the former mayor of Gate City.
- Total cost to the Commonwealth = \$3,000.
- Two private attorneys were appointed to prosecute an election fraud case in neighboring Wise County.
- The total cost to the Commonwealth: \$150,000.

Special Prosecutions

Example of Cost Savings

Commonwealth's Attorneys

- In FY 2008, Commonwealth's Attorneys were reimbursed a total of \$23,400 for out-of-pocket expenses incurred for all special prosecutions that year.

Private Attorneys

- In FY 2008 and FY 2009, private attorneys were paid \$236,000 for handling special prosecutions in just seven counties in Southwest Virginia.

Example of Cost Savings

- Commonwealth v. Michael Gardner, required two attorneys, numerous motions days, an eight day jury trial, and a one day sentencing event. Two special prosecutors devoted 325 hours to this case, the child molester was brought to justice, and the Commonwealth only paid out-of-pocket expenses. **If a private attorney had been appointed to handle this case, the cost to the citizens of Virginia would have been in excess of \$29,000.**

Example of Cost Savings

- From January 1, 2012-October 1, 2013, Henrico County Commonwealth's Attorney Shannon Taylor and her Assistants have handled twenty-one special prosecution cases for other jurisdictions. Several of these cases have not yet gone to trial, however, Ms. Taylor and her assistant prosecutors spent 410 hours seeing sixteen (16) of these cases through to completion. **If private attorneys had been appointed to handle these cases, the Commonwealth would have paid \$36,900, plus expenses.**

The Commonwealth Spends Twice as Much Defending Criminals

- In FY 2013, the Commonwealth appropriated \$42,972,997 for public defenders, paid \$57,635,324 in court-appointed counsel fees, and an additional \$3,894,777 in fee cap waivers for a grand total of **\$104,503,098**. By contrast, according to the Compensation Board, the Commonwealth paid **\$60,745,119** to cover the salaries of Commonwealth's Attorneys, Assistant Commonwealth's Attorneys, and support staff **as well as office supplies and other necessities** in FY 2013.
- In FY 2012, the Commonwealth allocated \$42,619,377 for public defenders, paid \$56,744,819 in court-appointed counsel fees, plus an additional \$4,199,880 in fee cap waivers for a grand total of **\$103,564,076**. By contrast, the Commonwealth paid **59,787,560** to cover salaries of Commonwealth's Attorneys, Assistant Commonwealth's Attorneys, and support staff as well as office supplies, equipment, and other necessities in FY 2012.
- In FY 2011, the Commonwealth allocated \$42,972,997 for public defenders, paid \$55,982,752 in court-appointed counsel fees, and an additional \$3,800,327 in fee cap waivers for a grand total of **\$102,706,076**. By contrast, the Commonwealth paid **\$60,474,098** to support all prosecutorial efforts in FY 2011.
- **(These amounts DO NOT INCLUDE Guardian Ad Litem Fees)**

Potential For Additional Savings: CAP Guardian Ad Litem Fees or Limit Appoints in Criminal Cases

Court Appointed Defense Attorney Fee Caps

GD, J&D Misdemeanors	\$120
Class III or IV Felony	\$445
Class II Felony	\$1,235

Court Appointed Guardian Ad Litem Fee Caps

- **NO CAPS**



Compensation For Assistant Commonwealth's Attorneys Continues to Be a Significant Concern

- A study in September 2012 shows that, compared to Virginia's attorneys in the private sector, similarly situated attorneys working for the Commonwealth of Virginia receive **91% less!**
- The 2013 budget included \$2.1 million GF in FY 2014 to provide a \$3,308 per year salary increase for Assistant Commonwealth's Attorneys as well as a two percent increase.
 - FY 2013 funding increased starting salaries from \$45,385 per year to \$49,601
 - This amendment was presented as the first year of a two year plan to raise starting salaries to \$52,000 per year

Over 400 Additional Duties

Including Prosecuting Violations of Regulations and Filing Civil Legal Actions for the:

- ✓ Department of Labor
- ✓ Department of Agriculture
- ✓ Department of Mines and Mining
- ✓ Department of Forestry
- ✓ Washington Metropolitan Airport Authority
- ✓ Air Pollution Control Board
- ✓ Milk Commission

Other Public Attorneys Have Paid Been Higher Salaries Over a Longer Period

- The Commonwealth paid an Assistant Public Defender I in Northern Virginia **\$8,674 more each year from 2007-2013. The cumulative difference is that these public defenders earned \$52,044 more during this period than an Assistant Commonwealth's Attorney.**
- **An Assistant Public Defender I in other areas of the state was paid \$2,798 more each year than an Assistant Commonwealth's Attorney for a cumulative difference of \$16,788 during this time period. These amounts do not include two retention bonuses paid to public defenders in all salary levels in 2007 and 2012.**

Average Law School Debt Prohibits Many Qualified Lawyers From Working as Assistant Commonwealth's Attorneys

- The average 2012 Virginia law graduate owes more than \$116,000 in law school debt alone.
- For example, the average 2012 University of Virginia School of Law graduate owes \$122,721 while the average 2012 Washington and Lee Law graduate owes \$111,825, and a 2012 William and Mary Law graduate owes \$94,852.
- These numbers do not include the median national average owed for undergraduate debt of \$28,270.
- With a combined educational debt of approximately \$144,270 and high monthly student loan payments, few law school graduates are able to live off of an Assistant Commonwealth's Attorney's salary.