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INCREASING EQUITY THROUGH MITIGATION

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VIRGINIA DEFENDERS

CHARLOTTESVILLE PUBLIC DEFENDER



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DISCLAIMER

The author conducted this study as a part of the program of professional education at the Frank Batten School of Leadership and Public Policy, University. This paper is submitted in partial fulfillment of the course requirements for the Master of Public Policy degree. The judgments and conclusions are solely those of the author, and are not necessarily endorsed by the Batten School, by the University of Virginia, or by any other agency.

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HONOR STATEMENT

On my honor as a University of Virginia student, I have neither given nor received unauthorized aid on this assignment.

- Tyler S. Sesker

A handwritten signature in black ink, appearing to read 'Tyler S. Sesker', with a stylized, flowing script.

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ACRONYMS

ACRJ: Albemarle-Charlottesville Regional Jail
VIDC: Virginia Indigent Defense Commission
UVA: University of Virginia
SCOTUS: Supreme Court of the United States
ABA: American Bar Association
MSW: Master of Social Work
BOP: Bureau of Prisons

TERMS

Mitigation: Mitigation is the evidence gathered related to the personal life story of a criminal defendant to be used to mitigate punishment in a court proceeding. This information can include mental health records, physical health records, school records and interviews with family and friends.

Mitigation Specialist: A mitigation specialist is a criminal defense team member who collects background material about a criminal defendant to persuade a judge or jury to a lesser sentence. Mitigation specialists can also provide services to criminal defendants throughout the course of their case that can range from assistance in applying for public assistance to finding rehab facilities. At the time of sentencing a mitigation specialist works to mitigate the length of a sentence through the information and material collected, which will be compiled into a mitigation memo. Mitigation specialists are different than public defenders as they do not typically have legal degrees and therefore are unable to give legal advice. While attorneys have the responsibility to represent the law to their clients, mitigation specialists can focus solely on what the client wants even if it not their best legal option.

Defendant: A defendant is the individual accused of a crime.

Capital Punishment: Capital punishment is the term describing the sentencing of criminal defendants to death based upon eligible crimes. In the Commonwealth of Virginia capital punishment has been abolished since 2021. The charge of capital murder was replaced with aggravated murder, which carries a minimum sentence of life in prison.

Criminal Offenses: Criminal offenses are conduct that violate criminal laws. Criminal offenses include arson, murder, assault, and robbery.

Criminal Case: Criminal cases are a type of court proceeding in which an individual is charged by federal, state, or a local government with a crime. Criminal cases carry the burden for the prosecutor of proving the defendant guilty beyond a reasonable doubt. Until found guilty, the defendant is to be considered innocent. If found guilty an individual can be sentenced to a variety of punishments including imprisonment, fines, or probation.

Court-Appointed Counsel: Court-appointed counsel describes any legal counsel appointed by the courts. Eligibility for court-appointed counsel is based upon the financial status of the defendant. Counsel is only appointed in criminal cases, with the possibility of jail or prison time. Civil cases

are not eligible for court-appointed counsel. Court appointed counsel can include both private attorneys paid for by the court and public defenders.

Public Defender: A public defender is an attorney who represents indigent clients in criminal cases. They are appointed by a judge and paid for by county, state, or federal governments. Appointment of a public defender is dependent on social economic status determined by different qualification questions.

Criminal Defendant: A criminal defendant is an individual that has been criminally charged in a court of law.

Criminal Defense: Criminal defense is the legal defense of an individual in a criminal case. Criminal defense attorneys typically practice as public defenders or private attorneys. Public defenders are appointed to a criminal case once an individual has a first appearance, and private attorneys are hired at any point by the criminal defendant.

Indigent: Indigent is a term describing an individual's circumstance of extreme poverty.

Prosecution/Prosecutor: The prosecution is the party representing the interests of the state and its people. In most criminal cases, they are titled to indicate the accused individual versus the state (ex. The People of the State of California v. Orenthal James Simpson). The prosecution is made up of prosecutors who argue their case on behalf of the state. In Virginia, the prosecution is commonly referred to as the Commonwealth.

Death Row: Death row describes individuals within a prison who have been sentenced in a capital punishment case, waiting to be executed.

Criminal Justice: Criminal justice are all the laws, rules, and agencies combined created for the management and punishment of individuals accused of a crime.

Criminal Justice System: The criminal justice system is made up of law enforcement, the judicial system, and the correctional system. Law enforcement patrols communities and specified areas within their jurisdiction with the goal of preventing crimes. Police arrest those accused of crimes, leading them into the judicial system. The judicial system is made up of attorneys, the judge, and they jury. Once an individual has been accused of a crime they come before the judge and jury where their case may go to trial at which point they will be found not guilty or guilty by a jury of their peers. If found guilty an individual will be introduced to the correctional system where they will enter the Bureau of Prisons.

EXECUTIVE SUMMARY

The need for criminal justice reform in the United States continues to grow every day. Currently the United States, has a higher incarceration rate than any other country in the world (Equal Justice Initiative, 2020). The criminal justice system is impacted by a variety of factors including race, class, and gender in ways that create an inequitable system for some individuals. The negative consequences are felt heavily among individuals who find themselves impacted by mental health issues, financial struggles, and prior history with the criminal justice system. Mitigation and mitigation specialists work to reduce the inequities that exist within the criminal justice system, by placing a spotlight on those factors that introduce an individual to the criminal justice system.

On February 14, 2018, Nikolas Cruz walked into Parkland High School where he proceeded to shoot thirty-four people, killing seventeen of them (Levenson et al., 2022). For many there was very little question about the factor of guilt or innocence. The question surrounded whether the death penalty should be imposed in this case. Jurors would go on to hear about Mr. Cruz's troubled upbringing marred by abuse and having been exposed to heavy drinking while his mother was pregnant with him (Levenson et al., 2022). These mitigating factors resulted in the jury opting to sentence Mr. Cruz to life imprisonment (Levenson et al., 2022). These mitigating factors were collected and compiled through the work of his mitigation specialist, Kate O'Shea. The work done in this case is not dissimilar to what is done throughout the country by mitigation specialists. They are trained and skilled in showing that a defendant should not be judged solely from what may have been the worst day of their life. They show the tons of factors that went into a singular incident: their mental health, upbringing, the neighborhood they grew up, history of abuse. Without the work of a mitigation specialist, they jury may never get the opportunity to hear how those factors impacted that individual on the day of their accused crime. In cases in which an individual is facing the death penalty, being able to provide mitigating factors is a Supreme Court recognized right that an individual has. As more and more states begin to abolish the death penalty and replace it with mandatory minimums of life sentences attention should be given to expanding the use of mitigation and mitigation specialists outside of simply being used in capital defense cases. With the Commonwealth of Virginia banning the death penalty in 2018, the focus of mitigation was able to spread more broadly across all areas of criminal defense.

Virginia's indigent defense offices are uniquely positioned on this issue, as every public defender's office within the Commonwealth have at least one mitigation specialist. This Applied Policy Project is focused on increasing equity in the criminal justice system through mitigation. In this paper I first will provide a background on the history of mitigation and mitigation specialist, why the work is necessary and increasing the field of mitigation is an important policy problem and provide background on the current policy area while providing existing evidence to support proposed policy options. Based upon this analysis, three policy options will be considered focusing on increasing the field of mitigation: (1) Creating a mitigation certificate program, (2) Identifying and utilizing a Department of Education Experimental Site opportunity, and (3) a Formal mentoring program to the field of mitigation. After the consideration of these policy alternatives and examining them against the selected criteria, alternative (2) Identifying and utilizing a Department of Education Experimental Site opportunity - will be presented as the final recommendation, concluding with a plan for implementation.

PROBLEM STATEMENT

Mitigation primarily began as a practice used in capital defense cases. As states continue to abolish the use of the death penalty, the practice of mitigation should not be used less – it should be used more frequently. Courts have begun to recognize the significance and necessity of mitigation in non-capital cases (Mundy & Law, 2013). The support of a mitigation specialist to a client, and the benefit of mitigation in sentencing has been shown to support both the criminal defendant and the jury deciding on sentencing (Mundy & Law, 2013). While the benefits have been proven, little work has been done to increase knowledge about the field or to increase the number of mitigation specialist in criminal defense work. It is believed that there are less than a thousand mitigation specialists currently working in the field (Chammah, 2023). I intend to focus on this aspect of criminal justice reform by looking to increase equity within the system. The purpose of this APP will be to show that a mitigation specialist should be accessible by everyone within the criminal justice system. Mitigation is a practice that works to create equity within the criminal justice system. *Too few individuals in the criminal justice system have the opportunity to work with a mitigation specialist.*

CLIENT OVERVIEW

My client organization is the Charlottesville-Albemarle Public Defenders Office. The Charlottesville-Albemarle Public Defenders Office is part of a larger organization of public defender offices across the Commonwealth of Virginia. This organization working across the Commonwealth, known as the Virginia Indigent Defense Commission (VIDC) manages 28 offices which house public defenders, investigators, and mitigation specialists all trained and dedicated to working on the cases of indigent defendants. The Charlottesville-Albemarle Public defender's office staff work to aid indigent defendants throughout the criminal court process. As members of the VIDC, the Charlottesville-Albemarle Public Defenders office is "DEDICATED to protecting and defending the rights and dignity of our clients through zealous compassionate, high quality legal advocacy" (Virginia Indigent Defense Commission, n.d.).

BACKGROUND

Trends in Criminal Justice Reform in the Commonwealth of Virginia

When discretionary parole was abolished in the Commonwealth of Virginia in 1995, legislators were focused on being tough on crime (Williams, 2020). With the abolition of capital punishment in 2021, it was done in an attempt to move towards a more progressive push to encourage more equitable practices in Virginia's criminal justice system. Instead, however, the abolition of both capital punishment and discretionary parole has increased opportunities of inequity for those facing charges in the Commonwealth of Virginia. Public perceptions, judicial discretion, and racism were identified as causes to these problems.

Public Perceptions

The abolition of discretionary parole was believed to be the proper response to ‘fight crime’ (Willams, 2020). Furthermore, parole was abolished to prevent those they believed to be violent criminals from being able to re-enter society. Then and today many supporters of abolishing parole believe that granting parole would allow for the return of violent criminals into society which could cause further harm for victims and their families (Willams, 2020). Additionally, supporters focus heavily on accountability as a reasoning for removing the option of parole, for them the ability to leave prison before the end of an individual’s full sentence represents a lack of accountability (Willams, 2020). Similar sentiments were held by opponents to legislation abolishing the use of the death penalty in the Commonwealth. Lawmakers felt that the death penalty offered a sense of justice to the families and victims of “heinous crimes” (Andone, 2021). Both allowing parole and abolishing the death penalty are publicly seen by some as opportunities to prevent justice being afforded to victims and their families.

For supporters of the abolition of capital punishment and opponents to the abolition of parole however, the perceptions are focused on the historical backgrounds or the criminal justice system and the historical past of capital punishment. Capital punishment is recognized for its origins in the Jim Crow South and its intertwinement with lynching in the south (Andone, 2021). For these individuals abolishing parole and supporting capital punishment does not provide an equitable answer to the issue of crime. Furthermore, they emphasize the need for trust that these individuals were able to be reformed since the time of their offense, and that they deserve the opportunity to show they changed since then (Olivo, 2020). However, perceptions that abolishing the death penalty has created a more equitable system on its face are also a cause of the problem. With the abolition of the death penalty, it was then replaced with a sentence of life without the possibility of parole (Death Penalty Information Center, 2021). Moving towards sentencing to life without the possibility of parole, while it does not upfront sentence an individual to death, it still is effectively a death sentence. Public perceptions on both sides of the argument are continuing to fuel the opportunities for inequity experienced by those facing charges with the possibility of life sentences.

Judicial Discretion

Judicial discretion is defined as a judge’s power to make decisions based upon their own evaluations within the boundaries of the law (Cornell Law School, 2020). In a criminal court this discretion is often used during sentencing giving the judge the ability to sentencing an individual above or below sentencing guidelines. There is support in favor of expanding judicial discretion and also those in favor of restricting judicial discretion. Mandatory sentences however remove the opportunity for a judge to use their discretion as they are bound by the law itself (Vasoli, 1965).

When looking at sentencing a judge has several options available to them, the ability to issue fines, to sentence someone concurrently or consecutively, or the option to modify a sentence entirely (Vasoli, 1965). In situations in which the judge has a larger range of discretion the options available to him look differently than simply just imposing prison time or sentencing to the maximum amount of time (Vasoli, 1965). In Virginia especially, Judges are more commonly known to use suspended sentencing to flex their judicial discretion. Suspended sentencing allows the judge to suspend portions of a sentence for a specific period of good behavior and other conditions determined by the court (Vasoli, 1965). For example, if an individual is sentenced to 35 years, a Judge can decide to suspend all but 5 years, implying that the individual would have

30 years in which they would need to abide by the conditions of the court and would spend 5 years incarcerated.

While judicial discretion can be a positive action there is also the opportunity for the discretion of judges to do more harm than good. Following the passing of criminal justice reforms in New York in 2020, some judges attempted to circumvent these changes through “defiant opinions, administrative adjustments, and routine court actions that undercut” the effects of the reform measures (Petrigh, 2023). In that case sometimes judges declared the reforms unconstitutional or directly interpreted the reforms in a way that ran afoul of their intended purpose of making the criminal justice system more just (Petrigh, 2023). In circumstances like these it shows how judicial discretion can serve to be a problem as it can cause increased opportunities of inequity for those facing charges with the possibility of life sentences, as judges have the ability to determine these sentences. With no oversight it may be a prevalent issue that judges are unfairly or unjustly sentencing individuals to higher sentences based upon their own personal interpretation of the law.

Racism

Racism is at the foundation of both parole and capital punishment within the United States. In a report done studying the racial make-up of those on parole it was found that 28% of those on probation and 38% of those on parole were African American, yet African Americans made up only 13% of the total US adult population (Moyd, 2021). In comparison however, as of 2003, people of color made up 43% of individuals who had been executed since 1976 (American Civil Liberties Union, 2003). When looking at the opportunity to be granted parole, other factors accounted for include: “institutional adjustment, programming achievements, security classification, release planning, and potential for employment” (Moyd, 2021). These factors while on their face seem to be sources of equity, it is important to note that much of those programs require an individual to entice the jail or prison with certain skills or qualities they might not possess due to life circumstances. If an individual struggles with reading perhaps or lacks certain physical abilities to do programming, this can prevent an individual from doing programming which may possibly prevent them from being granted parole (Moyd, 2021). African Americans are often languishing in prison for longer than initially expected due to the repeated denial of parole.

Parole boards and courts often utilize Pretrial Risk Assessment tools which were designed to determine the likelihood of an individual reoffending in the future. While these assessments have been used heavily, there is little done to address the racism and inequity within these tools (Moyd, 2021). For tools such as the Correctional Offender Management Profiling for Alternative Sanctions, it was found that African Americans are “more likely to have been misclassified as medium or high risk by the COMPAS” (Moyd, 2021). Some of these tool’s factor in age of first arrest, or an individual’s criminal history – however, when coming from a community in which police surveillance is highly prevalent these factors are increased significantly (Moyd, 2021). While racism is a problem with parole, it also is a problem without parole.

More than half of the individuals at 56.4% serving life without parole sentences are Black (Walsh, 2016). Similarly Black people made up 41.7% of the death row population yet make up only 13.2% of the overall US population (Walsh, 2016). Studies have shown however that there are racial biases present in sentences of life without parole, but it is often based on the race of the victim than the race of the accused (Ball, 2020). Patterns have shown that white lives are more

valuable than that of other lives when determining whether to sentence someone to life without parole. While life without parole sentences have become common place to replace the death penalty after acknowledging years of racism within that system – racism is also at the bedrock of life without parole sentencing.

Mitigation and Criminal Justice Reform

Mitigation as a practice initially began to address some of those aforementioned issues within the criminal justice system: the public perceptions, the possibility of racism, and judicial discretion. Overall, it is the practice of utilizing past history, mental health status, family history, educational, life circumstances and a flurry of other things to mitigate or lower a possible punishment in a criminal case. The Supreme Court of the United States determined in *Lockett v. Ohio* (1978), that mitigating evidence is a Constitutionally protected right that a sentencing judge must consider. What could be considered a mitigating circumstance could include anything from “a defendant’s character or record and any circumstance of the offense proffered as a reason for a sentence less than death” (*Lockett v. Ohio*, 1978).

Mitigation as a field has grown since then – with mitigation specialist working in-house in public defender’s office, private mitigation who do contract work with private attorneys, and even private mitigation firms such as, Advancing Real Change, Inc. Mitigation specialist work on capital murder cases all the way to misdemeanor cases, regardless of the charge – the possibility of jail time should illicit the support and work of a mitigation specialist.

What if you were judged solely from the worst day of your life? You know that tons of other factors went into that day: your mental health, racism, sexism, your upbringing, the neighborhood you grew up in. The jury never hears this, they never get to hear how these factors impacted that singular day. That is the fate for thousands of people who never get the opportunity who to receive the services of a mitigation specialist. For some mitigation can be the difference between a life behind bars and freedom, in some cases it can be the difference between life and death. Mitigation directly challenges those public perceptions, the racism, and judicial discretion that impacts the criminal justice system both in the Commonwealth of Virginia but also throughout the country. Mitigation specialists do the work necessary to make sure those stories are heard by the jury and by the courts. Mitigation specialists hold an incredibly important role on a criminal defense team yet remain an underknown and underutilized field.

How Does Mitigation Work?

Imagine – one day you find yourself reacting out of anger, impulsiveness, or you have completely lost your ability to tell right from wrong. You commit an act of violence against someone else, a stranger, a loved one, or a friend. Scared, ashamed, and angry you find yourself thrust into the criminal justice system first through the arrest and then to your new home at the jail. Your first day at the jail a mitigation specialist will come in, you may talk about the event that led you to this situation, but mostly you will discuss your life. Your mitigation specialist will ask about where you grew up, where you attended school, what your family is like, if you have any mental health or substance abuse issues. They will make sure you know you are supported and being listened to – that your conversations are covered by confidentiality and cannot be shared with anyone outside of your legal team.

Your mitigation specialist will then leave that day and begin collecting records from schools, previous places of employment, doctors, hospitals, your best friends, your family members, even the woman who gave you your first job at fifteen. You will have weekly visits from your mitigation specialist when they simply check in to see how you are doing, if your mitigation specialist also has a Master of Social Work, they also may be able to provide counseling if needed. From the beginning of your case until sentencing your mitigation specialist would work diligently on your case. If your case goes to trial mitigation will be sprinkled throughout the trial – witness, both expert and personal, brought in to spoke on your behalf would be identified while doing research for mitigation. If your case goes to sentencing your mitigation specialist would compile a mitigation memo that tells the story of your life, and why that one day of anger does not represent you as a person. It will tell how you are the parent of small children, the caretaker of your elderly grandparents, how you struggled with drug and alcohol addiction, or how you were abused as a child.

This information will then be presented to the judge with the hope that it will impact them in your sentencing. With mitigation the goal is to mitigate the punishment, to not receive the maximum amount of time or in the case of capital cases to remove the punishment of the death penalty off the table.

Who Can Do Mitigation Work?

There are no specific majors or degree programs required to be completed in order to become a mitigation specialist. Many within the role will hold a Master of Social Work (MSW), as it provides an extended skillset to better serve clients. However, there also are no required certifications or specific degree programs required to be a mitigation specialist. Several organizations offer certification programs, which provide future and current mitigation with different resources to improve their skillsets.

Advancing Real Change Inc. has an entire resource library of guidelines dedicate to expanding the knowledge base of mitigation specialists. Resources range from education on ethical duties, to how to utilize cultural competency when conducting mitigation. A caveat to the lack of requirements for specific degrees and certifications however is in the case of capital cases. For these cases the American Bar Association (ABA) recommends that a mitigation specialist hold an MSW degree. While there are no formal guidelines to being a mitigation specialist much of the time “the profession relies more on standards and guidelines – things that someone fulfilling the role must *do*” (Chammah, 2023). The mitigation specialist of the Charlottesville-Albemarle Public Defender’s office, Tess Musolino, defines mitigation as “vibes”. Much of the work requires a mitigation specialist that can think on their toes and react quickly when new information presents itself. A mitigation specialist must be able to collect and synthesize information from thousands of pages of hospital, school, jail, and courts records combined with hundreds of hours of interviews (Chammah, 2023).

Possible Benefits to Society

When looking at the possible benefits of society to increasing the field of mitigation, it will be important to find a connection that the society can relate to. While many people may not support

criminal justice reform – they are in fact possibly against the exorbitant price associated with running the criminal justice system. In 2007 after years of tough on crime policy, Texas State Governor James Perry was faced with the decision of spending nearly \$2 billion to finance the growing prison population, he instead chose to implement policies that would decrease the prison population (Thielo et al., 2015). For this APP, education is the theme on how this issue should be approached, due to this the possible benefits to society will also be framed around education – specifically teachers’ salaries.

With the goal of mitigation being to mitigate the possible punishment in a criminal case, mitigation specialists can benefit society in lowering the overall costs associated with the criminal justice system. With the elimination of parole and the death penalty the Commonwealth of Virginia incarcerates people at higher rates than states with similar population numbers (Woods & Powell, 2023). In 2022, around 25,000 people were housed in Virginia’s prisons costing taxpayers an average of \$42,000, per person a year to incarcerate (Woods & Powell, 2023). This totals out to around \$1,050,000,000 per year in expenses. In comparison the average starting salary for Virginia elementary aged teacher is \$40,000 (Woods & Powell, 2023).

Research has shown that while more people are going to prison in recent years, nearly half of all people in U.S. prisons, nearly 770,000, were serving sentences of ten years or longer (Nellis & Ghandnoosh, 2022). If even half of the people housed in Virginia’s prisons were sentenced to ten years, it would lead to costs of around \$5,250,000,000 over ten years. When compared against the average starting salary of a Virginia teacher - 131,250 teachers could be hired with a starting salary of \$40,000 before that cost was reached.

With the elimination of parole, when an individual is sentenced to a substantial amount of active time they are required to stay in prison for the entirety of their sentence. These sentences lead to high costs associated with housing an individual in the Virginia Department of Corrections. As an individual continues to get older health related costs can increase the average cost to taxpayers up to \$100,000 per person per year (Virginia Department of Corrections, n.d.).

With an increase in the number of mitigation specialist in the field, it presents the opportunity to lower the number of individuals in the prison system, as well as decrease the amount of time that they may possibly be sentenced to. A mitigation specialist is a tool to support a criminal defendant, but they are also able to support the needs of the public as they can encourage a decrease in the costs associated with maintaining large prison populations in the Commonwealth of Virginia.

Gaps In Knowledge

Conducting this research, highlighted gaps in the policies directly related to the practice of mitigation work. There is very little policy relating to the field of mitigation. In order to draw connections on how to address the lack of mitigation specialists and the few numbers of people involved with the criminal justice system, this question must be approached from a work force and education perspective instead of a clear criminal justice perspective. In doing it this way it is easy to identify possible policy areas related to addressing the lack of mitigation specialists in the criminal justice field. However, overall, there is still a lack of clear research and policies directly related to the practice of mitigation or the role of a mitigation specialist.

Much of the information surrounding the usage of mitigation and mitigation specialist is in the context of capital cases. As the Commonwealth of Virginia has abolished the death penalty this is no longer an important factor to this APP. While this does bring awareness to the gap, the importance of the work of a mitigation specialist is highlighted now that the death penalty has been abolished. As more and more states move to abolish their death penalties – the sentence of death will now be replaced with life sentences which should also require the work of a mitigation specialist. The goal of the mitigation specialist is to be able to tell the story of a criminal defendant, this opportunity should not be lost as we move to become more progressive and abolish the death penalty. It is because the Commonwealth of Virginia is moving towards more progressive practices that the focus should be placed on how to increase the usage of mitigation in more non-capital cases.

Problem Background

While criminal justice reform continues to be a hot topic, individuals continue to find themselves involved in the system and facing incarceration. For every person that has an interaction with a mitigation specialist on their case there is also someone else who has not experienced the services of a mitigation specialist. It is believed that there is less than a thousand mitigation specialists working throughout the United States. The VIDC employs a mitigation specialist in each of their twenty-eight offices throughout the Commonwealth of Virginia. The District of Columbia and the Maryland Defenders also employ mitigation specialists or contract mitigation specialists in their offices, however in these offices much of the employment time frames for mitigation specialists are temporary or focus primarily on capital cases. The VIDC has at least one mitigation specialist in every office.

Having one mitigation specialist in an office however leaves them managing a large case load entirely on their own. A mitigation specialist working in a smaller office may carry a case load of fifty cases, but this may represent only a small portion of all cases handled by the office. It creates a need for the triaging of cases, they may leave some without the work of a mitigation specialist. Increasing the field of mitigation can begin to address this inequity within the system. As shown before mitigation works to address issues of public perception in criminal cases, judicial discretion, and racism among many other issues - when an individual is unable to receive the services of a mitigation specialist due to staffing constraints, they are placed at a disadvantage to other defendants who do have those services.

CRITERIA

The policy alternatives will be weighed against three evaluative criteria:

1. **Effectiveness:** capability to create impact on the field of mitigation. Effectiveness will focus on the length of time for impact, and the possible size of growth in the number of mitigation specialists working in the field. Effectiveness will be further evaluated by comparing with other similar career fields to determine the effect of the policy alternative. The cost of each policy option will determine effectiveness rating in relation to the cost placed on the individual involved in the program. A program that has high cost to the student will receive a lower effectiveness rating.

2. **Equitability:** capability of the plan to be applied to various education levels (upper-level education starting at an associate degree) and students from various educational institutions. If a plan is unable to Equitability of an alternative will also be weighed given based upon its ability to create equity within the criminal justice system. As this APP will focus entirely on mitigation specialists in public defender's offices or private mitigation specialist working with court-appointed counsel, equity in cost is not a factor.

3. **Feasibility:** measurement of the difficulty and/or the ability for a plan to be implemented. It will look at two distinct options: can the plan be conducted entirely by the Charlottesville-Albemarle office, or must it be implemented by the overall VIDC office. The ability for the alternative to be implemented by the office, is the most important option. Alternatives able to complete this will score higher in this criteria area.

POLICY OPTIONS

POLICY OPTION 1: Creating a Mitigation Certificate Program

Alternative one will see the creation of a mitigation certificate program at a local institution. This certificate program will be created through a consortium of the University of Virginia's Frank Batten School of Leadership and Public Policy, the Darden School of Business, the School of Education and Human Development, and the College of Arts & Sciences. This consortium will rely on the existing certificate programs in each program. Each school has a certificate program rooted in the skills needed to be a mitigation specialist. Students will be allowed the opportunity to take 12 credit hours of course work which would then culminate in receiving a Certificate in Mitigation Studies. The program will be made up of a combination of required courses and elective studies. As a public policy and leadership program, the program would be housed by Batten but a partnership between each school.

The Batten school currently has certificates in leadership and public policy programs with courses including Strategies and Process of Negotiation and Psychology for Leadership. The Education school offers courses in Research, Statistics and Evaluation. Darden is already home to the Darden Prison Reentry Education Program (PREP) serves to benefit both its incarcerated students in offering them undergraduate credits, while also providing credits to the MBA student instructors. The College of Arts and Sciences would offer a larger range of courses in which a student could self-select into based upon the areas of mitigation they would like to be focused in.

While the PREP program is currently geared towards business and entrepreneurial endeavors, partnerships with other programs could offer the opportunity for the program itself to represent a wider variety of areas of study. Partnering with Batten could lead to the creation of a certificate program with both UVA students and incarcerated individuals in which UVA students could focus on learning mitigation skills through these interactions with incarcerated individuals. Similarly for the incarcerated individuals the course could be tailored around the focus being English, writing skills, and public policy through their life stories. The same credits would be

offered as in previous programs, however the focus of them would culminate around the goal: a certificate in mitigation studies.

Effectiveness: Low Effectiveness

This policy alternative scores low on effectiveness due to the time commitment necessary, the level of institutional cooperation necessary, and the cost required by students. This alternative would require coordination between the mitigation specialist and stakeholders within the four previously mentioned institutions. An alternative of this magnitude would deplete the already strained resources dedicated to mitigation in Albemarle-Charlottesville Public Defenders Office.

While certificate programs do already exist at the institution it would require large amounts of cooperation for the creation of a new certificate program dedicated to mitigation, this would create an issue of timeliness as it would not currently address the issue of the small size of the mitigation field. Additionally, this policy option would create a large financial burden for students involved in the program. The certificate programs currently offered at Batten are charged on a per classes rate of \$6,753 for out of state residents and \$3,711 for Virginia Residents (Frank Batten School of Leadership and Public Policy, n.d.). With a similar course structure of 12 credits, at 3 credits per class, a similar program would incur the following costs:

Out of State Residents: $4 \text{ courses} \times \$6,753 = \$27,012$

Virginia Residents: $4 \text{ courses} \times \$3,711 = \$14,844$

These costs do not include the additional fees related to books and lodging (cost of living fees) which can trend up to \$26,000 for an academic year (Student Financial Services - University of Virginia, n.d.). While these costs would entirely be the responsibility of the student, it is ineffective to create a program of this cost when a certificate is not required to be a mitigation specialist. The possible costs that would be incurred by students, the level of institutional cooperation, and the time commitment that would be required by current mitigation specialist are highly ineffective, which is why creating a mitigation studies certificate program scores low for effectiveness.

Equitability: Low Equitability

This policy alternative scores low on equitability due to the cost that would be incurred by students. As a certificate program the costs of the program is not eligible to be supplemented by federal financial aid. As the plan is to create equity within the criminal justice, it is inequitable for someone wanting to create change to be priced out of creating change due to the cost of a program. Additionally, the certificate program would need to be placed within a specific institution, which would be inequitable for students who are not students at that institution but wish to do mitigation work.

Feasibility: High Feasibility

This policy alternative scores High on feasibility due to the possible benefit to the overall VIDC organization as well as the Charlottesville-Albemarle Public Defenders Office. This policy alternative would be able to be implemented by the Charlottesville Office, while still serving a benefit to the overall VIDC. With no costs to be incurred by either office combined with the possibility to have new employees in the future with backgrounds in the field the program serves a benefit, which makes it feasible. Additionally, as certificate programs already exist at the forementioned schools this alternative would not require the creation of a new system.

POLICY OPTION 2: Identifying an Experimental Site Opportunity

Alternative two will utilize the U.S. Department of Education Experimental Sites Initiative (ESI) to use the Federal Work-Study Program experimental site to fund student internships. Schools can arrange for recipients of a federal work-study “to be employed by federal, state, or local public agencies...” (Department of Education, 2023). As a local public agency, the Charlottesville-Albemarle public defender’s office would be able to bring in student workers who can receive federal work-study while conducting work within the office. An application process would identify students with coursework in psychology, English, policy, or related fields and students with relevant internship or work experience that could range from retail experience to prior internships in mitigation work. The partnership between the public defender’s office and the University of Virginia would be used to attract both undergraduate and graduate students into the program. For the first year of the program, the focus will be on students with at least two years remaining in their degree programs –to increase long term commitment.

Under federal work study guidelines students will have the opportunity to work up to twenty hours per week while in class, and up to forty hours during school breaks. The public defender’s office would commit to bringing in three students per year with the focus being on creating a small cohort of students to increase their learning potential, while also keeping the program small so as to eliminate the possibility of an increased workload for the mitigation specialist already employed in the office.

Effectiveness: Medium Effectiveness

This policy alternative responds directly to increasing the knowledge base about the field of mitigation and creates the possibility for a future increase in the number of mitigation specialist in the field. In Virginia in particular, as each public defender office has at least one mitigation specialist already, future support will be needed as the movement for criminal justice reform continues to grow. This policy alternative, while it will require supervision from the current mitigation specialist in the office – it also offers the opportunity for assistance to be available with cases. As the students will have had previous experience with research and writing it will allow for a quick transition with similar tasks.

There will be a large amount of cooperation between the Charlottesville-Albemarle Public Defenders office and the University of Virginia Financial services to ensure that both the students and the office are following the requirements of the federal work study program. This cooperation required however, would be outweighed by the low overhead costs associated with running the program through the Federal Work-Study Site Initiative Program.

Federal Work-Study guidelines provide that the federal share of funds that an institution is provided can cover up to 90% of a student’s wages when employed at a state or local public organization or agency, with 10% of the funds coming from the employer (U.S. Department of Education, 2019). Organizations “unable to afford the cost of this employment [10%] are eligible to pay a reduced nonfederal share” (U.S. Department of Education, 2019). For the 2023-2024 School year the University of Virginia subsidized 75% of a student’s wages from federal funds, with the remaining 25% of wages being paid for by their employer (University of Virginia Student Financial Services, n.d.).

The standard annual award amount being between \$3,000-\$4,000 for undergraduates and \$5,000 for graduate students receiving federal work-study awards (University of Virginia Student Financial Services, n.d.). The following calculation can indicate the possible costs for both the University of Virginia from its Federal Work-Study allotment and the wages required from the public defender's office. These costs will be based upon a cohort program made up of two undergraduate students receiving the minimum possible award, and one graduate student.

$$\begin{aligned} 1 \text{ Graduate Students} \times \$5,000 &= \$5,000 \\ 2 \text{ Undergraduate Students} \times \$3,000 &= \$9,000 \end{aligned}$$

Cost from the University of Virginia's Federal Work-Study Allotment:

$$75\% \text{ of } \$5,000 = \$3,750$$

$$75\% \text{ of } \$3,000 = \$2,250$$

Graduate Students = \$3,750 and Undergraduate Students = \$4,500
Total Costs: \$8,250

Cost to Charlottesville-Albemarle Public Defenders Office:

$$25\% \text{ of } \$5,000 = \$1,250$$

$$25\% \text{ of } \$3,000 = \$750$$

Graduate Students = \$1,250 and Undergraduate Students = \$1,500
Total Costs: \$2,750

With the possibility of a low overhead cost for the public defender's office at \$2,750, the benefit to the student of being able to earn money, and the benefit to current mitigation specialists of being able to have additional assistance on cases this policy alternative is effective. The cost to bring in students to help the current mitigation specialist in the office, would be less expensive than the salary of a mitigation specialist in the VIDC is listed at \$56,753 (*Department of Planning and Budget 2024 Session Fiscal Impact Statement*, n.d.). This policy alternative received a medium effectiveness score due to the long term investment required to know if the students in this program would go on to become mitigation specialists in the future. While it does require a long-term investment the costs are low, and the program would continue to be a benefit to mitigation specialist currently working in the office in the short-term.

Equitability: High Equitability

This policy option scores high in equitability as the low costs for the program to run, the ability for the program to be housed at multiple intuitions, and the opportunity for students to earn money would allow for students of different backgrounds to be involved in the program. In doing this it allowed for a wide variety in the type of individual entering the mitigation field which can create the possibility for increased equity in the criminal justice system.

Feasibility: High Feasibility

This policy alternative scores medium on feasibility due to the possible benefit to the overall VIDC organization as well as the Charlottesville-Albemarle Public Defenders Office. This policy alternative would be able to be implemented by the Charlottesville Office, while still serving a benefit to the overall VIDC. Since Federal Work-Study programs are at multiple institutions throughout the Commonwealth, other public defenders' office could create similar partnerships with other institutions. Additionally, as the state is beginning to look towards ways to transform

Federal Work-Study positions into functioning more as internships, there is also a shifting legislative climate that makes this policy alternative incredibly feasible. In 2023, the State Council of Higher Education for Virginia (SCHEV), awarded four institutions grants to transform Federal Work-Study jobs into internship experiences (Spieldenner, 2023). More than \$142,000 was allotted as a part of the inaugural Virginia Talent + Opportunity Partnership (V-TOP), in its second round of grants V-TOP allocated nearly \$930,000 (Spieldenner, 2023). This political feasibility combined with the benefit to both the Charlottesville Office and the ability for this plan to be implemented by the VIDC leave it with a score of high for feasibility.

POLICY OPTION 3: Creating a Formal Mentoring Program to the Field of Mitigation

Alternative three would see the creation of a formal mentoring program between the Charlottesville-Albemarle Public defender's office and the University of Virginia. The program would serve to increase awareness about and introduce students to the field of mitigation. Similarly to alternative two this option would focus on educating students about mitigation and growing their skills in the field. Students would have the opportunity again in a small cohort setting to learn how to conduct the research necessary for mitigation. Literature has shown that undergraduate students are often left out of the conversation of mentoring opportunities available within the criminal justice field (Vincent Aprile II, 2020). As the goal is to increase the field of mitigation, approaching undergraduate students who are exploring different career fields offers the potential of growing the field. In addition, the level of cooperation between institutions is low, however the involvement from the current mitigation specialist in the office will be high.

Mentoring at the undergraduate level would serve to target students at an early age to take coursework that could be beneficial in their role as a mitigation specialist. While there are not any required courses, there still may be courses that serve to benefit an individual as a mitigation specialist. Early intervention through mentoring would serve to both bring awareness to the field of mitigation, but it can also serve to create some guidance on what courses can serve to benefit their work in the field.

This program similarly to policy option two, will function around a small cohort of students who are able to make at least a two-to-four-year commitment to the program over the course of their college education. This will be done to both prevent disruption in any cases or work that they do, but also to encourage a long-term return on investment with the hope of increasing the field of mitigation. In this small cohort of four to five students, direct contact with the mitigation specialist and potential clients would be prioritized – with a continued time commitment giving students the opportunity to work on longer term cases. This format benefits the mitigation specialist as they will have assistance in conducting research, interviews, and additional tasks as needed.

Effectiveness: Medium Effectiveness

This policy alternative scores medium for effectiveness as it greatly increases knowledge about the field of mitigation and offers students the opportunity to be involved substantially in the field. However, it does not directly address the desire to grow the field of mitigation, it offers no financial incentive to students in exchange for substantial amounts of work, and the time investment required by the mitigation specialist is high. The commitment of two-to-four years does give the opportunity to earn a return on the time investment given by the mitigation specialist as they would not have to lose time on training students as the opportunity for turnover

is low. The cost incurred by the office would be low, as it would follow the current practice of internships in the office being unpaid. Due to this- students may incur costs due to parking and living expenses that make this alternative lower in effectiveness. It is because of both these drawbacks and benefits that this policy alternative received a score of medium for effectiveness.

Equitability: Low Equitability

This policy alternative scores low on equitability as the lack of pay has the ability of deterring certain demographics of students away from the program. Unpaid internships are an opportunity that some students may be unable, this creates the exact inequity that already exists in the criminal justice system. In which we see those able to pay experiencing different opportunities and outcomes than those who cannot. Additionally in a program that is inequitable it creates disparities in the types of students involved in the program who may relate differently or not be able to relate to the types of clients they should expect to interact with. The lack of pay which in turn has the possibility of creating inequity within the structure of the program causes this policy alternative to score low for equitability.

Feasibility: High Feasibility

This policy alternative scores high for feasibility as it is a free program for the public defender's office and would require no input from either the University of Virginia or the VIDC for implementation. The office already has a structured internship program for UVA law students, and after having their first mitigation and investigation fellow for the past year are highly interested in creating a formal internship program. The current internship program focuses on law students and runs through the summer, fall and winter semesters. The mitigation internship program would be able to follow the same timeline and could be implemented immediately.

OUTCOMES MATRIX

	CERTIFICATE PROGRAM	EXPERIMENTAL SITE	MENTORING PROGRAM
EFFECTIVENESS	Low	Medium	Medium
EQUITABILITY	Low	High	Low
FEASIBILITY	High	High	High

RECOMMENDATION

When looking to select one alternative versus the other I had to look at possible tradeoffs between each of them. If option one was to be selected, the equitability that could be gained from option two would be lost. Similarly, option two also scored the lowest in effectiveness due to its inability to create impact quickly. Option two would allow for this plan to be implemented at any university in which they are a part of the federal work study plan, which lead to its high scores for feasibility and equitability. The effectiveness score for both option two and three are medium due to the leg work that would be required by the current mitigation specialist. However, both are tradeoffs in comparison to option one which would require high amounts of input from the mitigation specialist.

After evaluating the alternatives, I recommended a combination of policy options two and three. Both have the advantage over alternative 1 in that they focus on getting students actively working in the office right now instead of long term which encourage higher effectiveness scores. Option three compared to option two however, scores low due to the lack of payment available to students in the program. While option two does incur a cost to the Charlottesville-Albemarle Public Defenders office it is minimal when compared to the salary required for a new mitigation specialist to provide support to the current mitigation specialist. Options two and three both focus on introducing students to the field of mitigation while also growing their learning to be able to complete hands on work as they complete the program, not after completion of the program as would be done in option one.

Combining policy options two and three are the most ideal at achieving an effective, equitable and feasible solution to increasing the number of individuals in the criminal justice system have the opportunity to work with a mitigation specialist and keeping low barriers to implementation.

IMPLEMENTATION

To begin implementing these policy options, the Charlottesville-Albemarle Public Defenders Office will need to build a relationship with the Financial Services Office and the Career Center at the University of Virginia, to establish itself as organization offering internships for work-study to undergraduate and graduate students. A job listing establishing what the role is and expectations of students would need to be created in order for the career center to list the job on handshake, the service utilized to provide notice to students of internship opportunities.

Main stakeholders will include the Career Center and the Financial Services Office of the University of Virginia. The Financial Services office will need to facilitate the program meeting federal guidelines as a work-study program and ensuring that students are receiving the 75% of federal funding allotted to them as well as the 25% of funding that would be provided by the Charlottesville-Albemarle Public Defenders office. The career center would need to facilitate the application process for the program in coordination with the current office mitigation specialist.

The Charlottesville-Albemarle Public Defenders office should recommend that the University of Virginia apply to the V-TOP grant program through SCHEV which could eliminate the cost of the program to the office. Additionally, they should recommend that the career services office stipulate that the program should be geared towards students with demonstrated commitment to criminal justice reform.

In order to access cost and the success of the program, the first year should start with a cohort of three students with the goal to eventually increase to five. Depending on the number of mitigation specialist in the Charlottesville-Albemarle Public Defender's office the ratio of students to mitigation specialist should not be higher than 5:1.

The success of the program and its students should be evaluated every six months. As this is a long-term program interacting with clients and individuals in high-stake situations it will be important that students academically and mentally are handling the program, while also ensuring

that the program is serving a benefit to everyone involved. With six-month evaluations changes can be made frequently as seen fit.

Potential challenges to this plan will be establishing interest in a mitigation internship/work-study program and establishing a training standard for students to complete before interacting directly with clients. In response to these challenges, the office should build connections with the career center as well the Madison House, the PEGLIII lab, and the MOCHA/WOCHA programs at the University of Virginia. These programs all involve students who have shown demonstrated commitment and interest in community service and criminal justice reform. They also all would have experience conducting confidential work, culturally sensitive work, and having worked with vulnerable communities. This prior knowledge could impact the time required for additional training.

Specifically, I would leave the Charlottesville-Albemarle Public Defenders Office with the following recommendations for this policy option: (1) Selecting studies from the previously mentioned organizations, (2) re-evaluate the program every six months, (3) focusing on small cohorts, and (4) applying to the V-TOP grant program.

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