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**Defending the Defenders: An Analysis of Policy Options for Reducing Excessive Public Defender Workloads in Virginia**

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**Preface**

**Acknowledgments**

[COMPLETE LIST OF ACKNOWLEDGMENTS WILL BE INCLUDED IN FINAL VERSION]

**Mission Statement**

The Virginia Indigent Defense Commission (IDC) is “dedicated to protecting and defending the rights of our clients through zealous, compassionate, high-quality legal advocacy.”

**University of Virginia Honor Pledge**

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

[ELECTRONIC SIGNATURE WILL BE INCLUDED IN FINAL VERSION]

**Disclaimer**

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

**Acronyms and Definitions**

ABA American Bar Association

BJA Bureau of Justice Assistance

BWC Body Worn Camera

CA Commonwealth’s Attorney

CSB Community Service Board

DBHS Department of Behavioral Health Services

DCJS Department of Criminal Justice Services

DMAS Department of Medical Assistance Services

DOJ U.S. Department of Justice

GDC General District Court

IDC Indigent Defense Commission

JDR Juvenile and Domestic Relations General District Court

JLARC Joint Legislative Audit and Review Commission

LEO Law Enforcement Officer

NAPD National Association for Public Defense

NCSC National Center for State Courts

OAA Opioid Abatement Authority

SAMSHA Substance Abuse and Mental Health Services Administration

SCOTUS Supreme Court of the United States

SCOVA Supreme Court of Virginia

VBA Virginia Bar Association

VSB Virginia State Bar

VSCC Virginia State Crime Commission

*Caseload* refers to the number of cases assigned to public defenders.

*Workload* refers to the amount of time that public defenders spend working on their assigned cases.

*Case Weight* refers to quantified estimates for the average amount of time that public defenders should ideally spend working on each case to provide clients with quality legal representation. These estimates vary depending on the case type — murder, violent felony, nonviolent felony, misdemeanor, juvenile, driving while intoxicated (DWI), felony probation violation, misdemeanor probation violation, juvenile probation violation, and appellate.

**Executive Summary**

Over the past decade, the average workload for attorneys in Virginia’s 28 public defender offices has increased nearly 50 percent. However, caseloads during this period declined nearly 15 percent from 99,742 total cases in FY13 to 85,516 total cases in FY23. This trend can be attributed to a combination of factors including the growing proliferation of digital and forensic evidence, an increase in the proportion of defendants with mental illnesses, the adoption of new criminal justice reform measures, and longer travel times to meet with defendants. (JLARC, 2023).

The U.S. Supreme Court has ruled that states are constitutionally required to provide indigent criminal defendants with competent counsel. A 2023 JLARC report found that Virginia’s public defenders are meeting this constitutional requirement, achieving similar outcomes for defendants as retained attorneys. However, excessive workloads may, if left unaddressed, hinder the ability of Virginia’s public defenders to continue providing clients with quality legal services and representation in the future.

In response to these concerns, the Virginia Indigent Defense Commission (IDC) commissioned this report to explore options for reducing excessive public defender workloads. With that goal in mind, this report will consider four policy alternatives: (1) create more mitigation specialist positions, (2) expand pre-charge diversion programs, (3) expand adult drug treatment courts, and (4) expand partner share agreements for electronic discovery. These policy alternatives will be assessed using five evaluative criteria: (1) cost, (2) effectiveness, (3) cost-effectiveness, (4) political feasibility, and (5) administrative feasibility. Ultimately, this report provides the IDC a series of near-term and long-term recommendations to consider moving forward.

In the near term, the IDC should consider petitioning the General Assembly during the 2025 legislative session to create 15 new mitigation specialist positions for 14 offices that are currently understaffed. This policy alternative is projected to save the impacted offices an average of 20 hours and 16 minutes of attorney time per week and 1,054 attorney hours over the year. Furthermore, at a cost of $948,588 during the first year of implementation (FY26) and $5.04 million over five years (FY26-30), this policy alternative is cost-effective. Finally, this policy alternative earns high scores for administrative and political feasibility, making it an attractive option for addressing excessive public defender workloads.

In the long term, the IDC should consider working with commonwealth’s attorneys and local law enforcement officers (LEOs) to expand pre-trial diversion programs and partner-share agreements for electronic discovery. While both policy alternatives are projected to reduce public defender workloads, they each have certain administrative and political barriers that will are expected to take time to navigate before full implementation is possible.

Adoption of these near-term and long-term recommendations alone will not fully address the problem of excessive workloads, and other strategies, including hiring more public defenders and increasing the usage of Artificial Intelligence, may be required. However, the the analysis included in this report will hopefully provide the IDC with a better understanding of the options it can pursue in the coming years to address this problem.

**Problem Statement**

In recent years, the Virginia Indigent Defense Commission (IDC) has struggled to attract and retain attorneys, leading to understaffing in many of the public defender offices it runs across the Commonwealth. According to a recent survey, one of the top issues driving this trend has been excessive workloads with nearly one in five public defenders reporting that they have insufficient time to perform key tasks that are necessary for adequately representing clients, including obtaining and reviewing evidence as well as conducting legal research. (JLARC, 2023).

The IDC plays an indispensable role in Virginia’s criminal justice system by protecting the constitutional right to counsel for defendants who cannot afford to hire an attorney. Moving forward, it will be vital for the IDC to reduce workloads so that Virginia’s public defenders can continue to provide clients with quality legal services and representation.

**Background**

*Costs to Society*

In 1791, the states ratified the Sixth Amendment to the U.S. Constitution as part of the Bill of Rights, guaranteeing that in “all criminal prosecutions, the accused shall have the right to… the Assistance of Counsel for his defense.” At the time, this protection only applied to criminal defendants in federal court. (U.S. Courts, 2023).

However, the U.S. Supreme Court (SCOTUS) later extended this right in *Gideon v. Wainwright* (1963) to criminal defendants in state court, citing the Fourteenth Amendment’s due process clause. Writing for a unanimous majority, Justice Hugo Black emphasized the indispensable role that a defense attorney plays in guaranteeing his or her client’s right to procedural due process:

“Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge… He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he does not know how to establish his innocence.”

Because defense attorneys are “necessities, not luxuries,” states must provide criminal defendants who cannot afford to hire one with representation at government expense. These protections only apply to indigent defenses charged with a crime punishable by incarceration or the loss of parental rights and do not extend to civil cases.

Nearly two decades after *Gideon*, SCOTUS went a step further in *Strickland v. Washington* (1984), ruling that indigent defendants are entitled under the Sixth Amendment to “effective assistance of counsel,” creating a two-part test for determining when an attorney has failed to adequately defend his or her client. To prove this, the defendant must demonstrate that (1) his or her attorney’s conduct fell below an “objective standard of reasonableness,” resulting in (2) prejudice to the defense that affected the outcome of the case. As a result of SCOTUS’s decision in *Strickland*, states must ensure that the attorneys they provide to indigent clients are competent and adhere to “prevailing professional norms.”

For many years after these landmark decisions, Virginia struggled to protect the constitutional rights of indigent defendants. In 2004, the American Bar Association (ABA) published a scathing report documenting severe deficiencies in Virginia’s indigent defense system including inadequate compensation as well as a lack of minimum competency standards for defense attorneys.). In response, the General Assembly established the IDC which today runs the state’s 28 public defender offices and manages the list of attorneys eligible for court appointment. (Jackman, 2005).

A 2023 report conducted by the Joint Legislative Audit and Review Commission (JLARC) found that Virginia’s public defenders achieve similar outcomes for clients as retained attorneys. This was measured in terms of the likelihood of conviction for defendants, the percentage of charges that were reduced, and the way cases were resolved (i.e., plea or trial).

A graph with text on it

Description automatically generatedHowever, in a survey included in this report, many of Virginia’s public defenders reported that, they “sometimes,” “rarely,” or “never” have time to perform key tasks associated with providing a quality defense — interviewing potential witnesses, communicating with the client, conducting legal research, obtaining and review evidence, and preparing for pre-trial hearings — because of their workloads. These results, shown in the table below, are deeply alarming as every public defender should be able to perform all the tasks included in the survey as they are requisite for providing adequate legal representation.

(Source: JLARC, *Indigent Criminal Defense and Commonwealth’s Attorneys*, 2023, p. 44).

Public defenders are responsible for representing those with the fewest resources. Indigent defendants are disproportionately people of color and, in many cases, struggle with severe physical and mental health impairments. Excessive workloads for public defenders infringe upon the constitutional rights of society’s most vulnerable members, effectively creating a two-tiered legal system between those with and without resources.

*Indigent Defense Models*

In the United States, there are currently three basic models of indigent defense: (1) public defenders, (2) court-appointed attorneys, and (3) contracted attorneys. (Yale Law School, 2019). Most states use some combination of these three models, and Virginia provides its indigent defense services through a hybrid system that includes (1) state-funded, locally-based public defenders and (2) private attorneys compensated by the state for their work as court-appointed defense attorneys. (JLARC, 2023).

*Indigent Defense in Virginia*

The IDC currently operates 28 public defender offices across the Commonwealth. While these offices are concentrated in predominately urban and suburban areas, there are a few offices in rural communities (e.g., Halifax and Pulaski). Attorneys in public defender offices are state employees and only represent clients within their respective jurisdiction.

Conversely, court-appointed attorneys represent indigent defendants in jurisdictions without a public defender office. Court-appointed attorneys also play a role when the public defender’s office cannot take the case either due to workload concerns or a potential conflict of interest. (JLARC, 2023). In addition to taking court-appointed cases, many of these attorneys also run their own private practice. The Supreme Court of Virginia (SCOVA) sets the hourly rate for court-appointed attorneys while the General Assembly sets caps for maximum allowable payments through statute. These pay caps are based on the type of charge — misdemeanor or felony — and the court — General District Court (GDC), Juvenile and Domestic Relations District Court (JDR), or Circuit Court — in which the charge is resolved. (JLARC, 2023). The IDC is responsible for training and certifying attorneys interested in taking court-appointed cases.

The map below shows the jurisdictions with public defender offices (in blue) and those that rely on court-appointed attorneys (in white).

A map of the state of virginia

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This report will exclusively focus on reducing workloads in public defender offices and will not address similar issues in Virginia’s court-appointed system.

*Eligibility for Representation*

In Virginia, the right to representation by a public defender is restricted to indigent defendants charged with an offense punishable by incarceration or the loss of parental rights by a court order. (SCOVA, 2024). As a result, indigent defendants charged exclusively with Class 3 or Class 4 misdemeanor(s) are not entitled to counsel from a public defender as there is no possibility for incarceration, if convicted. Common examples of Class 3 and Class 4 misdemeanors include public intoxication, driving while uninsured, and possession of a Schedule V or VI controlled substance. Similarly, indigent defendants in civil cases are not entitled to representation by a public defender.

## Indigency is determined by whether a criminal defendant has the financial means to retain private counsel. Defendants who are recipients of certain federal programs including Medicaid, Supplemental Nutrition Assistance Program (SNAP), and Social Security Insurance (SSI) are automatically presumed to be indigent and thus eligible for representation by a public defender. (Va. Code § 19.2-159). Defendants who are not recipients of these programs may still request representation from a public defender. The court will determine their eligibility based on their financial resources including net income, assets, and exceptional expenses (e.g., child support and medical care). If a defendant’s annual income falls below a certain threshold, as shown in the table below, he or she is entitled to representation by a public defender or court-appointed attorney (SCOVA, 2024).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Household Size** | 1 | 2 | 3 | 4 |
| **Annual Income** | $18,825 | $25,550 | $32,275 | $39,000 |

A blue circle with white text

Description automatically generatedIn FY22, the state provided representation to approximately two-thirds of criminal defendants in cases involving the possibility of incarceration, as illustrated in the graph below.

(Source: JLARC, *Indigent Criminal Defense and Commonwealth’s Attorneys*, 2023, p. 5).

*IDC Organizational Structure*

## The IDC is a statutorily-created state agency governed by a commission whose members include: the Chairman of the House of Delegates Committee for Courts of Justice, the Chairman of the Senate Committee on the Judiciary, the Chairman of the Virginia State Crime Commission (VSCC), the Executive Secretary of the Virginia Supreme Court, two attorneys designated by the Virginia State Bar (VSB), two individuals designated by the Governor, three individuals designated by the Speaker of the House of Delegates, and three individuals appointed by the Senate Committee on Rules. (Va. Code § 19.2-163.02).

The IDC’s administrative office is in Henrico County. The Executive Director is based out of this office and manages the agency’s day-to-day operations. Maria Jankowski has served in this role since September 2022. There are currently 28 public defender offices located across the Commonwealth as well as two satellite offices (Lexington and Front Royal).[[1]](#footnote-1) Each office is led by a Chief Public Defender who reports directly to the Executive Director.

**The Commission**

Carolyn Grady (Chair)

**Deputy Executive Director**

Timothy Coyne

**Executive Director**

Maria Jankowski

**Administrative Office**

**Public Defender Offices**

Alexandria, Arlington, Bedford, Charlottesville, Chesapeake, Chesterfield, Danville, Fairfax, Fredericksburg, Halifax, Hampton, Leesburg, Lynchburg, Martinsville, Newport News, Norfolk, Petersburg, Portsmouth, Prince William, Pulaski, Richmond, Roanoke, Smithfield, Staunton/Lexington, Suffolk, Virginia Beach, Warrenton, and Winchester/Front Royal

As previously mentioned, the focus of this report will be on reducing public defender workloads. Therefore, the governance map on the previous page only shows this part of Virginia’s indigent defense system.

*Causes for Excessive Workloads*

In September 2023, the RAND Corporation published the National Public Defense Workload Study. The report was commissioned by the ABA and marks the first major overhaul in national workload standards for public defenders in five decades. The revised guidelines are meant to reflect the growing complexity of working on criminal cases. Two months after the release of the National Public Defense Workload Study, JLARC released its own report analyzing Virginia’s indigent defense system and providing an updated set of Virginia-specific workload case weights.

Some of the key causes for excessive workloads that were identified by the RAND Corporation and JLARC include:

1): Growing Proliferation of Digital and Forensic Evidence

The growing availability and usage of forensic and digital evidence have made criminal cases more complex. Public defenders are today investing considerable amounts of time reviewing pieces of evidence — including body-worn camera (BWC) footage, text messages, and digital photos — that were not widely available a few decades ago. (RAND Corporation, 2023).

2): More Defendants with Mental Illness

In surveys conducted by JLARC, public defenders reported an increase in the proportion of clients with mental illnesses. These observations are corroborated by the State Compensation Board which noted in a 2022 report that the number of inmates in Virginia prisons with known or suspected mental illnesses has increased by 89 percent over the past decade. (JLARC, 2023). Representing these clients can oftentimes be very challenging and time-consuming due to possible communication difficulties as well as the need for additional services like placement in a behavioral health program.

3): Recent Adoption of Criminal Justice Reform Measures

Over the past three years, the General Assembly has adopted a series of criminal justice reform measures. While these changes have been made to expand the rights of defendants, promoting equity and rehabilitation, an unintended consequence has been an increase in workloads for Virginia’s public defenders. As a result of these reforms, criminal defendants now have the right to appeal their case upon conviction and are no longer presumed to be ineligible for bail. (JLARC, 2023).

4): Long Travel Times to Meet with Defendants and Appear in Court

In recent years, there has been a growing shift in Virginia toward housing defendants in regional detention centers rather than local jails. (JLARC, 2023). This has increased the travel time for public defenders looking to meet with their clients as these regional detention centers are often further away than local jails that are typically either adjacent to or within close walking distance of the courthouse.

*Other Key Issues Facing Public Defenders*

1): Pay Disparities

Although public defenders and commonwealth’s attorneys are both publicly funded, the state has historically paid prosecutors more. In recent years, however, the General Assembly has tried to close this gap by increasing appropriations for the IDC. In FY24, the average state-funded salary for staff attorneys in public defender offices (excluding the chief public defender) is $92,000, slightly higher than assistant commonwealth’s attorneys who are paid $89,000, on average. (JLARC, 2023).

And yet, despite these efforts, public defenders in Virginia continue to receive less total compensation, on average, than prosecutors. The reason for this is that localities have the option to provide salary supplements and, as the chart below illustrates, those that do generally provide more funding to prosecutors than public defenders.

A graph of a number of individuals

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(Source: JLARC, *Indigent Criminal Defense and Commonwealth’s Attorneys*, 2023, p. 61).

In FY23, less than half (13) of Virginia’s 28 public defender offices received local salary supplements, compared to 87 out of 120 commonwealth’s attorney offices. As a result, staff attorneys in 24 out of Virginia’s 28 public defender offices earned less than the assistant commonwealth’s attorneys in their jurisdiction.

The pay disparity from unequal local salary supplements has caused many public defender offices across Virginia to struggle with attracting and retaining attorneys. Unsurprisingly, these challenges are more pronounced in jurisdictions where the gap in total compensation between public defenders and commonwealth’s attorneys is wider. In fact, the average vacancy rate in public defender offices that have large salary differences (i.e., more than 20 percent) with their commonwealth’s attorney office(s) is 22 percent. These staffing shortages are significantly higher than the 12 percent average vacancy rate in public defender offices with smaller salary differences (i.e., less than 10 percent). (JLARC, 2023).

2): Heavy Caseloads

While commonwealth’s attorneys are generally responsible for prosecuting criminal cases in only one locality, 13 of Virginia’s public defender offices — Arlington, Bedford, Charlottesville, Fairfax, Fredericksburg, Halifax, Martinsville, Prince William, Pulaski, Staunton, Smithfield, Warrenton, and Winchester — represent clients in multiple localities. Because of these larger jurisdictions, many public defenders in Virginia handle a greater volume of cases than prosecutors.

3): Limited Support Staff

Like other states, Virginia’s public defender offices employ support staff — typically at least one office manager, paralegal, legal assistant, investigator, and mitigation specialist — to assist the attorneys with preparing cases and managing day-to-day operations. As part of its recent report, JLARC surveyed public defenders from across Virginia to identify common factors exacerbating workloads. Nearly half of these respondents indicated that they did not have enough support staff to adequately represent clients. (JLARC, 2023).

This issue can be tied back to varying ratios of attorneys-to-support staff between public defender offices. Statewide, the average office has 10 attorneys for one mitigation specialist, 13 attorneys for one paralegal, eight attorneys for one investigator, and five attorneys for one legal assistant. The National Association for Public Defenders (NAPD) recommends ideal ratios of 3:1 for mitigation specialists and investigators, and 4:1 for paralegals and legal assistants. (JLARC, 2023). The lack of sufficient support staff has played a key role in exacerbating workloads as public defenders are often unable to delegate assignments, pushing them to take on most of the work that is associated with preparing cases.

**Evaluative Criteria**

This report will use five evaluative criteria to assess the policy alternatives:

**1): *Cost***

Cost refers to the financial resources needed to implement a policy alternative. This report will assess the cost of each policy alternative by calculating the amount that state and local governments should expect to pay during the first year of policy implementation (FY26) as well as over five years (FY26-30).

Resources are limited so policy alternatives will be considered successful for this criterion if they minimize direct government expenditures. While opportunity costs will not be directly included in the cost calculations, they will be acknowledged in the cost discussion for each policy alternative.

**2): *Effectiveness***

Effectiveness refers to a policy alternative’s ability to produce a desirable outcome. This report will assess the effectiveness of each policy alternative by calculating the average amount of attorney time that public defender offices will save over a week once the policy alternative has been fully implemented. It is important to note that two of the policy alternatives analyzed in this report will only impact select offices — Policy Alternatives #1A and #3 — while the rest will impact Virginia’s entire public defender system.

Attorneys who can devote more time to their cases can better represent their clients and achieve favorable outcomes. Therefore, policy alternatives will be considered successful for this criterion if they reduce the amount of extra time that public defenders must spend beyond the salaried 40-hour work week to provide their clients with quality legal services and representation.

**3): *Cost-Effectiveness***

Cost-effectiveness refers to the ratio between a policy alternative’s cost and its ability to produce a desirable outcome. This report will assess the cost-effectiveness of each policy alternative by calculating the average amount of money that state and local officials must spend in order to save one hour of attorney time.

Government resources are limited so policy alternatives will be considered successful if they can maximize the average amount of time that Virginia’s public defenders will save in a week relative to the amount of money that is invested.

**4): *Political Feasibility***

Political feasibility refers to the likelihood that a policy alternative will attract enough support from decision-makers and the public to be implemented. This report will assess the political feasibility of each policy alternative by projecting its appeal to key decision-makers (e.g., the General Assembly, commonwealth’s attorneys, local law enforcement, and judges) as well as the public. This assessment will be made following the consideration of a variety of factors including legislative history, recent public opinion polls, and potential windows of opportunity.

Political support is required for the IDC to move forward with implementation. As a result, policy alternatives will be considered successful for this criterion if there is a strong likelihood that they will appeal to decision-makers.

**5): *Administrative Feasibility***

Administrative feasibility refers to the ability of existing institutions and organizational structures to successfully implement a policy alternative. This report will assess the administrative feasibility of each policy alternative by determining whether the IDC and Virginia’s broader criminal justice system, including judges and commonwealth’s attorneys, can implement the proposed change.

Implementation of any policy alternative is contingent upon administrative capacity. Therefore, policy alternatives will be considered successful for this criterion if the IDC and Virginia’s broader criminal justice system can easily implement the proposed change.

**Policy Alternatives**

This report will consider four policy alternatives that, if implemented, have the potential to alleviate excessive public defender workloads:

***1A and 1B): Petition the General Assembly to Create More Mitigation Specialist Positions***

The most common recommendation provided in the literature surveyed for this report is to increase state appropriations for indigent defense. Over the past several years, the General Assembly has tried to close the pay gap between commonwealth’s attorneys and public defenders by increasing appropriations for the IDC. While pay disparities persist as commonwealth’s attorneys generally receive larger local supplements than public defenders, state-provided salaries are now comparable to each other. In addition to closing the pay gap, the increase in state support for indigent defense has enabled the IDC to hire more attorneys in many of its understaffed offices. However, despite this progress, the IDC still does not have enough support staff, especially mitigation specialists.

Unlike most attorneys, mitigation specialists are trained social workers and therefore better positioned to identify certain mitigating factors (e.g., mental illness, substance use disorders, and histories of abuse and neglect) and explain how these conditions influenced the defendant’s behavior and development.

The increase in clients with mental illnesses over the past decade has exacerbated public defender workloads. (JLARC, 2023). Mitigation specialists can help to alleviate this strain by working directly with clients who need additional services and support beyond legal representation (e.g. placement in behavioral health and drug rehabilitative programs).

The current budget provides the IDC with 417 full-time attorney positions (excluding appellate and immigration) and 41 mitigation specialist positions across 28 public defender offices and two satellite offices, resulting in a statewide average of approximately one mitigation specialist for every 10 attorneys. However, attorney-to-mitigation specialist ratios vary significantly between offices. For example, the Lynchburg office has 11 attorneys and three mitigation specialists while the Norfolk office, despite having 22 attorneys, only has one mitigation specialist.

One strategy the General Assembly could pursue is to increase the number of mitigation specialist positions in offices that are currently understaffed. At the time of this report, the attorney-to-mitigation specialist ratio in 14 offices — Arlington, Chesapeake, Chesterfield, Fredericksburg, Hampton, Leesburg, Newport News, Norfolk, Portsmouth, Prince William, Richmond, Roanoke, Virginia Beach, and Winchester — exceeds the state average. To ensure that every office has a minimum of one mitigation specialist for every 10 attorneys, the General Assembly will need to create an additional 15 mitigation specialist positions.

Alternatively, the General Assembly could go a step further by increasing the number of mitigation specialist positions statewide, not just in the offices that are currently understaffed. The NAPD recommends an ideal ratio of one mitigation specialist for every three attorneys. To meet this ratio in every office, the General Assembly will need to create an additional 99 mitigation specialist positions.

Under this policy alternative, the IDC would petition the General Assembly to create additional mitigation specialist positions.

***2): Expand Pre-Charge Diversion Programs***

In 2020, the Augusta County Commonwealth’s Attorney’s Office received a $600,000 grant from the U.S. Department of Justice (DOJ) to create the Pathways Program — a pre-charge diversion program that provides first-time, non-violent offenders with the opportunity to avoid criminal prosecution if they complete community service and, when applicable, successfully pursue treatment for substance abuse and/or mental health issues. In 2023, 54 individuals who could have been charged with a misdemeanor completed the program in addition to 6 individuals who could have been charged with a felony. (Kramer, 2024).

Although the Pathways Program is still in its infancy, pre-charge diversion programs have shown tremendous promise as they provide those suffering from substance use disorder, mental illness, and housing insecurity, among other issues, with the opportunity to get help. (Boatner, 2024). Cases that are successfully diverted through pre-charge diversion programs never enter the criminal justice system, saving prosecutors and public defenders alike valuable time and resources.

The key difference between pre-charge and pre-trial diversion programs is that participants who complete the former are never charged with a crime and thus there is no public record of their case going through the criminal justice system. This means that individuals who complete a pre-charge diversion program can walk away with a clean slate.

Furthermore, another benefit of pre-charge diversion programs is that they enable the criminal justice system to provide resources to individuals struggling with substance use disorder in a matter of days. This is a key advantage over pre-trial diversion programs which stipulate that individuals must formally be charged with a crime before they can participate — a process that can often take at least six months in cases involving controlled substances. By intervening at an earlier stage, pre-charge diversion programs are a more effective tool for treating substance use disorder.

Unlike the other policy alternatives considered in this report, public defenders play a relatively minimal role in operating pre-charge diversion programs as participants are never formally charged with a crime. The decision whether to place an individual in a pre-charge diversion program is fully at the discretion of prosecutors and local law enforcement officers (LEOs). However, despite these limitations, public defenders can still assist with the creation of pre-charge division programs. In 2016, Tim Martin, the Augusta County Commonwealth’s Attorney, invited Peter Boatner, the county’s chief public defender, to join the advisory board for the Pathways Program. Because of his involvement, candidates for the Pathways Program are now allowed to consult with an attorney in the Staunton Public Defender’s Office before deciding whether to participate.

Under this policy alternative, public defenders would work with their respective commonwealth’s attorney(s) and law enforcement agencies to create pre-charge diversion programs. These programs would be modeled after Augusta County’s Pathways Program.

***3):* *Expand Adult Drug Treatment Courts***

In recent years, pre-trial diversion programs have become an increasingly popular tool for policymakers interested in reducing recidivism, conserving judicial resources, and decreasing the collateral consequences that come with a criminal conviction. Eligibility is typically determined based on the severity of the crime and the defendant’s criminal history. Pre-trial diversion programs are designed to provide defendants with a “second chance,” focusing on rehabilitation rather than punishment.

Participation in pre-trial diversion programs occurs after a defendant has been charged with successful completion of the program resulting in the case’s dismissal. However, even though the defendant is not convicted, there are still records of the arrest and proceedings. While defendants can typically request for these records to be expunged, certain crimes (e.g., first-time drug offense and domestic violence) are not eligible for this relief under Virginia statute.

There are several different diversion opportunities for criminal defendants in Virginia with one of the most common being deferred dispositions. For certain first-time misdemeanor offenses (e.g., underage possession of alcohol, possession of drugs, and destruction of property), judges can dismiss the pending charges after the defendant completes certain conditions. Common examples of these conditions include probation, community service, payment of restitution, and completion of certain rehabilitative programs.

Virginia is also one of 11 states that have population-specific diversion programs, known as “specialty dockets.” These diversion programs are designed to address the needs of specific populations and are created by the GDC and Circuit Court judges for their respective jurisdictions. (VSCC, 2021). SCOVA currently permits GDC and Circuit Court judges to run three types of specialty dockets — behavioral/mental health dockets, drug treatment courts, and veterans’ dockets.

Adult drug treatment courts are the most common type of specialty dockets in Virginia, and the chart below shows the 51 jurisdictions currently operating such programs. (SCOVA, 2023).

A map of virginia state

Description automatically generated

Only two of the IDC’s public defender offices — Petersburg and Warrenton — do not have any adult drug treatment courts operating in their jurisdiction(s). Additionally, three multi-jurisdictional offices — Halifax (Lunenburg and Mecklenburg Counties), Pulaski (Bland County), and Staunton (Buena Vista, Lexington, and Rockbridge County) — cover at least one jurisdiction that lacks an adult drug treatment court.

By allowing cases to be resolved without going to trial, some have argued that specialty dockets can alleviate public defender workloads. Furthermore, because specialty dockets are designed to reduce recidivism, the hope is that they will also ease public defender workloads over the long run as they will not have to represent some of the same clients again as they will be rehabilitated.

In FY23, 523 individuals exited a drug treatment court program — 249 (47.6%) of whom graduated while the remaining 274 (52.4%) were terminated. The three-year reconviction rate for those who successfully completed a drug treatment court program was 22.1%. (SCOVA, 2023).

Under this policy alternative, public defenders in jurisdictions without adult drug treatment courts would work with their respective commonwealth’s attorney(s) as well as district court and circuit court judges to expand this pre-trial diversion opportunity.

***4): Establish More Partner Share Agreements for Electronic Discovery***

The advancement of digital technology in recent decades has provided attorneys with new forms of evidence (e.g., BWC footage, text messages, emails, and social media posts) to use in criminal cases. However, the process for obtaining and reviewing this evidence can vary greatly between jurisdictions and sources. For example, prosecutors in Spotsylvania County share digital evidence with public defenders through a combination of flash drives and downloadable links. Conversely, prosecutors in neighboring King George County refuse to share copies of digital evidence, requiring public defenders to schedule in-person meetings to review these files. (Whitley, 2023).

Every public defender interviewed for this report expressed frustration with these discrepancies, noting that the electronic discovery process(es) in their respective jurisdiction(s) was inefficient and time-consuming. In localities like King George County with restrictive electronic discovery policies, public defenders are forced to take time out of their busy schedules every week to travel to/from meetings to review digital evidence and must schedule follow-up meetings if they would like to review the evidence again. Furthermore, even in localities like Spotsylvania County with less restrictive electronic discovery processes, public defenders still must spend considerable amounts of time downloading files to their computers and then uploading them into the IDC’s internal evidence management system. (Whitley, 2023).

In response to these concerns, the IDC signed a ten-year contract in 2023 with Axon, a digital evidence management company, to create a secure platform for commonwealth’s attorneys and LEOs to share digital evidence directly with public defenders. At the time of this report, partner share agreements have been established in 10 jurisdictions — Alexandria, Arlington County, Charlottesville, Danville, Fairfax County, Lynchburg, Patrick County, Richmond City, Roanoke City, and Virginia Beach — and are pending in five more jurisdictions — Chesterfield County, Newport News, Petersburg, Portsmouth, and Winchester.

The IDC hopes that the new partner share platform will streamline the electronic discovery process by reducing the amount of time that public defenders must spend obtaining and reviewing digital evidence.

Under this policy alternatives, public defenders would work with their respective commonwealth’s attorney(es) and law enforcement agencies to establish more partner share agreements to streamline the process for obtaining and reviewing evidence during electronic discovery.

**Analysis**

The following sections summarize the analysis that was performed for each of the policy alternatives. Please refer to the appendix for more information, including an explanation of the cost and efficiency calculations.

***1A): Petition the General Assembly to Create 15 More Mitigation Specialist Positions***

This policy alternative proposes that the IDC should lobby the General Assembly to create an additional 15 mitigation specialist positions. These new positions would be allocated to 14 offices that are currently understaffed — Arlington, Chesapeake, Chesterfield, Fredericksburg, Hampton, Leesburg, Newport News, Norfolk, Portsmouth, Prince William, Richmond, Roanoke, Virginia Beach, and Winchester — ensuring that every public defender office in Virginia has at least one mitigation specialist for every 10 attorneys.

* **Cost:** This policy alternative is projected to cost $948,588 during the first year of implementation (FY26) and $5.04 million over five years (FY26-30). These figures are based on the entry-level state-supported salary for mitigation specialists and a pay differential for positions in Northern Virginia — both of which were adjusted by 3% each year to account for inflation. These figures do not reflect additional costs to the state such as employee benefits (e.g., healthcare and retirement) given differences in employee preferences and needs. Similarly, these figures do not reflect the cost of salary supplements as the decision whether to provide additional compensation for the positions will be made at the local level and will likely vary significantly between jurisdictions.
* **Effectiveness:** This policy alternative is projected to save the 14 public defender offices an average of 20 hours and 16 minutes of attorney time per week and 1,054 attorney hours over the year. These projections are based on JLARC’s 2023 public defender case weights and rely on the assumption that attorneys can delegate to mitigation specialists many non-legal tasks (e.g. program placement and family communication). Every office impacted by this policy alternative, except Prince William, can expect to see a reduction in public defender workloads.
* **Cost-Effectiveness:** This policy alternative is projected to save the 14 public defender office an average of one attorney hour for every $64.28 that is invested. In comparison to the other policy alternatives included in this report, this policy alternative earns a high score for cost-effectiveness.
* **Political Feasibility:** This policy alternative earns a high score for political feasibility. In recent years, the IDC has successfully lobbied the General Assembly to increase its support for the public defender system, creating 59 new attorney positions in FY21 and boosting compensation for staff attorneys by 21% in FY24. (JLARC, 2023). These measures received strong bipartisan support as there has been an interest on both sides of the aisle in reforming Virginia’s criminal justice system. Lawmakers are likely to be supportive of this policy alternative given that its price tag is relatively modest, and the new positions would be allocated to offices that are currently understaffed. Adding to the political feasibility of this policy alternative is the fact that JLARC recently recommended increasing the number of mitigation specialist positions in understaffed offices.
* **Administrative Feasibility:** This policy alternative earns a high score for administrative feasibility. In comparison to attorneys, mitigation specialists are easier to recruit and cheaper to employ. (JLARC, 2023). Furthermore, unlike other support staff positions (e.g., paralegals and legal assistants), there is relatively little variation between offices in mitigation specialist responsibilities. This will help to streamline the onboarding process for new hires. (Jankowski, 2024). Finally, of the 14 public defender offices that would be impacted by this policy alternative, only one — Norfolk — would receive more than one new mitigation specialist position. Given all these considerations, this report anticipates that the IDC will be able to fill all 15 positions within the first year of implementation.

***1B): Petition the General Assembly to Create 99 More Mitigation Specialist Positions***

This policy alternative proposes that the IDC should lobby the General Assembly to create an additional 99 mitigation specialist positions. These new positions would be allocated across Virginia’s public defender system to ensure that all 28 public defender offices have at least one mitigation specialist for every three attorneys — the ratio recommended by the NAPD.

* **Cost:** This policy alternative is projected to cost $6.23 million during the first year of implementation (FY26) and $33.08 million over five years (FY26-30). These figures are based on the entry-level state-supported salary for mitigation specialists and a pay differential for positions in Northern Virginia — both of which were adjusted by 3% each year to account for inflation. These figures do not reflect additional costs to the state such as employee benefits (e.g., healthcare and retirement) given differences in employee preferences and needs. Similarly, these figures do not reflect the cost of salary supplements as the decision whether to provide additional compensation for the positions will be made at the local level and is likely to vary significantly between jurisdictions.
* **Effectiveness:** This policy alternative is projected to save each public defender offices an average of 14 hours and 45 minutes of attorney time per week and 767 attorney hours over the year. These projections are based on JLARC’s 2023 public defender case weights and rely on the assumption that attorneys can delegate to mitigation specialists many non-legal tasks (e.g. program placement and family communication). While 18 offices are projected to see a decline in public defender workloads as the result of hiring one additional mitigation specialist, only five offices — Chesapeake, Chesterfield, Fredericksburg, Newport News, and Virginia Beach — are expected to see workload savings from hiring more mitigation specialists than the number proposed under Policy Alternative #1A.
* **Cost-Effectiveness:** This policy alternative is projected to save each public defender office an average of one attorney hour for every $290.20 that is invested. In comparison to the other policy alternatives included in this report, this policy alternative earns a low score for cost-effectiveness. This poor performance suggests that this policy alternative would create more mitigation specialist positions than needed. In fact, 10 offices — Bedford, Danville, Lynchburg, Martinsville, Petersburg, Prince William, Pulaski, Smithfield, Staunton, and Warrenton — already have enough mitigation specialists on staff for attorneys to effectively delegate assignments. Therefore, these offices will see no workload savings from the creation of more mitigation specialist positions.
* **Political Feasibility:** This policy alternative earns a low score for political feasibility. While the General Assembly has significantly increased its support for Virginia’s public defender system in recent years, the measures they have enacted were meant to address low pay and severe staffing shortages. It is unlikely that lawmakers will support this policy alternative given the fact that only three offices will benefit from the creation of more mitigation specialist positions beyond the number proposed under Policy Alternative #1A. Furthermore, lawmakers are likely to be mindful of the fact that the price tag for this policy alternative exceeds the amount that was appropriated in FY21 and FY22 —$3.8 million and $5.7 million, respectively — to fund the creation of 59 new attorney positions. (Virginia Biennium Budget, FY21-22).
* **Administrative Feasibility:** This policy alternative earns a low score for administrative feasibility. At the time of this report, the IDC has 41 mitigation specialist positions allocated between 28 public defender offices and two satellite offices. If implemented, this policy alternative would provide the IDC with 140 mitigation specialist positions — a nearly threefold increase from current staffing levels. Although mitigation specialists have largely the same responsibilities between different offices, this report anticipates that it will be difficult for the IDC to hire and onboard this many new employees during the first year of implementation.

***2): Expand Pre-Charge Diversion Programs***

This policy alternative proposes that public defenders in all 28 offices should work with their respective commonwealth’s attorneys and law enforcement agencies to create pre-charge diversion programs in jurisdictions that lack one. These programs would be modeled after Augusta County’s Pathways Program.

* **Cost:** This policy alternative is projected to cost $2.52 million during the first year of implementation (FY26) and $22.73 million over five years (FY26-30). These figures are based on costs for the Pathways Program between FY19-23 and were adjusted by 3% each year to account for inflation. During this period, the Pathways Program not only expanded its capacity from 10 to 60 participants but also began accepting individuals who could have been charged with more serious crimes, including non-violent felonies (e.g., possession of a controlled substance). To meet these new demands, the Augusta County Commonwealth’s Attorney’s Office hired a program manager. The cost projections for this policy alternative assume that jurisdictions looking to create a pre-charge diversion program modeled after the Pathways Program will follow a similar path for developing their own programs. Furthermore, these cost projections assume that policymakers will use Medicaid to cover drug treatment costs for eligible participants.
* **Effectiveness:** This policy alternative is projected to save each public defender office an average of 6 hours and 45 minutes of attorney time per week and 352 attorney hours over the year. These projections are based on JLARC’s 2023 public defender case weights and rely on the assumption that attorneys will spend no time working on cases that are successfully diverted through a pre-charge diversion program. The reason for this is that public defenders are only assigned cases *after* a client has been charged.
* **Cost-Effectiveness:** This policy alternative is projected to save each public defender office an average of one attorney hour for every $9,848.20 that is invested. In comparison to the other policy alternatives included in this report, this policy alternative earns a low score for cost-effectiveness.
* **Political Feasibility:** This policy alternative earns a medium score for political feasibility. Pre-charge diversion programs are novel and there are a lot of misconceptions about how they operate, especially as participants are never charged with a crime unless they fail to abide by the terms of the program. Consequently, many self-proclaimed “law and order” prosecutors are reluctant to embrace these programs as they seemingly contradict their professional responsibility to prosecute crimes. Adding to these concerns is the fact that commonwealth’s attorneys, unlike public defenders, are elected officials accountable and thus concerned about voter perceptions. (Kramer, 2024). However, over the past several years, there has been a growing recognition within the legal community that many of the “tough on crime” laws enacted during the War on Drugs have failed to address the root causes of substance abuse. While the Pathways Program has not yet been replicated, it could serve as a blueprint for other communities in Virginia looking to create a pre-charge diversion program capable of winning support from a diverse group of stakeholders, including prosecutors, public defenders, and LEOs.
* **Administrative Feasibility:** This policy alternative earns a low score for administrative feasibility. At the time of this report, Augusta County is the only jurisdiction in Virginia with a pre-charge diversion program, providing relatively little precedent for other communities interested in creating programs of their own. (Kramer, 2024). This mirrors a wider national trend as there are relatively few pre-charge diversion programs currently operating in the U.S., leaving interested communities with relatively few case studies and best practices to draw from. Furthermore, because pre-charge diversion programs are not yet widely established, there is a current lack of institutional support in Virginia for their creation, especially when compared to pre-trial diversion programs.

***3):* *Expand Adult Drug Treatment Courts***

This policy alternative proposes that public defenders in four offices — Halifax, Petersburg, Pulaski, and Warrenton — should work with their respective commonwealth’s attorney(s) as well as GDC and Circuit Court judges to create adult drug treatment courts in jurisdictions that lack one.[[2]](#footnote-2) At the time of this report, there are six jurisdictions covered by a public defender office that do not have an adult drug treatment court and have not started the process for creating such programs — Bland County, Fauquier County, Lunenburg County, Mecklenburg County, Petersburg, and Rappahannock County.

* **Cost:** This policy alternative is projected to cost $600,611 during the first year of implementation (FY26) and $4.22 million over five years (FY26-30). These figures are based on operating costs for existing drug treatment courts operating in neighboring jurisdictions and account for initial startup costs as well as the ability of jurisdictions to expand their program capacities over time. Jurisdictions looking to establish a drug treatment court can offset many of these start-up costs by applying for grants from the Bureau of Justice Assistance (BJA) and the Opioid Abatement Authority (OAA). (Robinette, 2024). Once the program is running, jurisdictions can apply for grants from SCOVA to defray operational costs. Jurisdictions can also utilize Medicaid to cover treatment costs for eligible participants. Finally, jurisdictions can explore the possibility of partnering with neighboring jurisdictions that are already operating drug treatment courts to reduce costs and leverage community resources.
* **Effectiveness:** This policy alternative is projected to save the four public defender offices an average of 0 minutes of attorney time per week and 0 attorney hours over the year. These projections are based on JLARC’s 2023 public defender case weights and rely on the assumption that cases in which the client is participating in a drug treatment court program will remain open for longer, thus requiring attorneys to prepare for and participate in more hearings. The average length of an adult drug treatment court program is 18 to 24 months.
* **Cost-Effectiveness:** This policy alternative is projected to *increase* public defender workloads in the four impacted offices rather than alleviate them. Consequentially, a projection for cost-effectiveness is not applicable.
* **Political Feasibility:** This policy alternative earns a high score for political feasibility. At the time of this report, there are 51 active adult drug treatment court programs in Virginia, including in jurisdictions that neighbor each of the six localities that would be impacted by this policy alternative. SCOVA has promulgated a well-defined set of standards for how these programs should operate, making them an attractive option among even some “tough on crime” commonwealth’s attorneys and LEOs. Adding to this political appeal is the fact that the populations in Virginia’s jails have surged in recent years in response to growing levels of substance abuse. A 2012 cost-benefit analysis study commissioned by SCOVA concluded that drug treatment courts are a cost-effective way for communities to address substance use issues without incurring the enormous expense of going through traditional case processing. (Cheesman & Kunkel, 2012).
* **Administrative Feasibility:** This policy alternative earns a high score for administrative feasibility. The reason for this is that adult drug treatment courts have been operating in Virginia for over two decades, leading SCOVA to promulgate a well-defined set of guidelines and best practices for how these programs should operate. Furthermore, BJA, OAA, and local philanthropic organizations, like the Community Foundation, have provided localities with grants to help ease start-up and operating costs. Similarly, communities can charge fees to program participants and utilize Medicaid to cover treatment costs for eligible individuals, Finally, as previously mentioned, each jurisdiction impacted by this policy alternative borders another jurisdiction with an existing drug treatment court. Many of the drug treatment courts operating in Virginia were created as the result of partnerships between multiple jurisdictions, helping small communities with fewer resources come together to provide this diversion opportunity.

***4): Establish More Partner Share Agreements for Electronic Discovery***

This policy alternative proposes that public defenders should establish more partner share agreements with their respective commonwealth’s attorney(s) and LEOs. At the time of this report, partner share agreements have been established in 10 jurisdictions — Alexandria, Arlington County, Charlottesville, Danville, Fairfax County, Lynchburg, Patrick County, Richmond City, Roanoke City, and Virginia Beach — and are pending in five more jurisdictions — Chesterfield County, Newport News, Petersburg, Portsmouth, and Winchester.

* **Cost:** This policy alternative is projected to cost $0 during the first year of implementation (FY26) and $0 over five years (FY26-30). In 2023, the IDC signed a ten-year contract with Axon to create a secure platform for obtaining and reviewing digital evidence at a fixed cost of $358,800 per year. The contract covers all 28 public defender offices and there is no cost to commonwealth’s attorneys as well as law enforcement agencies for entering into partner share agreements to use the platform. Furthermore, under the terms of the contract, Axon is responsible for periodically updating the software as well as training parties on how to use the platform. Given the fact that the cost of the contract has been factored into the IDC’s budget until FY34, the agency should not expect to pay any additional cost for implementing this policy alternative.
* **Effectiveness:** This policy alternative is projected to save each public defender office an average of 6 hours and 15 minutes of attorney time per week and 325 attorney hours over the year. These projections are based on JLARC’s 2023 public defender case weights and rely on an assumption that public defenders spend 10% of their time during electronic discovery obtaining evidence. This assumption accounts for the fact that some jurisdictions have more restrictive — and therefore more time-consuming — processes for electronic discovery than others. Furthermore, this assumption includes time spent by public defenders corresponding with prosecutors and LEOs regarding digital evidence.
* **Cost-Effectiveness:** Because the IDC will incur no additional costs from establishing more partner share agreements, the cost for every attorney hour saved is $0. In comparison to the other policy alternatives included in this report, this policy alternative earns a high score for cost-effectiveness.
* **Political Feasibility:** This policy alternative earns a medium score for political feasibility. In 2018, the SCOVA amended its pre-trial discovery rules to require prosecutors to turn over police reports, witness statements, and witness lists to defendants facing criminal charges. Before this, commonwealth’s attorneys were only required to provide exculpatory evidence during discovery. (McCarthy, 2019). While these new rules were meant to curb a common prosecutorial tactic known as “trial by ambush,” commonwealth’s attorneys still have considerable discretion over how they share this evidence, leading to significant differences between jurisdictions in their discovery procedures. Consequently, this report anticipates that some commonwealth’s attorneys will be hesitant to establish partner share agreements as doing so will eliminate a powerful advantage that prosecutors currently enjoy.
* **Administrative Feasibility:** This policy alternative earns a high score for administrative feasibility. Since June 2023, 10 public defender offices have established partner share agreements with their respective commonwealth’s attorney’s office(s) and/or local law enforcement agencies. Under the terms of the IDC’s contract, Axon is responsible for covering all the costs associated with training public defenders as well as partner agencies on how to use the software. With that in mind, this report anticipates that the IDC has the present capacity to fully implement this policy alternative.

**Outcomes Matrix**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Policy Alternatives** | **Cost** | **Effectiveness** | **Cost-Effectiveness** | **Political Feasibility** | **Administrative Feasibility** |
| **1A): Create 15 More Mitigation Specialist Positions \*** | $948,588 (FY26)  $5.04 million  (FY26-30) | 20 Hours and 16 Minutes of Attorney Time Saved Per Week | $64.28 for Every Hour of Attorney Time Saved | High | High |
| **1B): Create 99 More Mitigation Specialist Positions \*\*\*** | $6.23 million  (FY26)  $33.08 million  (FY26-30) | 14 Hours and 45 Minutes of Attorney Time Saved Per Week | $290.20 for Every Hour of Attorney Time Saved | Low | Low |
| **2): Expand Pre-Charge Diversion Programs \*\*\*** | $2.52 million (FY26)  $22.73 million (FY26-30) | 6 Hours and 45 Minutes of Attorney Time Saved Per Week | $9,848.20 for Every Hour of Attorney Time Saved | Medium | Low |
| **3): Expand Adult Drug Treatment Courts \*\*** | $600,611 (FY26)  $4.22 million (FY26-30) | 0 Minutes of Attorney Time Saved Per Week | N/A | High | High |
| **4): Expand Partner Share Agreements \*\*\*** | $0  (FY26)  $0  (FY26-30) | 6 Hours and 15 Minutes of Attorney Time Saved Per Week | $0 for Every Hour of Attorney Time Saved | Medium | High |

\* Policy Alternative #1A will only impact 14 offices that are currently understaffed.

\*\* Policy Alternative #3 will only impact 4 offices that cover jurisdiction(s) without drug treatment courts. (Staunton is omitted from this analysis as Buena Vista, Lexington, and Rockbridge County are currently in the process of creating a combined adult drug treatment court).

\*\*\* Policy Alternatives #1B, #2, and #4 will impact all 28 public defender offices.

**Recommendation**

Based on the analysis, this report provides the IDC with the following near-term and long-term recommendations:

***Near-Term Recommendation***

In the near term, the IDC should petition the General Assembly to create 15 more mitigation specialist positions for 14 public defender offices that are currently understaffed. In addition to earning high scores for administrative and political feasibility, this policy alternative saved the highest average amount of attorney time. Furthermore, with an average cost of $64.28 for every attorney hour saved, this policy alternative is a cost-effective approach for alleviating excessive public defender workloads. With that in mind, the IDC should consider utilizing the steps outlined in the implementation section of this report as it prepares for the General Assembly’s next legislative session in early 2025.

***Long-Term Recommendations***

In the long term, the IDC should pursue the expansion of pre-charge diversion programs as well as work with commonwealth’s attorneys and law enforcement agencies to expand partner share agreements. While both policy alternatives are projected to help alleviate public defender workloads, they face administrative and political challenges that are unlikely to be overcome in the near term. Therefore, with these considerations in mind, the IDC should consider utilizing the steps outlined in the implementation section of this report to help improve the administrative and political feasibility of these policy alternatives over the long term.

***Additional Considerations***

It is important to acknowledge that this report fails to recommend expanding pre-trial diversion opportunities for the sole purpose of reducing public defender workloads. In fact, contrary to prevailing thought, public defenders can often spend *more* time working on a case when their client accepts a deferred disposition or is referred to a specialty docket. (JLARC, 2023). However, the IDC’s mission is to provide “zealous and high-quality legal representation for every client.” It is the author’s opinion that this professional obligation outweighs any potential risks for negatively impacting public defender workloads. Accordingly, this report encourages public defenders to pursue pre-trial diversion opportunities in cases when they are likely to produce the most favorable outcome for the client while remaining cognizant of its impact on workloads.

In a similar vein, this report recommends Policy Alternative #1 over #1B. While it is the author’s opinion that meeting the NAPD’s recommended attorney-to-mitigation specialist ratio will likely enhance the quality of representation that public defenders can provide to their clients, this report’s analysis indicates that the benefit of hiring additional mitigation specialists for the sole purpose of reducing public defender workloads will elapse after a certain point. Accordingly, this report encourages the IDC to look at filling shortages in other support staff positions — investigators, office managers, legal assistants, paralegals.

**Implementation**

The IDC should consider the following factors before implementing the near-term and long-term recommendations provided in the previous section:

***Policy Alternative 1A): Petition the General Assembly to Create 15 More Mitigation Specialist Positions***

In December 2023, Gov. Glenn Youngkin unveiled his proposed budget for the 2024-2026 biennium which allocated $170.08 million ($85.04 million per fiscal year) to the IDC — levels that were ultimately approved by the General Assembly. While this is a historically large amount of funding for the IDC, it unfortunately did not include a provision to provide the agency with additional mitigation specialist positions. Consequently, the IDC should prioritize finding a lawmaker ahead of the 2025 legislative session that is willing to cosponsor a budget amendment that would support the creation of 15 new mitigation specialist positions.

As mentioned earlier in this report, the IDC is a state agency governed by a commission whose members include the Chair of the House of Delegates Committee for Courts of Justice (or his/her designee) as well as the Chair of the Senate Committee on the Judiciary (or his/her designee). The seats are currently filled by Del. Katrina Callsen (D-Charlottesville) and Sen. Creigh Deeds (D-Charlottesville). Additionally, Del. Charniele Herring (D-Alexandria) also sits on the commission through her position as Chair of the VSCC. All three of these lawmakers are strongly positioned to serve as effective co-sponsors of a budget amendment funding this policy alternative.

Outside of the commission, the IDC should also look to secure support for the budget amendment from Del. Cliff Haynes (D-Chesapeake) and Sen. Scott Surovell (D-Fairfax) who serve as Chairs of the House and Senate General Government Appropriations Subcommittees, respectively. After its introduction, the budget amendment will be likely referred to their committees as they have jurisdiction over appropriations bills for the IDC and other judicial agencies. Similarly, it would be wise for the IDC to enlist support from Del. Patrick Hope (D-Arlington) who serves as the Chair of the House Committee for Courts of Justice which has jurisdiction of non-appropriations bills pertaining to the IDC. Compared to other lawmakers, he is likely to have a greater level of familiarity with the workload issues facing the IDC and could thus serve as an effective advocate.

Finally, the IDC should support from at least one Republican lawmaker to increase the likelihood that Gov. Youngkin will approve the amendment. Del. Jason Ballard (R-Giles) would be a strong candidate for this role as he previously served on the commission when Republicans controlled the House of Delegates (2022-24) and assisted the IDC during the 2024 legislative session by introducing H.B. 306 which clarified the ability for public defenders to decline cases when their existing caseloads become too burdensome.

***Policy Alternative 2): Expand Pre-Charge Diversion Programs***

Pre-charge diversion programs are driven almost entirely by prosecutors and LEOs as public defenders only become involved in cases after an individual has been charged with a crime. Consequently, the role of public defenders is relatively small once a pre-trial diversion program begins operating. Nevertheless, public defenders can play a valuable role in the creation of these programs as advisors and coalition builders.

For example, while the idea for Augusta County’s Pathways Program was originally conceived by Commonwealth’s Attorney Tim Martin, Peter Boatner, the county’s chief public defender, was invited early on to join the program’s advisory board. Because of Mr. Boatner’s involvement, candidates for the Pathways Program are now allowed to consult with an attorney in the Staunton Public Defender’s Office before deciding whether to participate. (Boatner, 2024). Furthermore, as a member of the program’s advisory board, Mr. Boatner has played a key role helping to win over support from local stakeholders, particularly groups that were initially skeptical of the initiative given its sponsorship by prosecutors and law enforcement. (Kramer, 2024).

As advisors and coalitions builders, it is important for public defenders to be mindful of the perspectives that prosecutors and LEOs bring to the table. Pre-charge diversion programs are relatively novel and there are many misconceptions about how they operate. Consequently, many self-proclaimed “law and order” prosecutors are reluctant to embrace these programs because they seemingly contradict their professional responsibility to prosecute crimes. (Kramer, 2024). Adding to this reluctance is the fact that commonwealth’s attorneys, unlike public defenders, are elected officials and therefore concerned about voter perceptions — a similar concern for elected sheriffs.

The reason why this report endorses Policy Alternative 2 as a long-term recommendation is because persuading commonwealth’s attorneys and LEOs to embrace pre-charge diversion programs will not happen overnight. Moreover, the decision to create these programs ultimately rests with commonwealth’s attorneys and law enforcement — not public defenders. Therefore, public defenders interested in creating pre-charge diversion programs should not only be sensitive to the interests of prosecutors and LEOs but also tactful in how they frame this policy alternative to target audiences.

***Policy Alternative 4): Establish More Partner Share Agreements for Electronic Discovery***

In 2018, SCOVA amended Rule 3A:11 (Discovery and Inspection) requiring commonwealth’s attorneys to turn over police reports, witness statements, and witness lists to criminal defendants and their attorneys. Before this, commonwealth’s attorneys were only required to provide exculpatory evidence during discovery. These new rules were intended to curb a common prosecutorial tactic known as “trial by ambush.” (McCarthy, 2019). However, commonwealth’s attorneys still have enormous discretion over how they share this evidence, leading to significant differences between jurisdictions in their discovery procedures. With that in mind, the IDC should consider petitioning SCOVA to amend its discovery rules, requiring prosecutors and law enforcement officials to share digital evidence with defense attorneys during discovery through the “least restrictive means possible.” In the absence of a rule change, some commonwealth’s attorneys and law enforcement agencies are likely to be wary of establishing partner share agreements with public defenders.

Additionally, another avenue that the IDC should consider before implementing this policy alternative is to petition the Department of Criminal Justice Service (DCJS) to update its BWC model policy. In 2020, the General Assembly enacted a law directing DCJS to create a BWC model policy that would guide local law enforcement agencies interested in deploying BWC systems. (Va. Code § 15.2-1723.1). DCJS last updated its model policy in 2021 — two years before the establishment of the IDC’s partner share platform. While DCJS’s model policy is not binding, an update to these guidelines recommending partner share agreements could persuade some law enforcement agencies to revise their policies for sharing evidence during electronic discovery.

**Appendix A: Case Weights**

In 2023, JLARC updated Virginia’s public defender case weights the first time in over a decade. These case weights account for the fact that different types of cases — murder, violent felony, nonviolent felony, misdemeanor, juvenile, driving while intoxicated (DWI), felony probation violation, misdemeanor probation violation, juvenile probation violation, and appellate — require more (or less) attorney time than others.

Using IDC caseload data from FY23, this report applies JLARC’s updated case weights to project the effectiveness of each policy alternative in reducing public defender workloads. The following components within these case weights were the most informative in making these projections:

**Policy Alternatives 1A and 1B: Create More Mitigation Specialist Positions**

*Murder*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Addressing Mental Health Issues | Public defenders representing mentally ill clients may need to spend additional time connecting their clients with services. This case weight also accounts for potential communication barriers. | 50% | 120 | 60 |
| Experts | Under the state’s new mental health statute (§19.2-271.6), evidence about a client’s mental condition that falls short of insanity is now admissible. Public defenders who intend to introduce this evidence will need to schedule an evaluation for their client and solicit expert testimony. | 35% | 300 | 105 |

*Violent Felony*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Addressing Mental Health Issues | Public defenders representing mentally ill clients may need to spend additional time connecting their clients with services. This case weight also accounts for potential communication barriers. | 80% | 60 | 48 |
| Experts | Under the state’s new mental health statute (§19.2-271.6), evidence about a client’s mental condition that falls short of insanity is now admissible. Public defenders who intend to introduce this evidence will need to schedule an evaluation for their client and solicit expert testimony. | 25% | 180 | 45 |
| Family Communication | Public defenders may need to meet with their client’s family to ensure that they understand the case and potential penalty. They may also use this time to collect information about their client’s background. | 25% | 45 | 11 |

*Non-Violent Felony*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Program Placement | Public defenders are expected to identify appropriate programs for clients and coordinate their entry into these programs. | 40% | 60 | 24 |
| Addressing Mental Health Issues | Public defenders representing mentally ill clients may need to spend additional time connecting their clients with services. Additionally, this case weight accounts for potential communication barriers. | 15% | 60 | 9 |
| Experts | Under the state’s new mental health statute (§19.2-271.6), evidence about a client’s mental condition that falls short of insanity is now admissible. Public defenders who intend to introduce this evidence will need to schedule an evaluation for their client and solicit expert testimony. | 10% | 120 | 12 |
| Family Communication | Public defenders may need to meet with their client’s family to ensure that they understand the case and potential penalty. They may also use this time to collect information about their client’s background. | 40% | 30 | 12 |

*Misdemeanor*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Program Placement | Public defenders are expected to identify appropriate programs for clients and coordinate their entry into these programs. | 20% | 60 | 12 |
| Addressing Mental Health Issues | Public defenders representing mentally ill clients may need to spend additional time connecting their clients with services. Additionally, this case weight accounts for potential communication barriers. | 2% | 120 | 2 |
| Assessing Competency | Public defenders are expected to assess their client’s competency. | 25% | 60 | 15 |
| Family Communication | Public defenders may need to meet with their client’s family to ensure that they understand the case and potential penalty. They may also use this time to collect information about their client’s background. | 55% | 40 | 22 |

*Driving While Intoxicated (DWI)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Program Placement | Public defenders are expected to identify appropriate programs for clients and coordinate their entry into these programs. | 40% | 60 | 24 |
| Family Communication | Public defenders may need to meet with their client’s family to ensure that they understand the case and potential penalty. They may also use this time to collect information about their client’s history of alcohol use. | 10% | 60 | 6 |

*Juvenile*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Assessing Competency | Public defenders are expected to assess their client’s competency. This has become more challenging in recent years for juvenile cases due to an increase in Autism diagnoses. | 18% | 30 | 5 |
| Program Placement | Public defenders are expected to identify appropriate programs for clients and coordinate their entry into these programs. | 25% | 60 | 15 |
| Addressing Mental Health Issues | When representing mentally ill clients, public defenders may need to spend time connecting their clients with mental health services. This case weight also accounts for potential communication barriers. | 17.3% | 150 | 26 |
| Experts | Under the state’s new mental health statute (§19.2-271.6), evidence about a client’s mental condition that falls short of insanity is now admissible. Public defenders who intend to introduce this evidence will need to schedule an evaluation for their client and solicit expert testimony. | 2% | 120 | 2 |
| Family Communication | Public defenders may need to meet with their client’s family to ensure that they understand the case and potential penalty. They may also use this time to collect information about their client’s background. | 55% | 40 | 22 |

**Policy Alternative 3: Expand Adult Drug Treatment Courts**

*Non-Violent Felony*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Deferrals | Cases in which the defendant participates in a pre-trial diversion program typically remain open for longer periods of time. | 20% | 90 | 18 |
| Program Placement | Public defenders are expected to identify appropriate programs for clients and coordinate their entry into these programs. | 40% | 60 | 24 |

*Misdemeanor*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Deferrals | Cases in which the defendant participates in a pre-trial diversion program typically remain open for longer periods of time. | 20% | 60 | 12 |
| Program Placement | Public defenders are expected to identify appropriate programs for clients and coordinate their entry into these programs. | 20% | 60 | 12 |

**Policy Alternative 4: Expand Partner Share Agreements**

*Murder*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Review Body Worn Camera Footage | Public defenders are expected to review all the BWC footage that is relevant to the case. Given the length of these recordings and the number of law enforcement personnel who may have been involved, these recordings can often take hours to review. | 80% | 360 | 288 |
| Review Cell Phone Evidence | Public defenders are expected to review all the cell phone evidence (e.g., text messages, photos, and videos) relevant to the case. | 60% | 360 | 216 |
| Review Social Media | Public defenders are expected to review their client’s social media activity as well as the social media activity of other parties involved in the cases. | 75% | 120 | 90 |

*Violent Felony*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Review Body Worn Camera Footage | Public defenders are expected to review all the BWC footage that is relevant to the case. Given the length of these recordings and the number of law enforcement personnel who may have been involved, these recordings can often take hours to review. | 80% | 180 | 144 |
| Review Cell Phone Evidence | Public defenders are expected to review all the cell phone evidence (e.g., text messages, photos, and videos) relevant to the case. | 10% | 180 | 18 |
| Review Social Media | Public defenders are expected to review their client’s social media activity as well as the social media activity of other parties involved in the cases. | 25% | 60 | 15 |

*Non-Violent Felony*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Review Body Worn Camera Footage | Public defenders are expected to review all the BWC footage that is relevant to the case. Given the length of these recordings and the number of law enforcement personnel who may have been involved, these recordings can often take hours to review. | 80% | 120 | 96 |
| Review Cell Phone Evidence | Public defenders are expected to review all the cell phone evidence (e.g., text messages, photos, and videos) relevant to the case. | 5% | 60 | 3 |
| Review Social Media | Public defenders are expected to review their client’s social media activity as well as the social media activity of other parties involved in the cases. | 5% | 60 | 3 |

*Misdemeanor*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Review Body Worn Camera Footage | Public defenders are expected to review all the BWC footage that is relevant to the case. Given the length of these recordings and the number of law enforcement personnel who may have been involved, these recordings can often take hours to review. | 50% | 60 | 30 |
| Review Cell Phone Evidence | Public defenders are expected to review all the cell phone evidence (e.g., text messages, photos, and videos) relevant to the case. | 25% | 20 | 5 |

*Driving While Intoxicated (DWI)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Review Body Worn Camera Footage | Public defenders are expected to review all the BWC footage that is relevant to the case. Given the length of these recordings and the number of law enforcement personnel who may have been involved, these recordings can often take hours to review. | 80% | 120 | 96 |

*Juvenile*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Activity** | **Description** | **Frequency**  **(% of Cases)** | **Average Time (Minutes)** | **Adjustment (Minutes)** |
| Review Body Worn Camera Footage | Public defenders are expected to review all the BWC footage that is relevant to the case. Given the length of these recordings and the number of law enforcement personnel who may have been involved, these recordings can often take hours to review. | 75% | 120 | 90 |
| Review Cell Phone Evidence | Public defenders are expected to review all the cell phone evidence (e.g., text messages, photos, and videos) relevant to the case. | 50% | 45 | 23 |
| Review Social Media | Public defenders are expected to review their client’s social media activity as well as the social media activity of other parties involved in the cases. | 30% | 30 | 9 |

**Appendix B: Mitigation Specialist Staffing and Compensation**

This report relied on the IDC’s staffing allocations for FY24, shown below, to project the number of mitigation specialists needed in each office under Policy Alternatives 1A and 1B.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Office** | **Number of Attorneys (FY24)** | **Number of Mitigation Specialists (FY24)** | **Attorney-to-Mitigation Specialist Ratio (FY24)** | **Positions Needed to Reach 10:1 Ratio** | **Positions Needed to Reach 3:1 Ratio** |
| Alexandria | 10 | 1 | 10:1 | 0 | 2 |
| Arlington | 12 | 1 | 12:1 | 1 | 3 |
| Bedford | 5 | 1 | 5:1 | 0 | 1 |
| Charlottesville | 9 | 1 | 9:1 | 0 | 2 |
| Chesapeake | 18 | 1 | 18:1 | 1 | 5 |
| Chesterfield | 27 | 2 | 13.5:1 | 1 | 7 |
| Danville | 8 | 2 | 4:1 | 0 | 1 |
| Fairfax | 25 | 4 | 6.25:1 | 0 | 4 |
| Fredericksburg | 23 | 2 | 11.5:1 | 1 | 6 |
| Halifax | 8 | 1 | 8:1 | 0 | 2 |
| Hampton | 16 | 1 | 16:1 | 1 | 4 |
| Leesburg | 12 | 1 | 12:1 | 1 | 3 |
| Lynchburg | 11 | 3 | 3.67:1 | 0 | 1 |
| Martinsville | 10 | 1 | 10:1 | 0 | 2 |
| Newport News | 20 | 1 | 20:1 | 1 | 6 |
| Norfolk | 22 | 1 | 22:1 | 2 | 6 |
| Petersburg | 8 | 1 | 8:1 | 0 | 2 |
| Portsmouth | 16 | 1 | 16:1 | 1 | 4 |
| Prince William | 25 | 2 | 12.5:1 | 1 | 6 |
| Pulaski | 9 | 1 | 9:1 | 0 | 2 |
| Richmond | 32 | 3 | 10.67:1 | 1 | 8 |
| Roanoke | 15 | 1 | 15:1 | 1 | 4 |
| Smithfield | 6 | 1 | 6:1 | 0 | 1 |
| Staunton | 14 | 2 | 7:1 | 0 | 3 |
| Suffolk | 8 | 1 | 8:1 | 0 | 2 |
| Virginia Beach | 29 | 2 | 14.5:1 | 1 | 8 |
| Warrenton | 6 | 1 | 6:1 | 0 | 1 |
| Winchester | 13 | 1 | 13:1 | 1 | 3 |
| **TOTAL** | **417** | **41** | **10:1** | **15** | **99** |

**Appendix B (Continued)**

This report relied on the IDC’s pay chart for FY24 to project the cost of creating new mitigation specialist positions under Policy Alternatives 1A and 1B. These figures are based on the entry-level state-supported salary for mitigation specialists and a pay differential for positions in Northern Virginia — both of which were adjusted by 3% each year to account for inflation.[[3]](#footnote-3)

These figures do not reflect additional costs to the state such as employee benefits (e.g., healthcare and retirement) given differences in employee preferences and needs. Similarly, these figures do not reflect the cost of salary supplements as the decision whether to provide additional compensation for the positions will be made at the local level and will likely vary significantly between jurisdictions.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **FY24** | **FY25** | **FY26** | **FY27** | **FY28** | **FY29** | **FY30** |
| **Salary** | $57,700 | $59,431 | $61,213.93 | $63,050.35 | $64,941.86 | $66,890.11 | $68,896.82 |
| **Northern Virginia Pay Differential** | $5,727 | $5,898.81 | $6,075.77 | $6,258.05 | $6,445.79 | $6,639.16 | $6,838.34 |

**Appendix C: Assumptions**

This report relies on the following assumptions to project the cost and effectiveness of each policy alternative:

***Policy Alternative 1A and 1B: Create More Mitigation Specialist Positions***

* With adequate staffing, attorneys can delegate all the social work tasks listed in Appendix A (pp. 33-5) to mitigation specialists.
* Compensation for mitigation specialists will increase at a standard rate of 3% per year to account for inflation.
* The average mitigation specialist can spend 1,378 hours per year working on cases. This figure is based on JLARC’s updated case weights and accounts for weekends, state holidays, vacation days, personal days, sick days, training opportunities, travel, and non-case related activities (e.g., staff meetings, administrative tasks, and lunch breaks).

***Policy Alternative 2: Expand Pre-Charge Diversion Programs***

* Programs will develop gradually based on the Pathways Program model:
  + Each program will begin with 25 participants during the first year of implementation (FY26) who could have been charged with non-drug-related misdemeanors and expanding by 5 slots per year. These participants will be required to complete community service.
  + During the fourth year of program implementation (FY29) each program will begin accepting 5 participants per year who could have been charged with drug-related misdemeanors. This number will expand by 5 slots per year. These participants will be required to pursue drug treatment and submit to regular screenings.
  + During the fifth year of implementation, each program will begin accepting participants who could have been charged with a non-violent, drug-related felony. These participants will also be required to pursue drug treatment and submit to regular screenings.
  + There will be 60 total participants in each program during the fifth year: 45 non-drug related misdemeanors, 10 drug-related misdemeanors, and 5 non-violent drug-related felonies. Programs will be considered “fully implemented” once they have reached this capacity.
  + 66% of participants who could have been charged with non-drug-related misdemeanors are presumed to be indigent. This assumption is based on the fact that two-thirds of criminal defendants in Virginia in FY22 were eligible for representation by a public defender or court-appointed attorney. (JLARC, 2023).
  + 90% of participants who could have been charged with a drug-related offense (misdemeanor or felony) are presumed to be indigent. These estimates are based on the percentage of participants in adult drug treatment courts eligible for Medicaid coverage. (Robinette, 2024).
* Small jurisdictions (i.e., populations below 15,000 residents) will partner with neighboring jurisdictions to reduce costs and leverage community resources.
* SCOVA’s cost estimates for drug treatment and regular screening accurately reflect the cost of providing these services. (Cheesman & Kunkel, 2012). These figures have been adjusted by a standard rate of 3% per year to account for inflation.
* Drug treatment will be provided by community service boards (CSBs) and most of these costs (90%) will be defrayed through Medicaid. (Kramer, 2024).
* Eligibility for participation will be restricted to those charged with first-time, misdemeanor and non-violent felony offenses.
* While participants will be allowed to consult with an attorney, public defenders will not be officially involved in any cases that are processed through a pre-charge program.

***Policy Alternative 3: Expand Adult Drug Treatment Courts***

* Program development will be gradual, beginning with 5 participants during the first year of implementation (FY26) and expanding by 5 slots per year as the program develops.
* SCOVA’s costing analysis for drug treatment and regular screenings accurately reflects the cost of providing these services. (Cheesman & Kunkel, 2012). These figures have been adjusted by a standard rate of 3% per year to account for inflation.
* Drug treatment will be provided by community service boards (CSBs) and most of these costs (90%) will be defrayed through Medicaid. (Robinette, 2024).
* Eligibility for participation will be restricted to those charged with misdemeanor and non-violent felony drug offenses.
* Individuals convicted of a violent criminal offense within the past 10 years will not be eligible to participate. (Va. Code § 18.2-254.1).
* At least one public defender will be required to participate in weekly drug court hearings. Accordingly, cases that are processed an adult drug treatment court will receive the full weight for deferrals and program placement, as shown in Appendix A (p. 36).

***Policy Alternative 4: Establish More Partner Share Agreements for Electronic Discovery***

* Public defenders spend, on average, 10% of their time during electronic discovery obtaining evidence. This assumption accounts for the fact that some jurisdictions have more restrictive — and therefore more time-consuming — processes for electronic discovery than others. Furthermore, this assumption includes time spent by public defenders corresponding with prosecutors and LEOs regarding digital evidence.
* The IDC will incur no additional costs for expanding the number of partner share agreements as Axon is contractually obligated to cover these expenses, including the cost of training and technical assistance.

**Appendix D: Example Cost Calculations**

Example cost calculations for Policy Alternatives 2 and 3 are provided below. Examples are not provided for Policy Alternatives 1A and 1B as the process for these calculations is explained in Appendix B. Similarly, no example is provided for Policy Alternative 4 as the projected cost for implementation is $0.

***Policy Alternative 2): Expand Pre-Charge Diversion Programs***

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| FREDERICKSBURG CITY |  |  |  |  |  |
| **Item** | **FY26** | **FY27** | **FY28** | **FY29** | **FY 30** |
| Vehicle (Ford Transit Van Wagon XL) | 56,885.46 | 0.00 | 0.00 | 0.00 | 0.00 |
| Transportation Expenses (15,000 Miles Per Year) | 2,000.00 | 2,060.00 | 2,121.80 | 2,185.45 | 2,251.02 |
| Trash Bags (for Litter Clean Up) | 795.75 | 983.40 | 1,181.95 | 1,565.10 | 2,149.20 |
| Safety Vests (for Litter Clean Up) | 265.25 | 54.6 | 56.3 | 116 | 179.1 |
| Intake Assessment (Drug-Related Offense) | 0.00 | 0.00 | 0.00 | 1,450.10 | 4,480.80 |
| Drug Treatment (Medicaid Ineligible Participants) | 0.00 | 0.00 | 0.00 | 22,361.23 | 46,064.14 |
| Drug Testing | 0.00 | 0.00 | 0.00 | 6,742.00 | 20,832.75 |
| Drug Program Training | 0.00 | 0.00 | 4,502.04 | 4,637.10 | 4,776.21 |
| Program Coordinator Salary (Adjusted for Northern Virginia) | 0.00 | 0.00 | 129,433.50 | 133,316.51 | 137,316.00 |
| Office Supplies | 530.45 | 546.36 | 562.75 | 579.64 | 597.03 |
| Educational Materials (for LEOs and community members) | 1,000.00 | 1,030.00 | 1,060.90 | 1,092.73 | 1,125.51 |
| **TOTAL COST** | **$61,476.91** | **$4,674.36** | **$138,919.24** | **$174,045.86** | **$219,771.76** |
| **TOTAL COST (FY26-30)** |  |  |  |  | **$598,888** |

**Appendix D (Continued)**

***Policy Alternative 3): Expand Adult Drug Treatment Courts***

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| FAUQUIER COUNTY | |  | |  | |  | |  | |
| **Item** | **FY26** | **FY27** | **FY28** | | **FY29** | | **FY 30** | |
| Intake Assessment | 1,327.05 | 2,733.70 | 4,223.55 | | 5,800.40 | | 7,468.00 | |
| Drug Treatment (Medicaid Ineligible Participants) | 20,463.70 | 21,077.61 | 43,419.88 | | 44,722.46 | | 69,096.21 | |
| Drug Testing | 6,169.90 | 12,710.00 | 19,636.95 | | 26,968.00 | | 34,721.25 | |
| Program Coordinator Salary (Adjusted for NOVA) | 84,872.00 | 87,418.16 | 90,040.70 | | 92,741.93 | | 95,524.18 | |
| Office Supplies | 530.45 | 546.36 | 562.75 | | 579.64 | | 597.03 | |
| Transportation | 1,060.90 | 1,092.73 | 1,125.51 | | 1,159.27 | | 1,194.05 | |
| Drug Program Training | 4,243.60 | 4,370.91 | 4,502.04 | | 4,637.10 | | 4,776.21 | |
| **TOTAL COST** | **$118,667.60** | **$129,949.47** | **$163,511.38** | | **$176,608.80** | | **$213,376.93** | |
| **TOTAL COST (FY26-30)** |  |  |  | |  | | **$802,114** | |

**Appendix E: Interview Subjects**

The following individuals were interviewed by the author between September 2023 and April 2024 while conducting research for this report:

* Justin Brown, *JLARC Senior Associate Director*
* Peter Boatner, *Staunton Chief Public Defender*
* Joshua Elrod, *Buena Vista Commonwealth’s Attorney and Member of the Buena Vista, Lexington, and Rockingham County Adult Drug Treatment Court Advisory Committee*
* James Hingley, *Albemarle County Commonwealth’s Attorney*
* Maria Jankowski, *IDC Executive Director*
* Caleb Kramer, *Augusta County Assistant Commonwealth’s Attorney and Pathways Program Liaison*
* Elizabeth Murtagh, *Charlottesville Chief Public Defender*
* Tracy Paner, *Richmond Chief Public Defender*
* Lindsay Phipps, *Pulaski Chief Public Defender*
* Cheryl Robinette, *Virginia Drug Treatment Court Advisory Committee Member*
* Megan Thomas, *Alexandria Chief Public Defender*
* Lauren Whitley, *Fredericksburg Chief Public Defender*

**References**

Baxter, H. (2012). Too Many Clients, Too Little Time: How States Are Forcing Public

Defenders to Violate Their Ethical Obligations. *Federal Sentencing Reporter*, 25(2),

91-102.

Botkin, B. (2023, June 22). *Oregon Lawmakers Put $66 Million Toward Public Defender Crisis*. Oregon Capital Chronicle. Retrieved October 22, 2023, from https://oregoncapital chronicle.com/2023/06/22/oregon-lawmakers-put-96-million-toward-public-defender-crisis/.

Brennan, C. (2015). The Public Defender System: Comparative Assessment. *Indiana*

*International & Comparative Law Review*, 25(2), 237-268.

Cheesman, F. & Kunkel, T. (2012, October). Virginia Adult Drug Treatment Courts: Cost Benefit Analysis. Retrieved March 20, 2024, from https://www.vacourts.gov/courtadmin/ aoc/djs/programs/sds/programs/dtc/resources/virginiadtccostbenefit.pdf.

Carroll, R. (2017). *Right to Counsel in the 50 States*. Sixth Amendment Center. Retrieved September 11, 2023, from https://www.in.gov/publicdefender/files/Right-to-Counsel-Services-in-the-50-States.pdf.

Denning, S. (2023, September 27). *2023 Appropriations Act Enacts Significant Court-Related Changes*. UNC School of Government. Retrieved on October 23, 2023, from https://nccriminallaw.sog.unc.edu/2023-appropriations-act-enacts-significant-court-related-changes/.

Hanan, E. (2018). Big Law, Public Defender-Style: Aggregating Resources to Ensure

Uniform Quality of Representation. *Washington and Lee Law Review*, 74(2),

420-437.

Hanlon, S. F. (2018). Case Refusal: Duty for Public Defender and Remedy for All of

Public Defender's Clients. *Indiana Law Review*, 51(1), 59-88.

Jackman, T. (2005). *Indigent Defense Panel is Approved*. Washington Post. Retrieved September 23, 2023, from https://www.washingtonpost.com/archive/local/2004/03/16/indigent-defense-panel-is-approved/9f108563-c489-4135-a231-bbd2eed1e8e9/.

Joe, I. (2016). Systematizing Public Defender Rationing. *Denver Law Review*, 93(2),

389-430.

Joe, I. (2020). Structuring the Public Defender. *Iowa Law Review*, 106(1), 113-180.

McCarthy, A. (2019). *‘Still an Ambush State’: The Move Towards Discovery Reform is Going Slowly in Virginia*. Virginia Mercury. Retrieved December 23, 2019, from https:// virginiamercury.com/2019/12/23/still-an-ambush-state-the-move-toward-discovery-reform-is-going-slowly-in-virginia/.

Pace, N., Brink, M., Lee, C., & Hanlon, S. (2023) *National Public Defense Workload Study*. RAND Corporation. Retrieved September 17, 2023, from https://www.rand.org/pubs/ research\_reports/RRA2559-1.html.

Powell, L. (2023, September 13). *State’s Public Defenders Deal with Heavy Caseloads and Low Pay*. Richmond Times-Dispatch. Retrieved June 14, 2023, from https://richmond.com/ news/local/crime-courts/public-defenders-heavy-workload-low-pay-virginia/article\_2c380806-50de-11ee-8194-177b77d38b03.html.

Wood, L. C., Goyette, D. T., & Burkhart, G. (2016). Meet and Plead: The Inevitable

Consequence of Crushing Defender Workloads. *Litigation*, 42(2), 20-26.

*A Comprehensive Review of Indigent Defense in Virginia*. (2005). ABA. Retrieved September 23, 2023, from https://clearinghouse.net/doc/42926/.

*Annual Report*. (2023). IDC. Retrieved January 3, 2024, from https://www.vadefenders.org/wp-content/uploads/2023/10/FY23-Annual-Report.pdf.

*Court-Appointed Counsel Procedures and Guidelines Manual.* (2024). SCOVA. Retrieved February 23, 2024, from https://www.vacourts.gov/courtadmin/aoc/djs/resources/ manuals/ctapptatty/cacmanual.pdf.

*Criminal Defense* (2019). Yale Law School. Retrieved December 29, 2023, from https://law.yale .edu/sites/default/files/area/department/cdo/document/cdo\_criminal\_defense\_public.pdf.

*Indigent Criminal Defense and Commonwealth Attorneys*.(2023) JLARC. Retrieved November 13, 2023, from https://jlarc.virginia.gov/pdfs/reports/Rpt581.pdf.

*Gideon v. Wainwright*. (2023). U.S. Courts. Retrieved September 11, 2023, from https://www.us courts.gov/educational-resources/educational-activities/facts-and-case-summary-gideon-v-wainwright.

*Guidelines for Collaboration and Engagement: Prosecution and Defense Counsel Working Together in Joint Post-Conviction Investigations*. (2022, March). University of Pennsylvania Carey School of Law. Retrieved November 13, 2023, from https://www.law.upenn.edu/live/files/12062-guidelines-for-collaboration-and-engagement.

*Model Policy on Body Worn Cameras.* (2021). DCJS. Retrieved February 16, 2024, from https:// www.dcjs.virginia.gov/content/body-worn-camera-model-policy.

*Ten Principles of a Public Defense System*. (2023) ABA. Retrieved September 30, 2023, from https://www.americanbar.org/content/dam/aba/administrative/legal\_aid\_indigent\_ defendantsls-sclaid-603-public-def-principles-2023.pdf.

*Virginia Drug Treatment Court Dockets Fiscal Year 2023 Annual Report*. (2023). SCOVA. Retrieved March 16, 2024, from https://www.vacourts.gov/courtadmin/aoc/djs/ programs/sds/programs/dtc/resources/2023\_dtc\_report.pdf.

1. On April 2, 2024, Governor Youngkin signed H.B. 1014 that will establish a public defender office for Harrisonburg and Rockingham County. Because this office is not yet operating, it is not factored into the report’s analysis. [↑](#footnote-ref-1)
2. The Staunton Public Defender’s Office is excluded from this analysis as Buena Vista, Lexington, and Rockbridge County are currently in the process of creating a combined adult drug treatment court. [↑](#footnote-ref-2)
3. Pay differential applies to eight offices in Northern Virginia: Alexandria, Arlington, Fairfax, Fauquier, Fredericksburg, Leesburg, Prince William, and Winchester. [↑](#footnote-ref-3)