

Provide Counsel at First Appearance in Virginia's Criminal Courts

The Issue: In Virginia, people detained pretrial can sit in jail for days or even weeks before they can challenge their detention, often resulting in a loss of employment, housing, access to medical care, and more, with effects rippling through families and communities. And when they finally appear in court, they often face a complicated system without a lawyer.

The Solution: Provide counsel to everyone in custody at their first court appearance and allow arguments on bail to be heard the same day.

Without a lawyer advocating for them, people who are detained are more likely to face unaffordable bond, extended pretrial detention, or confusing and punitive pretrial conditions. People held pretrial are more likely to be convicted, receive a longer sentence, and to be rearrested for new crimes.

Counsel at first appearance is already being provided in every type of Virginia jurisdiction:

- With public defender (Prince William) and court appointed counsel systems (Williamsburg)
- Urban (Richmond) and rural (Rockbridge)
- Republican-leaning (Augusta) and Democratic-leaning (Portsmouth)

Proposed legislation allows for flexibility to local conditions by allowing each jurisdiction to develop their own plans to provide CAFA in a way that works for their community's unique needs while still ensuring core commitments to:

- Guarantee everyone in custody has a lawyer at their first court appearance
- Provide lawyers access to the information needed for effective pretrial advocacy
- Ensure courts hear any arguments by the defense and prosecution about bail
- Give everyone the opportunity to consult with their lawyer before arguments on bail occur

Virginia could save money.

- **Savings on the back-end:** According to the Virginia Pretrial Data Project, every month thousands of Virginians initially detained by a magistrate are eventually released within fourteen days of arrest. By expediting the review of those individuals' pretrial conditions, tens of thousands of jail bed days could be avoided, resulting in millions of dollars of savings. In 2019, the average cost of holding someone in jail for a single day was over \$90.
- **Reasonable front-end cost:** Roughly 70% of cases in Virginia are handled in jurisdictions served by public defender offices. The Indigent Defense Commission reports that: "virtually all public defender offices, including those covering multiple jurisdictions, report having enough assets currently to provide representation for bail review at first appearance if required."

All stakeholders benefit. CAFA increases procedural justice by ensuring the accused understands the proceedings, improving future appearance rates and conceptions of fairness; reduces the human cost of pretrial detention; and increases judicial efficiency by reducing the number of court appearances and providing an advocate to facilitate interactions with the accused.