



Can't Afford an Attorney?

Virginia Law Tells Poor People To Pay Anyway

by Pat Levy-Lavelle

***You have the right to an attorney.
If you cannot afford an attorney, one will be
provided for you.***

Many people have heard that promise. It's part of what's known as the Miranda warning and it's part of our core understanding of the criminal legal system. If you cannot afford to pay for an attorney, you still get one, because everyone deserves access to equal justice.

But it's not quite that simple in Virginia.

Here, when a person cannot afford to pay for an attorney and is assigned one by the court, that representation isn't free if the person is convicted, accepts a plea bargain, and even sometimes when a case may be dismissed. Instead, they get charged a court-appointed attorney fee (for their court-appointed attorney or public defender), despite the judge already having decided that they couldn't pay for an attorney.

Virginia's existing policy of charging people for court-appointed attorneys taxes low-income people for equal justice, takes money out of family budgets for basic needs, costs localities across the Commonwealth dearly, and is unnecessary.

Virginia can and should eliminate court-appointed attorney fees.¹

"Court costs are a burden, they are oppressive, and they are systematic."

Shakil Ali has several nonviolent convictions from years ago in the Harrisonburg area.

After serving time in jail, he was released only to find that he had over \$3,000 in court debt,² of which court-appointed attorney fees were over \$1,000. He made regular monthly payments and complied with all of the conditions of probation. Because of this, his probation officer recommended that he be taken off probation, but the court disallowed that because of his remaining debt, and instead hauled Mr. Ali back into court. The judge (who asked no questions about Mr. Ali's finances) told Mr. Ali that he had 45 days to pay his balance, or that he'd be sent back to jail.

Faced with jail time after being released from incarceration, simply for his debt, Mr. Ali's community gathered the money at great hardship.

"Court costs are a burden, they are oppressive, and they are systematic," says Mr. Ali. "The court system ran itself for centuries without fees and now people are being crushed by them."

HOW THE CURRENT SYSTEM OPERATES

- When a person is accused of criminal charges that can draw jail time, the U.S. Constitution requires that the government ensures people can have an attorney who will provide them with effective representation.
- For low-income people in Virginia, access to an attorney means either a court-appointed attorney or a public defender (depending on the geographic area).³
- In court, a judge will ask the person facing these criminal charges if they can afford an attorney; if they can't, the person either will fill out a form or be interviewed about their finances. Only people with a very low income—below 125% of the federal poverty level—will qualify for a court-appointed attorney or public defender. For a single-person household, that threshold is \$18,225 a year. For a family of four, that threshold is \$37,500 a year.
- If the court finds that the person qualifies, based on the income standard and meaning that the person cannot afford to pay for an attorney, the court will appoint an attorney or assign the case to the public defender's office, and the case will proceed.
- If a person gets a deferred disposition (meaning the case is dismissed if the individual follows the court's directions), they may be billed for their attorney as a condition of dismissal. If they are convicted, whether by plea agreement (which is how an estimated 90 to 95% of cases are resolved, based on national statistics)⁴ or after trial, they will be billed for the attorney. In either case, this is despite the previous court finding that they could not afford the attorney.
- The fees charged can vary widely, depending on how the jurisdiction bills (either per case—which could involve multiple criminal charges—or per criminal charge), and what types of criminal convictions are involved. Virginia's law assigns a fee of \$120 to low-level misdemeanors, and up to \$1,235 for certain felonies. In practice, these bills can accumulate into thousands of dollars. In many cases, the court-appointed attorney fee can be more than 50% of the person's overall bill.
- Virginia law says that court-appointed attorney fees are mandatory, so there is no way for a person to challenge these fees if they are unable to pay.
- For low-income Virginians, court debt can be a lifelong debt sentence. Depending on the kind of case, the debt can be collectible for thirty (General District Court debt) or even sixty (Circuit Court debt) years after the conviction.⁵
- Unpaid court debt can lead to serious and sometimes life-altering penalties including extending probation, causing a person to lose a deferred disposition and be convicted of a criminal offense, or triggering separate court proceedings where the person faces the possibility of additional fines or imprisonment.

Example Bill:

Arlington Circuit Court – a case resolved in 2020 by a guilty plea, without a trial, for drug possession

CHARGES

INT CRIM CHILD FUND: \$30.00

STATE INTEREST: \$355.28

COURT APPT ATTY FEE: \$1780.00

LOCAL INTEREST: \$12.50

FELONY FEE: \$750.00

DOAF [Drug Offender Assessment Fund]:
\$300.00

FINES AND FORFEITURES: \$0

E-SUMMONS: \$10.00

CSHF [Courthouse Security Fund]: \$20.00

COLLECTION FEE: \$0

Total: \$3257.78

Deferred Dispositions: Pay or You're Guilty

"Sara"⁶ was arrested and charged with larceny (related to a smartphone) and disorderly conduct in a public place. She was determined to be indigent and was assigned a public defender. She expressed concern that she'd been falsely accused. However, instead of being taken to trial, and the risks of sentencing, Sara was offered a deferred disposition where the court would drop charges against her if she completed certain terms, including the payment of over \$1,300 in court costs (including court-appointed attorney fees of \$703 [\$445 on the larceny charge, and \$158 on the other]). Sara was relieved to be able to put the criminal charges behind her and worked hard to complete the terms set by the court, including meeting periodically with a probation officer. But she told the court that she just hadn't had the money to pay, since her limited earnings were consumed by rent and other basic needs for her and her daughter.

After giving her an extension and making it clear that payment was part of the deal, and her failing to pay, **the court then revoked the deferred disposition—convicting her on both charges**, because she was unable to pay her court-appointed attorney fees and other court debt. **Sara now has criminal convictions, solely because she couldn't pay.**

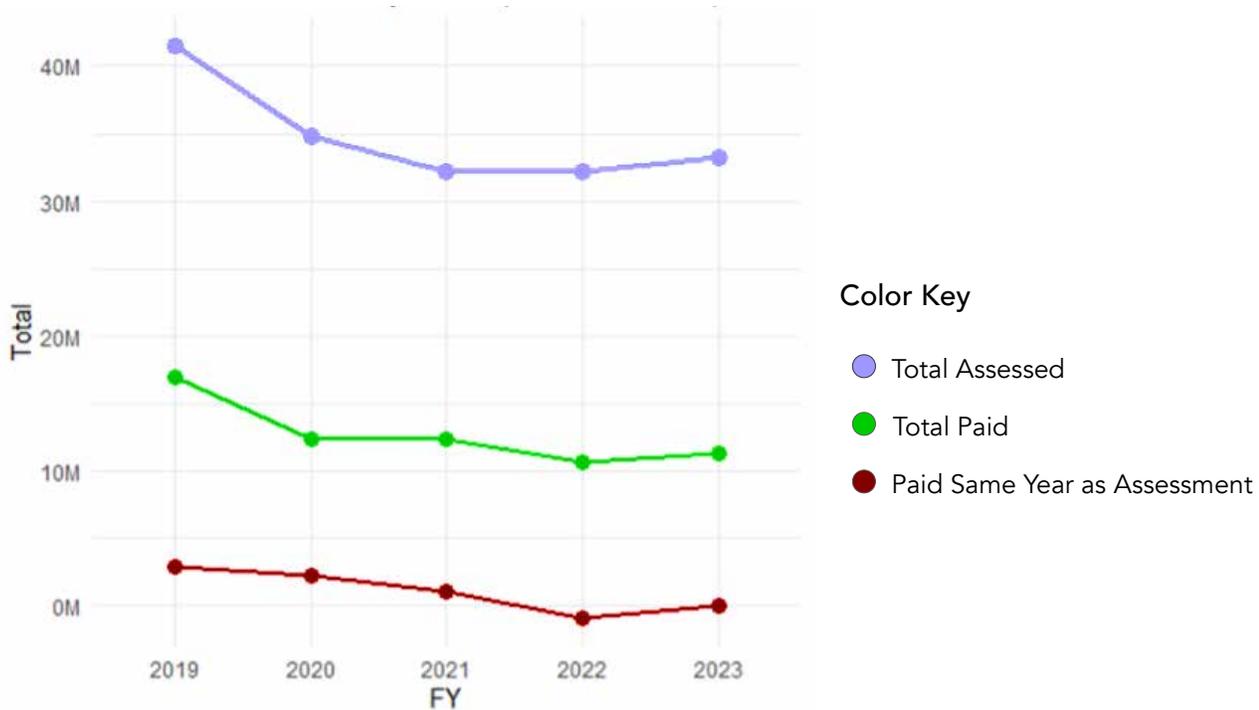
THE CURRENT SYSTEM, BY THE NUMBERS

Analysis of data newly obtained from Virginia’s state court system⁷ paints a picture of a system that imposes millions of dollars of court-appointed attorney fee debt on low-income people, collects far less than what is imposed, and concentrates harm in communities least able to bear the burden.

Between FY2019 and FY2023, Virginia courts collected an average of nearly \$12.7M annually in court-appointed attorney fee debt from low-income people. These funds flow into the state’s General Fund as undifferentiated revenue to the state, and to localities.

Between FY2019 and FY2023, an average of over \$34.7M in court-appointed attorney fee debt was imposed on low-income people annually, by Virginia state courts.

Assessments and Payments (FY 2019-2023)



Virginia Law Tells Poor People To Pay Anyway

Just 3% of court-appointed attorney fees are collected in the same year they were assessed

- Over the past five fiscal years, just 3% of court-appointed attorney fees were collected in the same year they were assessed; at the end of each year, almost all court-appointed attorney fees remained as debt on the books against low-income Virginians.
- Older debt is typically an indication of debt that is more difficult and expensive to collect, and may in some cases be uncollectible. Studies of court debt across the country have shown that people who can pay typically do so quickly, and that debt that remains is often a diminishing source of revenue.⁸ Debt that is paid later typically reflects extraction of money from people and family members who do not have the capacity to pay without serious hardship. Virginia's Auditor of Public Accounts concluded previously that court debt should be stratified, with greater emphasis on people's ability to pay, and a greater recognition that some court debt is simply uncollectible.⁹

Assessments and revenues have declined significantly over the past five fiscal years

- Over the past five fiscal years, as the chart on page four indicates, there has been a marked decline in court-appointed attorney fee assessments and revenues. More specifically, Virginia has seen a 33% decrease in revenues over the five-year period.
- Court-appointed attorney fee revenue is thus an unreliable and shrinking source of money for Virginia government budgets. As noted below, the amount represents just .0001937 of the state budget. Localities reporting revenue in annual budgets

from court-appointed attorney fees reported an average of just \$4,494 in such revenues.

- Additionally, these gross figures do not account for the fact that court debt is also an inefficient source of revenue. The cost of trying to collect court debt, especially from low-income Virginians, is far more expensive than other options for revenue generation available to government leaders – both in actual dollars expended, and also because it takes valuable staff time and resources away from other important justice and public safety needs.

Higher per-case court-appointed attorney fees are associated with areas of Virginia with higher levels of poverty and with higher percentages of people of color

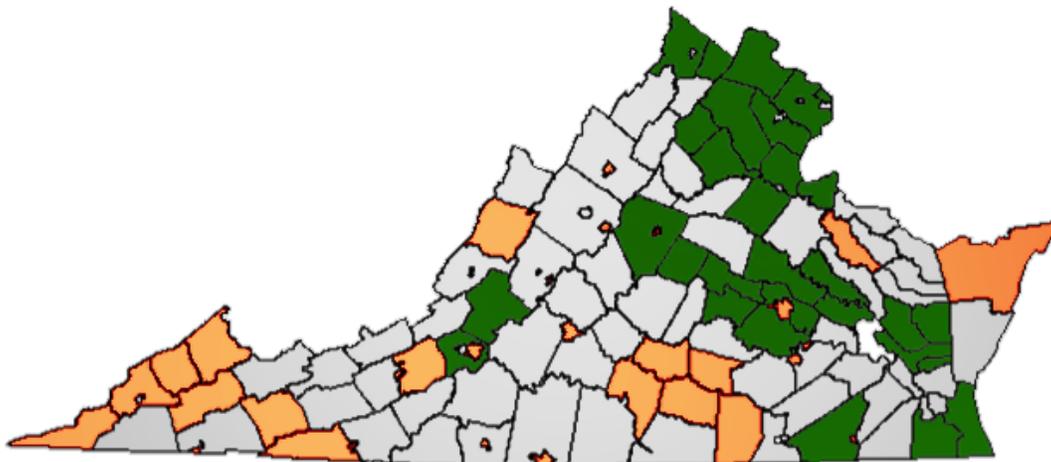
- Court-appointed attorney fees are notably higher (per case involving a court-appointed attorney or public defender, where court-appointed attorney fees have been imposed [“case involving court-appointed attorney fees”]) in the geographic communities across Virginia that can least afford it.
- The data includes, as to each jurisdiction, the total number of cases in each of the past five fiscal years in which any amount of court-appointed attorney fees was imposed, and the total amount in court-appointed attorney fees imposed over the course of each fiscal year. Thus, we can estimate the average court-appointed attorney fees assessment per case involving court-appointed attorney fees, over the course of the past five fiscal years.

Court-appointed attorney fees are higher on average, per case involving these fees, in the areas of Virginia with the highest percentages of indigent Virginians

Comparing the 31 jurisdictions in Virginia with the highest percentage of people living at or below 125% of the poverty line, to the 31 jurisdictions with the lowest percentage, reveals a distinct divide. In low-income Virginia, jurisdictions appear to assess higher amounts in court-appointed attorney fees per case involving court-appointed attorney fees, with an average of \$590 in court-appointed attorney fees per case.¹⁰ In high-income Virginia, jurisdictions generally assessed lower amounts in court-appointed attorney fees per case involving court-appointed attorney fees, with an average of \$370 per case. In short, those areas of Virginia least able to pay (that is, the lowest-income

cohort) carry a per-case burden roughly 60% higher than the highest-income cohort.

Because the impact of court-appointed attorney fees, like court debt more generally, spills from individual Virginians to families and communities, this financial burden of free representation that isn't free means a disproportionately large chunk of dollars taken from, or debt otherwise hanging over, communities already challenged by poverty.



Color Legend

- Jurisdictions with the smallest percentage of residents at or below 125% poverty level (average "per capita" assessment is \$370)
- N/A
- Jurisdictions with the largest percentage of residents at or below 125% poverty level (average "per capita" assessment is \$590)

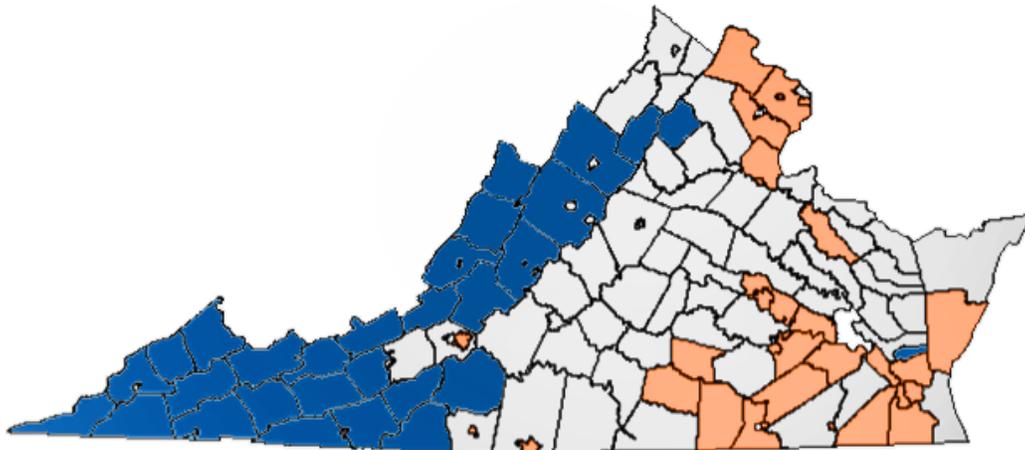
Virginia Law Tells Poor People To Pay Anyway

Court-appointed attorney fees are higher on average, per case involving these fees, in the areas of Virginia with the highest percentages of “non-white” Virginians

A similar divide exists across Virginia with regards to court-appointed attorney fees vis-a-vis race. Comparing the 31 jurisdictions in Virginia with the highest percentage of non-white Virginians,¹¹ to the 31 jurisdictions with the lowest percentage, reveals a distinct disparity. In the jurisdictions with the largest percentage of non-white Virginians, the average court-appointed attorney fee assessment per case involving court-appointed attorney fees is higher, at \$433 in court-appointed attorney fees per case. In the jurisdictions with the lowest percentage of non-white Virginians, jurisdictions generally assessed lower amounts in court-appointed attorney fees per case involving court-appointed attorney fees, with an average of \$340

per case. In short, areas with the highest percentage of non-white Virginians carry a per-case burden over 27% higher than areas with the lowest percentage.

While the reasons for these disparities are unclear, these disparities themselves—impacting communities that have been challenged by poverty and racial oppression—stand as an impediment to a Virginia where families and communities have a fair chance and can see a better future.



Color Legend

-  Jurisdictions with the smallest percentage of non-white residents (average “per capita” assessment is \$340)
-  N/A
-  Jurisdictions with the largest percentage of non-white residents (average “per capita” assessment is \$433)

"The thing that all of my clients have in common is they do not have the ability to pay for a lawyer."

"I represent people every day who have been accused of a crime. Some may have violated the law, others did not. I fight for all of them zealously and unapologetically because due process matters. The thing that all of my clients have in common is they do not have the ability to pay for a lawyer. But if our Constitution and ideals are to mean anything, this should be irrelevant. Funding indigent defense is critically important to these ideals. So is the realization that when someone is determined by a court to be unable to hire an attorney, that same person should not be asked to pay for the court-appointed counsel they receive. The system must change."

Brad Lindsay, Deputy Public Defender, Lynchburg City

"How do you charge someone for their attorney when they were too poor to afford one?"

"I didn't even know I'd get charged for my attorney until after my appeal was decided! That's when I learned I had about \$650 in counsel fees, and I was shocked. I thought that'd come from the state budget, just like the money for the Commonwealth Attorney. How do you charge someone for their attorney when they were too poor to afford one?"

While I was in prison, I was making just 45 cents an hour working in the law library—and the prison was taking money out of that pay for fees. How am I going to buy hygiene items and decent food, especially since I wasn't getting money from home? It does cause trauma and stress."

Hassan Shabbaz, a Virginian who faced court-appointed attorney fees

PROBLEMS WITH VIRGINIA'S CURRENT SYSTEM

Virginia's existing policy choice—to impose debt and try to collect money from low-income people for access to a lawyer, after a judge already has found that the person makes too little money to afford a lawyer—is problematic for several reasons:

Court-appointed attorney fees are inconsistent with the promise of equal justice.

Like Americans across the country, Virginians understand that the criminal legal system is supposed to be fair to people regardless of their income. The U.S. Supreme Court wrote nearly seventy years ago, in a case called *Griffin v. Illinois*, that “[i]n criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color.” The Court concluded that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.” 351 U.S. 12, 17 (1956). The U.S. Supreme Court later said, in *Gideon v. Wainwright*, that “in our adversary system of criminal justice, any person hauled into court, who cannot afford a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.” 372 U.S. 335, 344 (1963).

When the Commonwealth makes a policy decision to collect money from low-income people for a lawyer they got precisely because they could not afford a lawyer, it breaks that trust. People understand that everyone has the right to a defense attorney. Public defense should be paid for as part of the larger public safety system and not be shouldered by Virginia's low-income families.¹²

Court-appointed attorney fees take money away from struggling families, and create disproportionate and unequal burdens for low-income communities in Virginia and for people of color.

When low-income people do pay court-appointed attorney fees—through payment plans, collections activity, and/or under threat of further criminal legal system involvement—it means taking money away from their families for basic needs like housing, food, medicine, transportation, childcare, and other essentials.

The impact of these fees does not fall just on people who are accused of crimes, but on their families and children as well. It hurts families in our Commonwealth and harms future generations. Court-appointed attorney fees mean more families struggling, and more instability in our communities.

A recent national survey¹³ of households facing court debt found that court debt caused 61% to experience at least one essential hardship—in housing, food, employment, health, childcare, or transportation—and that 99% of parents of children had to cut back on at least one essential need as a result of court debt. “At every step of the process,” the report summarizes prior studies, “counterproductive enforcement tactics focused on making money can push people into a cycle of punishment, debt, and poverty that can lead to people losing their jobs, their homes, and even their children.”

Moreover, court-appointed attorney fee debt is disproportionately concentrated in low-income communities, and among people of color. Data suggests that there is a distinct association—some of the highest court-appointed attorney fees in Virginia, on a per-case basis among cases involving court-appointed attorney fees, are in jurisdictions with high percentages of low-income people, and of Virginians who are not white.¹⁴

And, looking to court debt more generally, a recent study found that Black Virginians were assessed 33% of court debt, despite being only 19% of Virginia's population.¹⁵ While all court debt has a racially disparate impact, because court-appointed attorney fees uniquely target low-income people, and because Black Virginians have the highest poverty rate by race/ethnicity among Virginians,¹⁶ the burden of court-appointed attorney fees is likely to be disproportionately heavier.

Court-appointed attorney fees are notoriously expensive and inefficient to collect.

Court-appointed attorney fees are, like court debt generally, a disproportionately expensive and inefficient source of revenue.

For example, the collection fee Amherst County pays to collect outstanding court debt is 46.8% of each dollar collected.¹⁷ In Arlington/Falls Church the collection cost is even higher, at 51.1%.¹⁸ Jurisdictions across Virginia expend significant resources to claw court debt revenue (including from court-appointed attorney fees) from indigent Virginians with only mediocre results, while causing significant harm to low-income communities.¹⁹

Virginia's expensive and inefficient collection of court debt is even worse than these numbers suggest. That is because these figures account only for direct collection costs. Factoring in the expense of keeping people tied to the criminal legal system due to unpaid court-appointed attorney fees and other court debt—with longer probation, new court proceedings for unpaid debt, and even sometimes incarceration—means that the inefficiency of collecting court-appointed attorney fees is even higher.

Virginia Law Tells Poor People To Pay Anyway

Court-appointed attorney fees are a very minor revenue source for Virginia.

For all of the problems court-appointed attorney fees cause, and for all of the inefficiency their collection entails, they also are not a significant source of revenue for Virginia's state budget and localities across the state. The money generated annually through court-appointed attorney fees works out to approximately .0001937 (or .01937%) of the state budget. In a budget of \$76 billion, \$12.7 million is a small fraction, especially compared to the costs of collection and the hardship it poses on debtors and their families.²⁰

Also, it is critically important to note that the money that is collected for court-appointed attorney fees does not go specifically to indigent defense. Indigent defense is a separate budget line, and public defenders/court-appointed attorneys are paid from that regardless of whether the person they represented was billed, or can pay, court-appointed attorney fees. Instead, revenue from these fees goes into the state's General Fund. The state's General Fund is a collection of discretionary money that spans funding across almost all agencies. To that end, the elimination of court-appointed attorney fee recoupment from indigent Virginians would not impact public defense; it means that General Fund monies would have to be only slightly reallocated to ensure that public defense remains fully funded. A renewed focus on

adequately funding public defense, such as is reflected in JLARC's 2023 study of the topic,²¹ presents the perfect time to recognize that public defense should be adequately—but also publicly—funded.

As for localities, very little money (a fraction of that \$12.7M collected annually) is generated by court-appointed attorney fees.²² A review by Vera Institute for Justice, that led to later reporting on court debt impacts on government budgets,²³ showed that only a limited number of jurisdictions (31 counties and 7 independent cities) with publicly available budgets reported a line item for revenues corresponding with court-appointed attorney fees.

Of those cities and counties, the average city or county collected just \$4,494 in these fees over the course of the year.²⁴ Based on this data, it is clear that court-appointed attorney fees are not generating much revenue for local government.

Court-appointed attorney fees tie people down with a debt sentence, risking further entanglement with the criminal legal system.

Court-appointed attorney fees are often one of the biggest chunks of court debt imposed on low-income people. And that debt can tie down low-income people trying to get by and do better for themselves and their families.

While people with money can pay off their debt and move on with their lives, low-income people can't. Beyond the money that is collected from families and communities that are already struggling, Virginia's laws ensure that court debt—including court-appointed attorney fees—can remain hanging over someone for decades. This effectively means a lifelong debt sentence for thousands of Virginians.

Nonpayment of debt can have spillover consequences—revocation of suspended sentences, denial of deferred dispositions, longer probation terms, and new court proceedings that carry the possibility of more fines and even jail time. Holding court-appointed attorney fees over low-income people can be a counterproductive barrier that prevents them from exiting the criminal legal system.²⁵ A Virginia that believes in public safety, rehabilitation, and second chances needs to know that court debt—and specifically court-appointed attorney fees—work against those fundamental values.

"We swear a statement that we can't afford an attorney. So what makes you think I can afford it in a year or two years from now?"

Court-appointed attorney fees have taken a toll on Kenneth Harper. Prior paychecks have been garnished, and he hasn't seen a state tax refund in years due in part to court-appointed attorney fees. Mr. Harper's struggles with drug addiction saw him in court for a number of drug charges several years ago and for minor offenses, and despite him having little income, he says he has been charged for a court-appointed attorney "every time." Mr. Harper's court-appointed attorney fees follow him, even as he now works in a reentry program to put himself on a better path.

"What's the purpose of this," Mr. Harper asks. "We swear a statement that we can't afford an attorney. So what makes you think I can afford it in a year or two years from now?"

RECOMMENDATIONS FOR REFORM

Court-appointed attorney fees are riddled with problems and create a needless penalty on Virginia families who can't pay. Public defenders should be well-paid and indigent defense should be well-funded; this is critical in our adversarial court system for the promise of equal justice to become a reality. Just like libraries, police, and firefighters, indigent defense should be funded as a public necessity, without cost to the Virginians they assist.

Telling low-income people that they must pay for attorneys they cannot afford is illogical, counterproductive, and costly. **The solution is to get rid of court-appointed attorney fee recoupment.**

Funding indigent defense through general appropriations, rather than taxing low-income people, is consistent with delivering on the constitutional promise of free representation. And states across the country are moving in that direction. States such as Nebraska and Mississippi and several others do not permit court-appointed attorney fees, and there has been recent legislative reform that ended them in Delaware, New Mexico, and New Jersey.

It is now Virginia's time to turn the page, towards a fairer criminal legal system—where we adequately fund public defense, and don't bill low-income Virginians for legal representation they cannot afford.

ACKNOWLEDGMENTS

We want to thank Maria Rafael from Vera Institute for Justice, and Tim Curry, Lillian Patil, Jessey Neves, and Mary Mergler from Fines and Fees Justice Center, for their data analysis and thought partnership.

Our deepest appreciation goes to the Virginians who spoke to us and shared their lived experience with court-appointed attorney fees, including Mr. Ali, Mr. Harper, Mr. Shabbaz, and residents and staff from Real Life, a reentry support organization in Richmond.

Thank you to Brad Lindsay and the other indigent defense attorneys who shared their experiences and expressed concerns about their clients being billed court-appointed attorney fees, and who work day in and day out for equal justice.

Thanks also to former LAJC attorney Teresa Hepler, whose work in conducting listening sessions, along with Maisie Osteen's, identified this issue.

We also appreciate the Office of the Executive Secretary (OES) at the Supreme Court of Virginia for providing us with data sets, in reply to request filings, in a timely manner.

Report author: Pat Levy-Lavelle. Contributors: Maisie Osteen, Akiva Freidlin, Jeff Jones, Abbey Philips, Anna Kurien, Elaine Poon, and Angela Ciolfi.

Disclaimer

This report is meant to be a source of information only. It is not legal advice. Please contact a lawyer if you need legal assistance.

While efforts have been made to ensure the accuracy of the data analysis presented in this report, it is important to acknowledge the inherent complexities of analyzing across multiple data sets (in this case, multiple data sets from OES and Census data). Findings are subject to potential dispute, and human error cannot be entirely ruled out.

Endnotes

1. “Court-appointed attorney fees” are the financial charges made against low-income Virginians in criminal court cases based on Code of Virginia Sections 19.2-163 (as to court-appointed attorneys) and 19.2-163.4:1 (as to public defenders).
2. “Court debt” refers more broadly to financial assessments made against people in relation to criminal and traffic cases, which may include (depending on the case) fines, costs, restitution, interest, collection costs, and/or other charges.
3. Virginia has 28 public defender offices, and two satellite offices, that collectively serve roughly 30 jurisdictions. In the rest of the state, courts maintain lists of private attorneys who are willing to be hired by the state (i.e. court-appointed) to represent low-income people. For more information on Virginia’s public defender offices, including a map of jurisdictions, see https://www.vadefenders.org/vidc_offices/.
4. Lindsey Devers, “Plea and Charge Bargaining: Research Summary,” Bureau of Justice Assistance, U.S. Department of Justice, January 2011, available at <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/PleaBargainingResearchSummary.pdf> (citing studies re the percentage of cases in federal and state courts resolved by plea bargains).
5. This is much longer than the collections periods for most other kinds of debt. In Virginia, debt in General District Court cases is collectible for 10 years, and debt in Circuit Court cases is collectible for 20 years.
6. Sara’s is a hypothetical scenario, based on the mechanics of how deferred dispositions regularly operate, with some facts drawn from a 2022 Virginia Supreme Court case involving a person, Mr. Smallwood, who struggled with court costs and then had a deferred disposition revoked, giving him a felony conviction. *Smallwood v. Commonwealth*, 300 Va. 426 (2022).
7. In the fall of 2023, Legal Aid Justice Center made FOIA requests to the Office of the Executive Secretary of the Supreme Court of Virginia, and obtained data for fiscal years 2019 through 2023 regarding the assessment and collection of court-appointed attorney fees by courts across the state. Analysis was completed by Maria Rafael, Senior Research Associate, Vera Institute of Justice, and by the Fines and Fees Justice Center.
8. See, e.g., Maria Katarina E. Rafael and Chris Mai, “Understanding the Burden of Legal Financial Obligations on Indigent Washingtonians,” *Social Sciences* 11, no. 1 (2022), available at <https://www.mdpi.com/2076-0760/11/1/17/htm>; Jeffrey T. Ward and Nathan W. Link, “Financial Sanctions in Pennsylvania: An Examination of Assessed Amounts and Repayment by Indigent Status,” *Federal Sentencing Reporter* 34, no. 2–3 (2022), 166–172, available at <https://doi.org/10.1525/fsr.2022.34.2-3.166>.
9. Auditor of Public Accounts, “Commonwealth Courts Collections Review,” April 2013, at <https://www.apa.virginia.gov/reports/CourtsAccountsReceivableSR2012.pdf>.
10. These and subsequent calculations in this section were done in the following manner: For each jurisdiction, the sum of all court-appointed attorney fee assessments during FYs 19-23 (A) were divided by the number of cases where court-appointed attorney fees were assessed during those same years (B); the result was a figure (C) representing the average court-appointed attorney fee per case in any given jurisdiction over that five-year time period. Then, for the 31 “poorest” jurisdictions (or, later, for other cohorts), the (C) figures were added, and then divided by 31, to get the average among those jurisdictions.
11. For this purpose, “non-white” is based on U.S. Census data, as a designation of people not marked “White

Endnotes (continued)

- Alone” (a designation which means that the resident is white only (no other race; not multiracial) and of non-Hispanic ethnic origin).
12. Court-appointed attorney fees are not intended as punishment and cannot be justified on that basis, including because people who have higher incomes are not punished with these assessments. Additionally, while fines are punitive and meant to serve as a means of accountability, fees are not. Virginia’s court system has previously concluded that court fees—and court-appointed attorney fees specifically—are not intended to be punitive, but instead simply are a source of revenue. The Supreme Court of Virginia held that court-appointed attorney fees should be “treated as any other debt,” and collected only “if and when [a person] becomes able to pay.” *Wicks v. Charlottesville*, 215 Va. 274 (1974). In essence, because court-appointed attorney fees cannot be rationalized or justified as a punishment, the state should not utilize collection and enforcement mechanisms (like the threat of incarceration) that do not exist as to “any other debt” (i.e. normal civil debts). But Virginia’s current system does treat court-appointed attorney fees (like other court debt) very differently, with unique collection mechanisms, and sometimes threatened or actual criminal enforcement.
 13. Wilson Center for Science and Justice and the Fines and Fees Justice Center, “Debt Sentence: How Fines and Fees Hurt Working Families,” May 2023, available at https://finesandfeesjusticecenter.org/content/uploads/2023/05/Debt_Sentence_FFJC-Wilson-Center-May-2023.pdf.
 14. See “The Current System, By the Numbers,” above.
 15. Phil Hernandez, Laura Goren, & Chris Wodicka, “Set Up to Fail: How Court Fines & Fees Punish Poverty and Harm Black Communities in Virginia,” The Commonwealth Institute (TCI), January 2021, available at <https://www.thecommonwealthinstitute.org/wp-content/uploads/2021/01/Set-Up-to-Fail-How-Court-Fines-Fees-Punish-Poverty-and-Harm-Black-Communities-in-Virginia.pdf>.
 16. See, e.g., Kaiser Family Foundation, State Health Facts: Poverty Rate by Race/Ethnicity, at <https://www.kff.org/other/state-indicator/poverty-rate-by-raceethnicity>.
 17. Compensation Board, FY22 Fines & Fees Report, December 1, 2022, at p. 15, available at <https://www.seb.virginia.gov/docs/fy22finesandfeesreport.pdf>.
 18. *Id.* at 16.
 19. These figures mirror those found in studies of other jurisdictions outside Virginia. For example, a 2019 study of several counties in New Mexico and Texas found that those counties spent approximately 41 cents to collect every dollar of court debt revenue received, or 121 times what the IRS spends to collect taxes. Matthew Menendez, Lauren-Brooke Eisen, Noah Atchison, and Michael Crowley, “The Steep Costs of Criminal Justice Fees and Fines,” Brennan Center for Justice, 2019, available at <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>.
 20. Virginia’s most recent completed biannual state budget (2020-2022) for operating expenses was \$134.2B. <https://dpb.virginia.gov/budget/faq.cfm>. In comparison, roughly \$12.7M is collected annually for court-appointed attorney fees from indigent Virginians. As noted below, a small fraction of that \$12.7M flows directly to localities – such that the amount to the state budget is actually fractionally less than the \$12.7M annual average.
 21. See <https://jlarc.virginia.gov/landing-2023-indigent-criminal-defense-and-commonwealths-attorneys.asp>.
 22. Localities receive revenue from court-appointed attorney fees associated with prosecutions of local law, whereas the state gets revenue from state law prosecutions.

Virginia Law Tells Poor People To Pay Anyway

23. See Chris Mai, “The High Price of Using Justice Fines and Fees to Fund Government in Virginia,” Vera Institute for Justice, June 2021, available at <https://www.vera.org/downloads/publications/the-high-price-of-using-justice-fines-and-fees-virginia.pdf>.
24. Information on file with Legal Aid Justice Center.
25. See, e.g., Wilson Center for Science and Justice and the Fines and Fees Justice Center, “Debt Sentence: How Fines and Fees Hurt Working Families,” May 2023, available at https://finesandfeesjusticecenter.org/content/uploads/2023/05/Debt_Sentence_FFJC-Wilson-Center-May-2023.pdf (citing studies showing that ending court debt reduces recidivism).

 LEGAL AID
JUSTICE CENTER

www.justice4all.org