

## Work Group to Study the Appointment of Counsel at First Appearance

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### Current Court Procedures at First Appearance

- All courts advise the defendant of the amount of bail, inform the defendant of the charges pending, and appoint counsel (if defendant is indigent and does not waive appointment of counsel).
- Some courts currently offer the defendant the opportunity to be heard on matters relating to bond and conditions of release during the first appearance.
- Differences in current court procedures during the first appearance relate to underlying differences in:
  - the availability of a public defender's office vs. appointment of private counsel,
  - whether the locality has a single-jurisdiction jail or a regional jail, and
  - space in the courthouse for confidential attorney-client consultations.

## Implementation Issues Identified by the Work Group

- Appointment of Counsel
  - Same-day availability of private court-appointed counsel
  - Access to bail information and private consultation with client prior to bond hearing
- Scope of Representation by Counsel for Indigent Defendants
  - Limited to first appearance or continuing to conclusion of case?
- Waiver of the Bond Hearing at First Appearance
  - Defendant may want to waive the right to a bond hearing at first appearance due to unavailability of counsel or to allow additional time for counsel to prepare
- Courthouse and Jail Facilities
  - Insufficient physical space in courthouses for confidential attorney-client consultations
  - Regional jails serving multiple courts in multiple jurisdictions
  - Additional equipment needed to hold hearings remotely

## Costs and Savings

- Costs
  - Potential fiscal impact to the Criminal Fund - \$15,391,800
    - This is a reduction of \$1,288,440 from the fiscal impact statement filed by OES during the 2021 Session due to the establishment of a public defender office for Chesterfield County.
  - If counsel were required to continue representation of indigent defendants through to conclusion of case without separate payment for bond hearing, potential fiscal impact to the Criminal Fund would be \$7,849,817.
  - Increased workload for district court clerks for reviewing and processing increased requests for payments - \$601,828
  - Increased workload for Commonwealth's Attorneys
- Savings
  - Virginia Compensation Board's initial estimate of potential savings relating to earlier release of defendants from pretrial detention - \$273,620
    - Additional analysis relating to jail costs forthcoming
- The Virginia Indigent Defense Commission and the Department of Criminal Justice Services can implement the provisions of HB2286 without additional costs.

## Considerations for Future Legislation

- Consider providing the defendant with the explicit ability to waive the bond hearing at first appearance.
- Consider requiring attorneys appointed at first appearance for indigent defendants to continue representation through conclusion of the case (absent circumstances requiring withdrawal of counsel).
- Consider the amount of the attorney fee to be paid to court-appointed counsel for representation limited solely to the bond hearing.
- Consider removing provisions allowing attorneys to request waiver of the fee limitation when representation is limited to the bond hearing.
- Consider clarifying that appointment of counsel is not required for subsequent bond hearings if counsel appointed at first appearance does not continue to represent the defendant.