

FACT SHEET



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Counsel (lawyer) at First Appearance

Problem: Too many Virginians are in jail even though they have not been convicted of a crime because they did not have access to a lawyer the first time they appeared in court.

In Virginia, people detained for pretrial can sit in jail for days, and in some places a week or more, before they are able to talk with an attorney and challenge their detention. When they finally appear in court, they often face a complicated system alone.

Without a lawyer advocating for them, someone detained is more likely to face unaffordable bond, extended pretrial detention, or confusing and punitive pretrial conditions. Incarceration for even a few days can cause serious harm to people and their families. People can lose their jobs if they don't show up. Without a job to pay rent, they can lose their housing. They can also lose access to needed medical care. People held for pretrial and not released on their own recognizance or with a reasonable bail are more likely to be convicted, receive a longer sentence; and be rearrested for new crimes.

Solution: VICPP supports SB475 (McClellan) and HB369 (Williams Graves) to require that each jurisdiction develop plans to provide Counsel at First Appearance (CAFA) in a way that works for their community's unique needs while still ensuring core commitments to:

- Guarantee that everyone in custody has a lawyer at their first court appearance.
- Provide lawyers access to the information needed for effective pretrial advocacy.
- Ensure that 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.

Counsel at First Appearance (CAFA) is Good Policy for Virginia:

CAFA is already working in many communities. Counsel at first appearance is already being provided in a variety of jurisdictions, including the public defender's office in Prince William, court appointed counsel systems in Williamsburg, urban communities like Richmond, rural communities like Rockbridge, Republican-leaning districts like Augusta, and

Democratic-leaning districts like Portsmouth. CAFA works for all communities. Other geographically and demographically diverse states – such as Michigan and New Jersey – have successfully implemented CAFA statewide.

CAFA benefits all stakeholders. CAFA:

- Ensures that the accused understands the proceedings,
- Improves future appearance rates,
- Reduces the human cost of pretrial detention (lost wages, housing, and medical access),
- Increases judicial efficiency by reducing the number of court appearances and providing an advocate to facilitate interactions with the accused.

CAFA saves Virginia money. Earlier representation means fewer days in jail. In 2019, the average cost of holding someone in jail for a single day was \$90. According to the Crime Commission's Pretrial Data Project (October 2017), in a single month, thousands of accused Virginians who are initially detained by a magistrate are eventually released within fourteen days of arrest. By expediting the review of those individual's pretrial conditions, tens of thousands of jail bed days could be avoided, resulting in millions of dollars of savings to the Commonwealth.

CAF has minimal additional costs. In most communities, there would be no additional cost for defense attorneys for most cases. Approximately 70 percent 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." Several non-public defender jurisdictions are already providing CAFA with no additional funds being expended. Therefore, guaranteeing representation for the accused would require additional state funding only in a minority of cases.

This fact sheet was adapted from one developed by the Legal Aid Justice Center.