

**Department of Planning and Budget
2025 General Assembly Session
State Fiscal Impact Statement**

Position Impact:

<u>Agency</u>	<u>FY2025</u>	<u>FY2026</u>	<u>FY2027</u>	<u>FY2028</u>	<u>FY2029</u>	<u>FY2030</u>
Indigent Defense Commission		10	10	10	10	10
TOTAL		10	10	10	10	10

Fiscal Analysis: OES provided the following information to help assess the potential fiscal impact of this bill.

This bill would require, in jurisdictions having an established public defender office, that counsel be appointed to represent indigent persons who are not free on bail for the potential bail hearing that is to occur on the first day on which the court sits after the person is detained (first appearance). If a private attorney is appointed by the court for representation during the first appearance, they are to be paid at an hourly rate in a total amount not to exceed the fee for court-appointed representation of an adult for a misdemeanor in district court. This fee for representation during the first appearance would be independent of any fees that would accrue for ongoing general representation of the defendant in such case. However, an attorney would be paid a single fee for representation of the defendant during the first appearance when multiple charges are addressed at the same hearing.

This bill would increase the amounts paid from the Criminal Fund to court-appointed attorneys for representation during the first appearance. The Joint Legislative Audit and Review Commission (JLARC) studied the feasibility of providing counsel during the first appearance and included their findings in a report that was filed on November 13, 2023. Based on the research, JLARC determined that roughly 35,000 hearings could be held annually for persons not free on bail in localities with a public defender’s office. Defense attorneys for the indigent (public defenders and court-appointed attorneys) represented criminal defendants on 66% of charges involving the possibility of incarceration. It is assumed that the other 34% were self-represented or acquired their own private counsel. Also, in localities that are served by a public defender, 35% of the cases with indigent defendants are represented by court-appointed attorneys.

The total cost of such representation depends on the amount of time billed by court-appointed counsel for representation at first appearance. Court-appointed counsel are currently compensated at a rate set by the OES of \$90 per hour up to the applicable cap of \$330, and may bill for time spent preparing for court, conferring with the client, and traveling to and from the court and/or jail, in addition to time spent during the hearing itself.

The Indigent Defense Commission estimates that ten additional paralegal positions would be needed to assist with cases in small and rural offices. One position in Winchester, VA, would be funded at the northern Virginia (NOVA) rate of \$86,491; nine others would be funded at the non-NOVA rate of \$80,499 each. Total cost for the positions is \$810,985, general fund, annually, which includes salary and benefits.

The impact this bill may have on Commonwealth’s Attorneys is not known at this time.

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Other: None