

FY11 Policy & Procedure Manual

# Commonwealth's Attorney

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## Additional Positions

### Compensation Board Policy

**The 2010 General Assembly did not fund new positions in offices of the Commonwealth's Attorney for FY11.**

For more information regarding additional positions, see the section entitled **Staffing Standards**. See also the section entitled **Position Reallocation** in the general section of this manual.

## Assistant Commonwealth's Attorney

### Compensation Board Policy

**A Commonwealth's Attorney may appoint assistant(s) with the approval of the county or city governing body and the Compensation Board.**

**The salary of the assistant prosecutor is determined by the Commonwealth's Attorney in accordance with Compensation Board pay policies, but cannot exceed ninety percent of the salary of the principal officer.**

**The term of employment for an assistant prosecutor may not extend beyond that of the principal officer.**

### Code of Virginia § 15.2-1626 (excerpt)

Every county and city may, with the approval of the Compensation Board, provide for employing compensated assistants to the attorney for the Commonwealth as in the opinion of the Compensation Board may be required. Such assistant or assistants shall be appointed by the attorney for the Commonwealth for a term coterminous with his own.

§ 15.2-1627.1 (excerpt)  
Each assistant attorney for the Commonwealth authorized by law, if his services shall be deemed necessary by the Compensation Board, shall receive an annual salary which shall not exceed ninety percent of the salary received by the attorney for the Commonwealth of his county or city.

Other Code of Virginia sections that are pertinent to assistant prosecutors include § 15.2-1534 that allows for a part-time assistant attorney to serve simultaneously in more than one locality with the consent of the respective Commonwealth's Attorneys and the Compensation Board and in accordance with Compensation Board staffing and pay policies. Code of Virginia, § 15.2-1633, provides for one Compensation Board-funded part-time assistant at the request of the Commonwealth's Attorney.

A form for sharing an assistant prosecutor between localities can be found on the Compensation Board website under the Publications and Forms tab at <http://www.scb.virginia.gov>.

For more information regarding an assistant prosecutor who serves as a substitute prosecutor in another locality, see the section entitled **Substitute Prosecutors**. For more information regarding salaries, see sections entitled **Salary** and **Pay Practices: New Hire** in the general section of this manual.

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## Career Prosecutor Program

1997 Appropriation Act  
Chapter 924, Item 74

G. The Compensation Board, with assistance of the Commonwealth's Attorneys' Services Council (CASC), shall develop criteria for the establishment of a Career Prosecutor Program. Such criteria shall include the selection process, minimum length of service, job performance, continuing legal education, removal process and any other criteria deemed relevant by the Compensation Board. The Compensation Board shall provide its recommendations to the Chairmen of the House Appropriations and Senate Finance Committees by September 1, 1997.

2010 Appropriation Act  
Item 67.90 (excerpt)

S. Notwithstanding Items 67.20, 67.40, 67.50, 67.60, 67.70 and 67.80, any Career Development Program supported by the Compensation Board with state funds shall remain in effect for those individuals who were participating in the program prior to January 1, 2010, and still meet all necessary program qualifications.

### Compensation Board Policy

**The Compensation Board cannot approve additional career prosecutor positions without additional funding from the General Assembly. Former unused career prosecutor classification slots can no longer be used by the office in which they were originally funded. Ongoing funding FY11 for pay associated with Career Prosecutor status is only available for those assistant attorneys in place in the program before January 1, 2010.**

Requests for additional Career Prosecutor positions must be certified to the Compensation Board by February 1 during the annual budget submission in COIN for pay increases the following July 1 (if funding becomes available through General Assembly action). Current positions funded as of July 1, 2010 are as follows:

Albemarle	1	Stafford	3
Alleghany	1	Tazewell	2
Appomattox	1	Westmoreland	1
Augusta	1	York	2
Botetourt	2	Alexandria	4
Brunswick	1	Chesapeake	6
Campbell	1	Colonial Heights	1
Chesterfield	5	Danville	2
Frederick	1	Hampton	2
Hanover	2	Lynchburg	2
Henrico	1	Newport News	1
Henry	2	Norfolk	4
James City	1	Roanoke City	1
Pittsylvania	1	Staunton	1
Prince Edward	1	Suffolk	3
Rockingham	1	Virginia Beach	17
Spotsylvania	1	<b>TOTAL</b>	<b>76</b>

No additional funding is included in FY11 for the selection of attorneys into the Career Prosecutor Program.

Criteria for becoming a Career Prosecutor are located at the Compensation Board web site under the Publications and Forms tab at <http://www.scb.virginia.gov>.

A certification form (CB10-CP) for the program is located on the Compensation Board website under the Publications and Forms tab at <http://www.scb.virginia.gov>.

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## Duties

### Code of Virginia

#### § 15.2-1626 (excerpt)

The voters in every county and city shall elect an attorney for the Commonwealth. He may perform such other duties, not inconsistent with his office, as the governing body may request. He shall be elected for a term of four years.

#### § 15.2-1627 (excerpt)

No attorney for the Commonwealth or assistant attorney shall be required to carry out any duties as a part of his office in civil matters or in any other manner of advising or representing the county or city, its boards, departments, agencies, officials and employees, except in matters involving the enforcement of the criminal law within the county or city. The attorney for the Commonwealth shall be a part of the department of law enforcement and shall have the duties and powers imposed upon him by general law, including prosecuting all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1, 2 and 3 misdemeanors which carries a penalty of confinement in jail or a fine of \$500 or more. He shall enforce all forfeitures, and carry out all duties imposed upon him by § 2.2-3126.

### Compensation Board Policy

**The duty of a Commonwealth's Attorney and assistant prosecutor involves the enforcement of the criminal law as well as enforcement of all fines, costs, forfeitures, penalties, and restitution.**

**The local governing body may request performance of other duties consistent with that of a Commonwealth's Attorney.**

Like all Constitutional Officers (excluding Clerks) the Commonwealth's Attorney is elected to a four-year term.

The Commonwealth's Attorney represents the people of Virginia in prosecuting criminal cases. The position is similar to that of the "District Attorney" in many other states. The Commonwealth's Attorney typically appoints one or more assistants to handle cases under his or her supervision.

All Commonwealth's Attorneys prosecute felonies, including murder, rape and robbery. A discretionary duty of Commonwealth's Attorneys is the prosecution of Class 1, 2, and 3 misdemeanors that may carry a penalty of confinement in jail or fine of \$500 or more, and violations of local ordinances, including traffic offenses.

In the largest counties and cities, Commonwealth's Attorneys serve as full-time prosecutors. In some smaller localities, they are paid a part-time salary and may maintain a private practice.

The Commonwealth's Attorney is not required to practice civil law or advise or represent the county or city officials, agencies, departments, or boards. The duty of the Commonwealth's Attorney also involves the collection of delinquent fines, fees, costs, forfeitures, penalties and restitution.

For more information regarding the duties of Commonwealth's Attorneys, see sections entitled **Assistant Prosecutors** and **Substitute Prosecutors**.

## FY11 Policy &amp; Procedure Manual

## Equipment Funding

**Compensation Board Policy**

**The Compensation Board reimburses the local governing body 100% of the amount it approves in equipment funding, multiplied by the fiscal stress factor.**

Equipment funding was not approved in FY11. In years that equipment funding is approved, it is provided as a one-time funding approval and must be expended prior to request for reimbursement no later than the May reimbursement period. Amounts approved will not be available for reimbursement in the June reimbursement period or in a subsequent fiscal year.

For more information, see **Equipment Funding** and **Fiscal Stress Factor** in the general section of this manual.

# FY11 Policy & Procedure Manual

## Fines & Fees

### Code of Virginia § 19.2-349 (excerpts)

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties, and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) local governing body, (iii) county or city treasurer, or (iv) use services of the Department of Taxation. The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected.

C. The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied.

### Compensation Board Policy

**The Commonwealth's Attorney is responsible for collection of delinquent fines, costs, forfeitures, penalties, and restitution.**

**As required by the General Assembly, the Compensation Board produces an annual report on the collection of fines, costs, forfeitures, penalties, and restitution.**

If payment or a payment arrangement for a court fine has not been made with the Circuit Court Clerk in 30 days, the account becomes delinquent. Ten days are allowed for the appeals process, after which the delinquent account becomes the responsibility of the Commonwealth's Attorney. Several collection options are available if the Commonwealth's Attorney chooses not to undertake collection. They include a contract with: 1) a private attorney; 2) a private collection agency; 3) the local governing body; 4) the city or county treasurer; or 5) the Department of Taxation.

The fees charged by private attorneys or collection agents are paid on a contingency basis out of the proceeds of the amount collected. No attorney or collection agent can receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act. The Department of Taxation and the Commonwealth are entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Code of Virginia, § 19.2-349, legislates that the Compensation Board generate an annual report on the assessment and collection of fines and fees. Data for the report is collected from Commonwealth's Attorneys and the Supreme Court of Virginia in August of every year using three forms. The Fines and Fees Collection Form and Instructions is located on the Compensation Board web site under the Publications and Forms tab at <http://www.scb.virginia.gov>.

Commonwealth's Attorneys are required to notify the Compensation Board of their choice of collection method. The Election form is located on the Compensation Board web site under the Publications and Forms tab at <http://www.scb.virginia.gov>.

Commonwealth's Attorneys are also required to sign and return to the Compensation Board a policy form that provides information regarding the legal authority for the collection and reporting of fines and fees. The Policy Form is located on the Compensation Board web site under the Publications and Forms tab at <http://www.scb.virginia.gov>.

The purpose of annual fines and fees reporting is to allow the Governor, the General Assembly, and interested parties to track collections and collection efforts by county or city. The Fines and Fees Report attempts to explain data collection issues, such as local collection efforts, prior and current-year assessments and collections, variances in gross amount assessments, collection rates in excess of 100 percent, and changes in collection methods.

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### Fines and Fees, Continued

The Fines and Fees Report does not compare collection methods chosen by Commonwealth's Attorneys or draw conclusions as to the effectiveness of a Commonwealth's Attorney in collection efforts. The format in which the data are collected does not allow for meaningful comparisons to be made between collection methods or individual offices.

The annual Fines and Fees Report is located on the Compensation Board web site under the Publications and Forms tab at <http://www.scb.virginia.gov>.

### Fringe Benefits

2010 Appropriation Act,  
Item 67.90

R.1. Compensation Board payments of, or reimbursements for, the employer paid contribution to the Virginia Retirement System, or any system offering like benefits, shall not exceed the Commonwealth's proportionate share of the following, whichever is less: (a) the actual retirement rate for the local constitutional officer's office or regional correctional facility as set by the Board of the Virginia Retirement System or (b) the employer rate established for the general classified workforce of the Commonwealth covered under and payable to the Virginia Retirement System. 2. The rate specified in paragraph R.1. shall exclude the cost of any early retirement program implemented by the Commonwealth. 3. Any employer paid contribution costs for rates exceeding those specified in paragraph R.1. shall be borne by the employer.

#### Compensation Board Policy

**The Compensation Board reimburses local governing bodies for fringe benefits for Commonwealth's Attorneys and their Compensation Board-funded staff at the same percentage it reimburses approved salary amounts.**

The Compensation Board reimburses for fringe benefits based on approved salary amounts reimbursed. The rates for FY11 are:

- Virginia Retirement System (VRS) retirement contributions at the locality's employer share contribution rate, or 2.13%, whichever is less.
- FICA at 7.65% of the taxable portion of the salary for permanent positions and hourly wage employees; and
- VRS Group Life Insurance at 0.28%.

For more detailed information regarding benefits of Constitutional Officers, see the section entitled **Fringe Benefits** in the general section of this manual.

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## Gang Prosecutor Positions

2010 Appropriation Act Item 67.60 (excerpt)

H. Out of this appropriation, \$389,165 the first year and \$389,165 the second year from the general fund is designated for the Compensation Board to fund five additional positions in Commonwealth's Attorney's Offices that shall be dedicated to prosecuting gang-related criminal activities.

### Compensation Board Policy

**The Compensation Board reimburses for five Gang Prosecutor positions in Commonwealth's Attorneys' offices in northern Virginia localities.**

The Compensation Board ensures that the five gang prosecutor positions work across jurisdictional lines, serving the Northern Virginia area to include the counties of Fairfax, Loudoun, Prince William, and Arlington and the cities of Falls Church, Alexandria, Manassas, Manassas Park and Fairfax.

For more information, see section entitled **Additional Positions**.

## Investigators

2010 Appropriation Act Item 67.60

B. No expenditure shall be made out of this Item for the employment of investigators, clerk-investigators or other investigative personnel in the office of an attorney for the Commonwealth.

### Compensation Board Policy

**The Compensation Board does not reimburse for investigative personnel.**

## Juvenile Justice Project Positions

2010 Appropriation Act Item 67.60 (excerpt)

E. The Statewide Juvenile Justice project positions are continued under the provisions of this act. The Commonwealth's Attorneys receiving such positions shall annually certify to the Compensation Board that the positions are used primarily, if not exclusively, for the prosecution of delinquency and domestic relations felony cases.

### Compensation Board Policy

**The Compensation Board reimburses for Juvenile Justice Project positions if the positions are used primarily, if not exclusively, for the prosecution of delinquency and domestic relations felony cases.**

In the event that positions are not primarily or exclusively used for prosecution of delinquency and domestic relations felony cases the Compensation Board will reallocate the Juvenile Justice Project positions to another office.

For more information, see the section entitled **Additional Positions**.



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## Office Expenses

### Code of Virginia § 15.2-1636.15 (excerpt)

A. Whenever a county or city attorney for the Commonwealth, treasurer or commissioner of the revenue purchases office furniture, office equipment, office appliances, tax tickets for state and local taxes collectible by county and city treasurers, stationery, office supplies, postage, data processing services, printing, advertising, telephone or telegraph service, or repairs to office furniture and equipment in conformity with and within the limits of allowances duly made and contained in the then current budget of any such officer, the invoices therefor, after examination as to their correctness, shall be paid by the county or city directly to the vendors, and the Commonwealth shall monthly pay the county or city the state's proportionate part of the cost of such items on submission by such officer to the Compensation Board of duplicate invoices and such other information or evidence as the Compensation Board may deem necessary.

### Compensation Board Policy

**The Compensation Board reimburses 100% of the budgeted amount for office expenses for Commonwealth's Attorneys.**

Base budgets for office expenses are based upon the same level as approved in the previous fiscal year (as adjusted though any base budget transfer requests during the fiscal year) and changes made in implementation of FY11 budget reductions.

The Compensation Board reimburses for:

- Repair of office furniture, appliances and equipment;
- Stationery and postage;
- Office supplies;
- Data processing services;
- Internet access costs (line charges, ISP, locality service charges);
- Insurance premiums for burglary;
- Printing; and
- Telephone or telegraph services.

The Compensation Board does not reimburse for:

- Notary Public Seal, fees, or application;
- Audit services;
- Telephone installation costs;
- Subscriptions to periodicals, newspapers, Code of Virginia;
- Name tags, desk signs, business cards;
- Chair mats;
- Custom software;
- Calculator maintenance contracts;
- Taxes; and
- Advertising services.

For more information regarding reimbursable office expenses, see sections entitled **Equipment Funding** and **Professional Associations**. See also **Office Expenses** in the general section of this manual.

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### Part-Time to Full-Time Service

Code of Virginia  
 §§ 15.2-1629 and  
 15.2-1631 (excerpts)

Any attorney for the Commonwealth for a county (city) may, with the consent of the Compensation Board, elect to devote full time to the duties of attorney for the Commonwealth at a salary equal to that in a county (city) with a population of more than 35,000. Such an election shall be binding on the attorney for the Commonwealth and on successors in the office.

§ 15.2-1627.1 (excerpt)

Any city served by a full-time attorney for the Commonwealth on January 1, 1993, shall continue to be served by a full-time attorney for the Commonwealth in the event the population of such city shall have fallen below the 17,000 population threshold in the most recent U.S. census and shall be administered in the same manner as cities with populations in excess of 17,000 but of 35,000 or less.

#### Compensation Board Policy

**Commonwealth's Attorneys and assistant prosecutors in a locality with a population of 35,000 or more must serve full-time.**

**With the consent of the Compensation Board and funding by the General Assembly, Commonwealth's Attorneys in a locality with a population of less than 35,000 may elect to serve full-time and receive a salary commensurate with serving a locality with a population between 35,000 and 44,999. Such election to serve on a full-time basis, once funded, is binding on that office from hence forward.**

The Code of Virginia, §§ 15.2-1629 and 15.2-1631, further stipulates that the Compensation Board prepare a list of localities eligible to have a full-time Commonwealth's Attorney and rank them for conversion using the same methodology established in staffing standards for the allocation of additional assistant Commonwealth's Attorney positions.

The Compensation Board seeks information each summer from remaining part-time offices regarding their potential election to convert to full-time, and prepares cost information for consideration by executive and legislative budget decision makers.

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### Professional Associations

#### Compensation Board Policy

**Reimbursement for attendance at non-Compensation Board-sponsored training events, professional association meetings, or membership dues will not be provided as additional allowances, but are reimbursed through available office expense funds.**

The Compensation Board reimburses for:

- Virginia Association of Commonwealth's Attorneys (VACA),
- Local Government Officials Conference (LGOC), and the
- Virginia Association of Local Elected Constitutional Officers (VALECO).

Only one Compensation Board-funded permanent employee per office may receive a maximum reimbursement of \$100 for VACA, LGOC, and VALECO. VALECO dues are reimbursed for the principal officer only.

The Compensation Board will also reimburse for Virginia State Bar dues, such as:

- 100% reimbursement for full-time principal officers and assistants in Compensation Board-funded positions; and
- 50% reimbursement for part-time officers and assistants in Compensation Board-funded positions.

For more information regarding reimbursable office expenses, see the section entitled **Office Expenses**. See also the sections entitled **Office Expenses** and **Professional Associations** in the general section of this manual.

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## Salary

2010 Appropriation Act Item 67.60 (excerpt)

A. 1. The annual salaries of attorneys for the Commonwealth shall be prescribed according to the population of the city or county served.

2. The attorneys for the Commonwealth and their successors who serve on a full-time basis pursuant to §§ 15.2-1627.1, 15.2-1628, 15.2-1629, 15.2-1630 or 15.2-1631, Code of Virginia, shall receive salaries as if they served localities with populations between 35,000 and 44,999.

3. Whenever an attorney for the Commonwealth is such for a county and city together, or for two or more cities, the aggregate population of such political subdivisions shall be the population for the purpose of arriving at the salary of such attorney for the Commonwealth and such attorney for the Commonwealth shall receive as additional compensation the sum of one thousand dollars.

### Compensation Board Policy

**The Compensation Board reimburses 100% of the salary amounts budgeted for Commonwealth's Attorneys and their Compensation Board-funded staff.**

The annual salaries of Commonwealth's Attorneys are determined according to population estimates of the city or county in which they serve. The Compensation Board uses an aggregate population estimate to determine the salary of a Commonwealth Attorney who serves two or more localities. An additional \$1,000 in compensation is awarded to Commonwealth's Attorneys in such circumstances. No funding is provided for performance-based pay increases for offices with performance evaluation plans in effect in their office.

The following are the population-based salaries for Commonwealth's Attorneys for FY11.

<i>Population</i>	<i>July 1, 2010 to June 30, 2011</i>	<i>July 1, 2011 to June 30, 2012</i>
Less than 10,000	\$51,706	\$51,706
10,000 to 19,999	\$57,458	\$57,458
20,000 to 34,999	\$63,202	\$63,202
35,000 to 44,999	\$113,760	\$113,760
45,000 to 99,999	\$126,397	\$126,397
100,000 to 249,999	\$131,139	\$131,139
250,000 or more	\$135,882	\$135,882

Salary scales for Compensation Board-funded employees in Commonwealth's Attorneys offices are located on the Compensation Board website under the Constitutional Officer Salaries and Budgets tab at <http://www.scb.virginia.gov>.

A history of salary increases for Constitutional Officers is located under the Constitutional Officer Salaries and Budgets tab at <http://www.scb.virginia.gov>.

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2010 Appropriation Act  
Item 67.90 (excerpt)

F. Any new positions established in Item 67.90 of this act shall be allocated by the Compensation Board upon request of the constitutional officers in accordance with staffing standards and ranking methodologies approved by the Compensation Board.

## Compensation Board Policy

**The Compensation Board uses staffing standards and a staffing methodology for allocating new positions in offices of the Commonwealth's Attorney.**

**Assistant Commonwealth's Attorneys** - Positions needed for each office are based upon the duties and workload measures identified specifically in the staffing standards. The staffing standards, recommended by the Virginia Association of Commonwealth's Attorneys (VACA) and approved by the Compensation Board, may not reflect all duties performed by the Commonwealth's Attorney. Many Commonwealth's Attorneys perform additional duties at their discretion or provide other services not required by state law. The number of Compensation Board-funded positions due in a specific office of the Commonwealth's Attorney is based upon duties required by law to be performed by the Commonwealth's Attorney, or duties that nearly all Commonwealth's Attorneys perform.

In determining the allocation of additional positions, the Compensation Board considers the following criteria:

1. The position (or positions) must be requested by the Commonwealth's Attorney as part of the Compensation Board's annual budget request process.
2. The basis of the request must be only the statutorily prescribed duty of the prosecution of felonies.
3. Funds and positions must be appropriated by the General Assembly.
4. The Compensation Board will use the staffing methodology and weighted three-year average workload criteria, developed by VACA to determine the appropriate level of Compensation Board-funded assistant Commonwealth's Attorneys for each office requesting additional positions.
5. The Compensation Board shall determine the number of additional positions to be allocated to any one office based upon criteria 1-4, inclusive, and additional positions shall be allocated in the order of percentage of need, where the offices with the highest percentage of need will receive positions first. The percentage of need is determined by calculating the percentage that the number of additional positions needed is to the total number of current positions.

### Staffing Methodology

1. The formula calculates the sum of a three-year average of felony defendants plus a three-year average of sentencing events, resulting in an average total workload figure. The workload figure is divided by a specified factor that has been devised to take into account economies of scale in larger offices, with the result being the total number of attorney positions due in the office.

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### Staffing Standards, continued

2. The data elements are as follows:

- A 3-Year Average Felony Defendants Data is the average of the number of felony defendants in the Circuit Court for each locality for the three most recent calendar years, as reported by the Supreme Court.
- A 3-Year Average Sentencing Events Data is the average of the number of felony sentencing events in the Circuit Court for each locality for the three most recent fiscal years, as reported by the Virginia Sentencing Commission.
- The Current FTE Attorney Staffing is adjusted to reflect the salary amounts reduced as a result of FY04 budget reductions. The annualized amount of FY04 budget reductions is divided by the most recent average salary of a Compensation Board-approved attorney position to determine an equivalent FTE adjustment. This FTE adjustment is subtracted from the total number of current Compensation Board-approved attorneys to determine the total number of Compensation Board-funded attorneys.

3. Offices are grouped based on the size of the office (determined by the average total workload figure), and assigned an escalating workload factor assuming economies of scale. Compensation Board funded assistant Commonwealth's Attorneys who are part-time (i.e., eligible to engage in private law practice) are to be considered as 0.5 of a FTE position for staffing standards purposes, instead of 1 FTE position.

Office Size	Range of Workload Totals per office size (AVG Defendants + AVG Sentencing Events)	Factor
Super	3,000 +	125
Large	1,000 to 2,999	100
Mid	300 to 999	84
Small	0 to 299	70

4. The formula is as follows:

$$\# \text{ Attorneys} = \frac{\text{Workload Total (3-Yr AVG felony defendants + 3-Yr AVG sentencing events)}}{\text{Factor}}$$

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### Staffing Standards, continued

#### 5. Definitions:

Felony Defendants – Staffing standards are based, in part, on the average number of felony defendants for the three most recent calendar years, as reported by the Supreme Court of Virginia. Felony defendants include:

- A person charged and convicted of a felony;
- A person charged with a felony but convicted of a misdemeanor;
- A person charged with a felony who was later acquitted;
- A person charged with a felony that was later nolle prossed;
- A person whose felony charge was initiated in general district court; and
- A person returned to court for a Show Cause hearing if the original offense was a felony (e.g., a probation violation).

In cases involving multiple felonies, a person is counted as a felony defendant each day or time that new felony charges are filed.

#### Sentencing Events

- Staffing Standards also based, in part, on the average number of felony sentencing events for the three most recent fiscal years, as reported by the Virginia Criminal Sentencing Commission.
  - The data reflect the number of sentencing guidelines forms submitted by the Circuit Court Clerk to the Sentencing Commission for felony offenses.
  - For purposes of sentencing guidelines, a single sentencing event would include all offenses for which the defendant is sentenced on the same day and at the same time.
  - The Sentencing Commission implemented probation violation sentencing guidelines in FY05. These are included in the data for staffing standards.
6. Amendments: The January 16, 2005 amendments recommended by the VACA and approved by the Compensation Board changed "...most recent calendar years..." of sentencing events to "...most recent fiscal years..." and considers the effect of FY04 budget reductions on salaries by reducing the current FTE attorney positions by the FY06 un-restored salary reduction in each office based on the average salary, as of July 1, 2005, of a Compensation Board-funded assistant attorney position. The May 10, 2006 amendment added the definitions of "felony defendant" and "sentencing event".

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### Substitute Prosecutors

#### Code of Virginia § 19.2-155 (excerpt)

If the attorney for the Commonwealth is connected by blood or marriage with the accused, or is so situated with respect to such accused as to render it improper, concurred in by the judge, for him to act or to attend to his official duties due to sickness, disability or other reason of a temporary nature, then the judge of the circuit court shall appoint from another jurisdiction an attorney or assistant attorney for the Commonwealth with the consent of such attorney, who is not authorized by law to engage in private practice. If the circuit court determines that the appointment of such attorney for the Commonwealth is not appropriate or that such an attorney or assistant is unavailable, then the circuit court may appoint an attorney-at-law who shall be compensated pursuant to § 19.2-332.

#### §§ 15.2-1628 and 15.2-1630 (excerpt)

No attorney for the Commonwealth or assistant required to devote full time to his duties shall receive any additional compensation from the Commonwealth or any county or city for substituting for or assisting any other attorney for the Commonwealth or his assistant in any criminal prosecution or investigation.

#### Compensation Board Policy

**The circuit court may appoint a substitute prosecutor for a case if the Commonwealth's Attorney is disqualified by association, illness, or temporarily disabled.**

**If a full-time Commonwealth's Attorney from another jurisdiction is authorized to prosecute the case, he may not receive additional compensation for substitute service from either the Compensation Board or the county or city (excluding travel expenses).**

**If a part-time Commonwealth's Attorney from another jurisdiction is authorized to prosecute the case, he may receive additional compensation for substitute service from either the Compensation Board or the county or city (including hours and travel expenses).**

**If another Commonwealth's Attorney is not appropriate or unavailable then a private attorney-at-law may be authorized to try the case and will receive reimbursement from the Compensation Board for the service.**

**Full-Time** A full-time Commonwealth's Attorney or assistant cannot receive additional compensation for prosecuting a case as a substitute in another jurisdiction, but they can receive reimbursement for travel expenses incurred as a substitute prosecutor per state travel regulations and Compensation Board policy. Full-time Commonwealth's Attorneys or assistants who serve as substitute prosecutors may access a **CB Form 24** for reimbursement of travel expenses, located on the Compensation Board website under the Publications and Forms tab at <http://www.scb.virginia.gov>. The completed form is mailed directly to the Compensation Board and reimbursement is made directly to the substitute prosecutors. A certified copy of the court order appointing the attorney (original certified copy with first submission), the reason for hiring a substitute, and an itemized list of expenses including mileage, meals, lodging, tolls and parking (not hours) must accompany the form. Upon review, the Compensation Board may deny reimbursement not reasonably incurred.

**Part-Time** A part-time attorney who serves as substitute prosecutor can request \$50 per hour compensation and reimbursement of travel expenses per state travel regulations and Compensation Board policy (mileage, meals, lodging, tolls, and parking). The office of the Commonwealth's Attorney in the locality of service is responsible for completing a **CB Form 22** on COIN, located on the Compensation Board website under the Publications and Forms tab at <http://www.scb.virginia.gov>.

**Private Attorney** If a Commonwealth's Attorney or assistant cannot be found to prosecute the case, a private attorney-at-law may be appointed as a substitute prosecutor for the Commonwealth. The Code of Virginia, § 19.2-332, states that in a criminal case when an officer or other person renders any service required by law for which no specific compensation is provided or when any other service has been rendered pursuant to the request or prior approval of the court, the court shall allow a reasonable payment to the individual, including mileage at a rate provided by law to be paid out of the Supreme Court's Criminal Fund. Private attorneys may use **CB Form 22** for hourly wage and travel reimbursement per state travel regulations and Compensation Board policy, located on the Compensation Board website under the Publications and Forms tab at <http://www.scb.virginia.gov>.



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### Substitute Prosecutors, continued

**Travel Reimbursements** Approved hotel expenditures are paid/reimbursed per state travel regulations, which are located on the Department of Accounts web site. Hotel rates at authorized levels should be obtained prior to travel dates. Meals and incidental expenses for substitute prosecutors are reimbursed using **actual** expenditures up to the maximum daily per diem in accordance with state travel regulations. Compensation Board policy, in accordance with state travel regulations, does not authorize reimbursement of meals and incidentals for "day" travel that does not include an overnight stay.

All requests for reimbursement for substitute prosecutors must be filed using either the CB Form-22 or CB Form-24. All requests must be submitted to the Compensation Board when the expenses reach \$500 or within 60 days of the conclusion of the case, **whichever comes first**. Requests not submitted when meeting the \$500 rule or are submitted more than 60 days after the conclusion of the case require a written explanation and docket action for Board approval. Upon review, the Compensation Board may deny reimbursement for expenses not reasonably incurred.

For more information regarding state travel regulations, go to [http://www.doa.virginia.gov/Admin\\_Services/CAPP/CAPP\\_Topics/20335.pdf](http://www.doa.virginia.gov/Admin_Services/CAPP/CAPP_Topics/20335.pdf).

# FY11 Policy & Procedure Manual

## Temporary (Hourly-Wage) Employees

### Compensation Board Policy

**The Compensation Board reimburses 100% of the budgeted amount for salaries for temporary (hourly-wage) employees of Commonwealth's Attorneys.**

Base budgets for temporary (hourly-wage) employee salaries are based upon the same level as approved in the previous fiscal year (as adjusted through any base budget transfer requests during the fiscal year) and changes made in implementation of FY11 budget reductions.

## Volunteer Assistant for the Commonwealth's Attorney

### Compensation Board Policy

**The Commonwealth's Attorney may appoint a volunteer assistant without approval of the local governing body or the Compensation Board if the assistant receives no salary.**

Code of Virginia  
§ 15.2-1630

Volunteer assistant attorneys for the Commonwealth serving without compensation may be appointed by the attorney for the Commonwealth without approval of the governing body or the Compensation Board. All assistant attorneys shall perform such duties as are prescribed by their respective attorney for the Commonwealth. In cities having a population of more than 35,000, attorneys for the Commonwealth and all assistant attorneys, except volunteer assistants serving without compensation, shall devote full time to their duties, and shall not engage in the private practice of law.