

# Commonwealth's Attorney

*Additional Positions*..... 1

*Assistant Commonwealth's Attorney*..... 1

*Career Prosecutor Program* ..... 2

*Duties* ..... 3

*Equipment Funding* ..... 4

*Fines & Fees*..... 5

*Fringe Benefits* ..... 6

*Gang Prosecutor Positions*..... 7

*Insurance Fraud Prosecutor Positions*..... 7

*Investigators*..... 8

*Juvenile Justice Project Positions*..... 8

*Office Expenses* ..... 9

*Part-Time to Full-Time Service* ..... 10

*Professional Associations*..... 11

*Salary* ..... 12

*Staffing Standards* ..... 13

*Substitute Prosecutors* ..... 15

*Temporary (Hourly-Wage) Employees* ..... 17

*Volunteer Assistant for the Commonwealth's Attorney*..... 17

# FY24 Policy & Procedure Manual

## Additional Positions

### Compensation Board Policy

**The 2023 General Assembly did not fund new positions in offices of the Commonwealth's Attorney for FY24.**

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 commonwealth's attorney 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 commonwealth's attorneys 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, allows for no more than 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 <https://www.scb.virginia.gov>.

For more information regarding an assistant commonwealth's attorney 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.

## FY24 Policy & Procedure Manual

### 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.

#### Compensation Board Policy

**Commonwealth's Attorneys who select assistant commonwealth's attorneys for the Career Prosecutor Program certify that the minimum requirements of the program have been met and then submit the certification as part of the annual budget request to the Compensation Board on or before February 1 of each year.**

Original certification and re-certifications that the minimum requirements of the program have been met and identification of assistant commonwealth's attorneys meeting the criteria for the Career Prosecutor Program are a part of each year's annual budget request to the Compensation Board on or before February 1 of each year, and the associated salary increase of 19.48 percent becomes effective the following July 1, subject to funding by the General Assembly.

A waitlist for funding may exist in the program where the cost for all participants certifying their compliance exceeds the available appropriation for the program.

More information regarding the criteria and other details of the Career Prosecutor Program for assistant commonwealth's attorneys can be found on the Compensation Board website under the Publications and Forms tab at <https://www.scb.virginia.gov>.

# FY24 Policy & Procedure Manual

## 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 commonwealth's attorney 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 all but two counties, Commonwealth's Attorneys serve as full-time prosecutors. In the two remaining small counties, 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 Commonwealth's Attorney** and **Substitute Prosecutors**.

## FY24 Policy & 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 FY24. In years that equipment funding is approved, or if vacancy savings are transferred to the equipment budget category for the purchase of specific items, 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.

## FY24 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 efforts of Commonwealth's Attorneys in 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 90 days, the account becomes delinquent and 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.

In accordance with §19.2-349 and Item 76 (paragraphs C, H) of the Appropriation Act, the fees charged by private attorneys or collection agents are paid on a contingency basis out of the proceeds of the amount collected, however, only those Treasurers contracted as the collection agent prior to January 1, 2015 may be compensated on a contingency basis and Treasurers newly collecting after January 1, 2015 may only be compensated for administrative costs pursuant to §58.1-3958, Code of Virginia.

An offset amount of 17% is added to the delinquent amount to offset some or all of the fees charged for collections and to provide for a fee of up to that offset amount for the collection of restitution. 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 <https://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 <https://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 <https://www.scb.virginia.gov>.

## FY24 Policy & Procedure Manual

### Fines and Fees, Continued

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, and changes in collection methods.

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 <https://www.scb.virginia.gov>.

### Fringe Benefits

2023 Appropriation Act,  
Item 79

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 FY24 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.

# FY24 Policy & Procedure Manual

2023 Appropriation Act Item 76 (excerpt)

G. 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.

## Gang Prosecutor Positions

**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**.

2023 Appropriation Act Item 76 (excerpt)

I. Notwithstanding the provisions of Article 7, Chapter 4, Title 38, Code of Virginia, beginning July 1, 2018, \$600,000 each year from the Insurance Fraud Fund is included in this appropriation to fund multi-jurisdictional Assistant Commonwealth's Attorney positions that shall be dedicated to prosecuting insurance fraud and related criminal activities. The Department of State Police shall identify those jurisdictions most affected by insurance fraud based upon data provided by the Virginia State Police Insurance Fraud Program. The Virginia State Police Insurance Fraud Program shall ensure that these positions work across jurisdictional lines, serving jurisdictions identified as most in need of these resources as supported by data.

## Insurance Fraud Prosecutor Positions

**Compensation Board Policy**

**The Compensation Board reimburses for four Insurance Fraud Prosecutor positions in Commonwealth's Attorneys' offices using an appropriation from the Insurance Fraud Fund of the Virginia State Police.**

The appropriation for Insurance Fraud Prosecutor positions is based upon the potential allocation of up to five Insurance Fraud Prosecutors in Virginia. The Compensation Board has currently allocated four of such positions based upon notification by Virginia State Police of agreements reached between host Commonwealth's Attorneys and the localities to be served by these positions. The host Commonwealth's Attorneys are to certify to the Compensation Board annually that the positions are used primarily, if not exclusively, for the prosecution of insurance fraud and related criminal activities. These assistant commonwealth's attorneys designated for insurance fraud prosecution are currently hosted in the Commonwealth's Attorneys' offices in Arlington County and in the Cities of Norfolk, Richmond, and Salem.

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



# FY24 Policy & Procedure Manual

## Investigators

2023 Appropriation Act Item 76

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

2023 Appropriation Act Item 76 (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 is to reallocate the Juvenile Justice Project positions to another office.

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

# FY24 Policy & Procedure Manual

## 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).

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.

## FY24 Policy & Procedure Manual

### 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. To-date, all but two part-time offices have converted to full-time under this process.

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

Commonwealth's Attorneys in the Counties of Bath and Highland still maintain the lowest level of prosecutorial workload statewide as identified through workload-based staffing standards, and continue to serve on a part-time basis, remaining eligible to also engage in private practice.

## FY24 Policy & Procedure Manual

### 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), and
- 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 and VALECO. VALECO dues are reimbursed for the principal officer only.

The Compensation Board will also reimburse for Virginia State Bar dues at the reimbursement rates as noted:

- 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.

# FY24 Policy & Procedure Manual

## Salary

2023 Appropriation Act Item 76 (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 provided to Commonwealth's Attorneys in such circumstances.

The following are the population-based salaries for Commonwealth's Attorneys for FY24.

<i>Population</i>	<i>July 1, 2023 to November 30, 2023</i>	<i>December 1, 2023 to June 30, 2024</i>
Less than 10,000	\$66,066	\$67,387
10,000 to 19,999	\$73,417	\$74,885
20,000 to 34,999	\$80,756	\$82,371
35,000 to 44,999	\$145,355	\$148,262
45,000 to 99,999	\$161,503	\$164,733
100,000 to 249,999	\$167,560	\$170,911
250,000 or more	\$173,621	\$177,093

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 <https://www.scb.virginia.gov>.

For more information regarding salary increases for Compensation Board funded positions in Commonwealth's Attorneys' offices provided in FY24, see the section entitled **Salary Increase** in the general section of this manual.

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

# FY24 Policy & Procedure Manual

## Staffing Standards

2023 Appropriation Act  
Item 79 (excerpt)

F. Any new positions established in Item 79 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 - Staffing standards for the allocation of Assistant Commonwealth's Attorney positions were developed based upon the June, 2023 Virginia Prosecutor Workload Assessment study and report produced under contract with the National Center for State Courts, recommended by the Virginia Association of Commonwealth's Attorneys and approved by the Compensation Board, and may not reflect all duties performed by the Commonwealth's Attorney. Positions needed for each office are based only upon the duties and workload measures identified specifically in the Staffing Standards. 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 Commonwealth's Attorney's office are based upon duties required by law to be performed by the Commonwealth's Attorney, or duties which 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 duties of the Commonwealth's Attorney, with focus on the prosecution of felonies as prescribed by state law.
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 in conjunction with the National Center for State Courts and the Virginia Association of Commonwealth's Attorneys (VACA), to determine the appropriate level of Compensation Board assistant Commonwealth's Attorney positions for each office requesting additional positions.
5. Whole positions due for allocation are based upon rounding of partial positions to the next whole position in a standard rounding convention of rounding down from 0.49 and rounding up from 0.50, except that where the total positions due for the prosecution of felonies falls between 1.0 and 1.49, the staffing standard shall round up to a minimum of 2.0 whole positions
6. The Compensation Board shall determine the number of additional positions to be allocated to any one office based upon criteria 1-5, 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 funded positions.

## FY24 Policy & Procedure Manual

### Staffing Standards, continued

Complete information regarding the newly developed staffing standards for Assistant Commonwealth's Attorneys beginning in FY24 can be found in the report on the [2023 Commonwealth's Attorneys' Workload Assessment/Time Study and Staffing Standards Revisions](#) located on the Compensation Board website under the Publications and Forms tab at <https://www.scb.virginia.gov>.

**Paralegal and Administrative Positions** - 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. Funds and positions must be appropriated by the General Assembly.
3. The Compensation Board will use a staffing standard which establishes the appropriate level of administrative staff support at one administrative support position (Sec, AAI, or AAll) for every two whole (rounded) Compensation Board funded Commonwealth's Attorney and/or assistant Commonwealth's Attorney positions due under the staffing standard for Assistant Commonwealth's Attorneys.
4. The Compensation Board will use a staffing standard which establishes the appropriate level of paralegal staff at one paralegal position (PA) for every four whole (rounded) Compensation Board funded Commonwealth's Attorney and/or assistant Commonwealth's Attorney positions due under the staffing standard for Assistant Commonwealth's Attorneys.
5. Whole positions due for allocation are based upon rounding of the total of administrative staff and paralegal positions due combined to the next whole position in a standard rounding convention of rounding down from 0.49 and rounding up from 0.50.
6. For Commonwealth's Attorneys' offices with only one allocated support position (administrative staff and/or paralegal), such position shall be classified at the highest administrative support position level (Administrative Assistant II).
7. The Compensation Board shall determine the number of additional positions to be allocated to any one office based upon criteria 1-6, 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 of the total number of current positions.

# FY24 Policy & Procedure Manual

## 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 appointed 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 appointed 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 appointed to try the case and will receive reimbursement from the Criminal Fund of the Office of the Executive Secretary of the Supreme Court of Virginia 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 <https://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. See **Travel Reimbursements** below.

**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; see **Travel Reimbursements** below). The office of the Commonwealth's Attorney in the locality of service is responsible for completing a **CB Form 22** in the COIN system (example located on the Compensation Board website under the Publications and Forms tab at <https://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 should contact the Supreme Court of Virginia's Office of the Executive Secretary, Department of Fiscal Services, at (804) 786-6455 or <https://www.vacourts.gov>.



## FY24 Policy & Procedure Manual

### Substitute Prosecutors, continued

#### Travel Reimbursements

Mileage reimbursement is based on the standard mileage rate for business use from the IRS, in effect on the date of travel (not the date of the reimbursement request). Travelers may find the standard mileage rates by year from the IRS on their website at <https://www.irs.gov/tax-professionals/standard-mileage-rates>. Generally, the traveler's work address is considered the starting point for travel, and the Compensation Board can only reimburse mileage for the distance traveled from the work address to the destination point and back. If the trip was longer for a specific reason or if there was a third stop, the traveler should include a detailed statement with the request for mileage reimbursement.

Approved hotel (lodging) expenditures are reimbursed per [state travel regulations \(CAPP Topic 20335\)](#), which are located on the Department of Accounts web site at <https://www.doa.virginia.gov>. Hotel (lodging) rates and per diem rates are governed by the US General Services Administration (GSA) rates. Travelers must search for their travel destination using search criteria on the [GSA website](#) to identify reimbursable (authorized) rates. 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 and as designated on the [GSA website](#). Compensation Board policy, in accordance with state travel regulations, does not authorize reimbursement of meals or 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 \$750 or within 60 days of the conclusion of the case, **whichever comes first**. Requests not submitted when meeting the \$750 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.

## FY24 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).

### 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.