

**CITIZENS ADVISORY COMMITTEE FOR THE
CHARLOTTESVILLE-ALBEMARLE
PUBLIC DEFENDER OFFICE**

Rauzelle J. Smith, Chair
434 985-3395 (Home)
Neal Goodloe
434 296-2441 (Work)

Sheriff Chip Harding
434 972-4001 (Work)

Marilyn Minrath, Ph.D.
434 296-6462 (Work)
Robert Gest, III Ed.D.
434 974-7167 (Work)

Eddie Harris
434 296-4118 (Work)
Gloria M. Rockhold
434 296-5803 (Work)

April 14, 2017

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**County of Albemarle
Board of Supervisor's Office**

The Honorable Chair, of the Board of Supervisors
Mrs. Diantha H. McKeel
401 McIntire Road
Charlottesville, VA 22902

Dear Mrs. Palmer,

I am very pleased to send you a copy of the 2016 annual report from the Citizens Advisory Committee of the Charlottesville-Albemarle Public Defender Office. I am very proud of the work and accomplishments of the Committee during the past year.

We commend Mr. James Hingeley and his staff for their efforts to improve the quality of service for their clients. The commitment of their personal time, beyond their duties as Public Defenders should not go unnoticed. There have been many changes that have been enacted due to their involvement. These changes have affected the lives of the indigent in very positive ways.

We thank you for your continued support; our successes would not be possible without it. All of our meetings are open to the public and meeting dates are posted in advance. Your presence is always welcomed. Please do not hesitate to contact me or any member of our committee if you have questions, ideas, or concerns.

Sincerely,



Rauzelle J. Smith, Chair

CITIZENS ADVISORY COMMITTEE FOR THE CHARLOTTESVILLE-ALBEMARLE PUBLIC DEFENDER OFFICE ANNUAL REPORT 2016

Background

The Citizens Advisory Committee held five regular meetings in 2016; January 21st, March 2nd, April 13th, July 13th, and November 9th. All committee seats were filled, and members whose terms expired in December 2016 were reappointed.

Committee's Activities

Committee members remain committed to making themselves available to the community to provide information about the services offered by the Public Defender Office. During the year the committee had several guests attend our meetings. We are pleased to share with you the successes we have achieved through collaboration and support with other community groups. The majority of these initiatives remain as works-in-progress, beginning in January 1999. We are pleased to report that we are continuing to make progress and the successes we have experienced are benefiting other localities.

Pay Equity Proposal, Meeting with City Council and Albemarle County Board of Supervisors (B.O.S.) provided an opportunity to educate both governing bodies about the importance of the services the Public Defenders provide. The supplements have been adjusted upward according to salary adjustments in the City and County. The first year of supplements was not up to the target figure.

A recalculation has been done to show current salary differences between public defenders and prosecutors. The current proposition provides a phase in of supplements over a period of three years, rather than asking for the full amount up front. At the end of the three year period, pay equity will be close, although still somewhat lower than the prosecutor supplements. With further adjustments as determined by the amount of increase given to general government employees of the localities, this will help close the salary gaps.

Mental Health Population Study:

Committee Member Neal Goodloe updated the committee on a study of the mental health population in the criminal justice population. This study involves a collaborative effort including the UVA Capstone Team, our local jail, OAR, and Region Ten. Data from different databases are being analyzed anonymously (to insure privacy) to identify individuals with mental health treatment needs for the purpose of seeking release from jail and providing services. This research project has been submitted to and approved by the UVA Institutional Review Board. Data will be stored anonymously with the goal of identifying the number of individuals who could effectively be diverted from the jail into treatment alternatives. A preliminary mental health screening tool is currently being utilized by OAR during their pretrial contacts. Preliminary review of this data suggests that 30% of jail "intakes," according the screening tool,

are appropriate for diversion. 18% of this data group has had prior mental health hospitalizations.

Court Costs:

Court costs can be crippling for low-income drivers, as reported by *"The Associated Press"* May 31, 2016. Kimberly Hopkins was so strapped for cash, she was selling her blood plasma to make ends meet. When a court assessed her with a \$25 monthly payment for a speeding ticket and court costs, the divorced mother of four simply couldn't pay. "Sometimes I just did not have it at the end of the month," the 44-year-old Amherst County resident said.

So Hopkins defaulted on the payment plan and her driver's license was suspended. She continued driving, out of necessity, and got caught, resulting in more fines and costs. Her total court obligation swelled to about \$1,500 – an impossible sum for Hopkins, who by then was unemployed and unable to legally drive anywhere to apply for jobs

The Legal Aid Justice Center says Hopkins' case illustrates a problem plaguing thousands of low-income Virginians, as traffic courts have been slow to implement suggested reforms. People who can't pay lose their license and can't drive to work without violating the law and risking even more fines or even a 10-day jail term that's mandatory for a third conviction of driving on a suspended license.

Hopkins stated she had no intention of breaking the law, but she didn't know what else to do. She is not alone. The Legal Aid Justice Center says more than 900,000 Virginians, (about one in six of Virginia's drivers,) have had their licenses suspended because of unpaid court costs or fines in 2015.

The Legal Aid Justice Center outlined the problem in its recent report: "Driven Deeper into Debt Unrealistic Repayment Options Hurt Low-Income Court Debtors." This organization, which began focusing on this problem about three years ago, noted that the Virginia General Assembly last year said courts must put their payment plan policies in writing. A year ago, the policy-making state Judicial Council recommended that courts abandon onerous debt-collection practices and develop policies and payment plans to help avoid driver's license suspension. The center analyzed the policies of 105 general district courts and found payment plans widely vary and often fall short of the Judicial Council recommendations.

Brandon Marshall, whose driver's license has been suspended since 2011, tried to set up payment plans after racking up about \$3,500 in fines and court costs in five localities. The 23 – year-old Newport News resident said, he had been working through a temp agency, but was only making about \$50 a day, not enough to pay his court debts and daily expenses. He said most employers insist on workers having a driver's license to demonstrate reliability, but he hoped to land a job within walking distance of his sister's house. When he tried to set up payment plans, three localities said he had to make a 50 percent down payment "It's a lot," he said. "It is unjust and unfair."

"It's just not a level playing field for people without means," said Charlottesville attorney Jonathan Blank, who helped Hopkins get her license reinstated. "We have a means-based test to see if someone qualifies for a court-appointed attorney, but not for how we are going to punish someone. Why can't we do it on the front end and not the back end?"

Virginia Supreme Court Chief Justice Donald Lemons appointed a task force to draft a court rule directing statewide compliance with the reforms, because “progress has varied” in implementing them. He believes that having such a rule will encourage consistency and fairness regarding these issues throughout the commonwealth.

Norfolk attorney Peter G. Decker III says he has represented hundreds of clients who have lost their driving privileges, because of unpaid court costs. He said some violators “thumb their nose” at the law but others, “are honest people trying to put food on the table, so they have to take a chance and drive.” “There’s a whole class of people out there who need to go to work but aren’t supposed to be driving,” Decker said.”

Group files legal challenge to Virginia driver’s license suspensions for the poor

Wednesday July 6, 2016 6:00 pm

By FRANK GREEN Richmond Times-Dispatch

A federal class-action lawsuit filed Wednesday is challenging Virginia’s system of suspending driver’s licenses of people too poor to pay their court costs and fines. The complaint alleges that the failure to take into account reasons for nonpayment or to consider debtor’s financial circumstances before suspending their licenses is discriminatory and in violation of constitutional protections.

A spokesman for the Virginia Attorney General’s Office declined to comment on the lawsuit, but stated “we will review the complaint closely with our client agencies and respond appropriately”.

The 56-page complaint was filed in U.S. District Court in Charlottesville against the commissioner of the Virginia Department of Motor Vehicles on behalf of four people with suspended licenses who represent others “similarly situated.”

It states that Virginia relies on driver’s license suspension to coerce payment of money owed the court.

“Those who can afford to pay generally do,” the suit says. But, the complaint continues: “Hundreds of thousands of people have lost their licenses simply because they are too poor to pay, effectively depriving them of lawful transportation.”

A recent analysis by the Legal Aid Justice Center (LAJC) said people have 30 days to pay costs and fines in full or establish a payment plan. Low-income drivers struggle to meet the minimum down payments or monthly payments required, get their license suspended and are therefore punished more harshly than someone who can pay, according to LAJC.

Each court has its own procedure for establishing a payment plan. Last year 1 in 6 drivers, 900,000 people, had suspended licenses because of one or more unpaid court costs, the LAJC said.

The LAJC reported that most Virginia general district courts are disregarding recommendations made last summer by the Judicial Council of Virginia aimed at helping low-income residents pay

off court costs and fines. According to the LAJC, a person convicted of reckless driving in Virginia risks no more than a six-month suspension of their license, while a person who fails to pay court costs faces an indefinite license suspension, often lasting years.

In the year that ended June 30, 2015, the DMV issued 366,773 orders of driver's license suspensions resulting from unpaid court costs or fines, more than a third of them for offenses unrelated to driving.

"Driver's licenses suspension is Virginia's form of a debtor's prison," Angela Ciolfi, an attorney at the LAJC, said in a statement.

"Many areas of the state provide no reliable public transportation, effectively leaving people confined to their homes or forcing them to risk jail time by driving on suspended licenses", she said.

The complaint calls for an injunction against the DMV, stopping it from entering orders of suspension against the licenses of low-income drivers until the state implements a system to properly assess drivers' ability to pay court debts. It also wants the DMV to reinstate the licenses of all drivers penalized for their inability to pay.

On July 6, 2016, the Legal Aid Justice Center and McGuireWoods filed a lawsuit against the Commissioner of the Department of Motor Vehicles in his official capacity in federal district court in Charlottesville. The Plaintiffs, represented by the Legal Aid Justice Center and McGuireWoods, are four Virginia residents whose driver's licenses were suspended by the Department of Motor Vehicles for unpaid court costs and fines. The driver's licenses were suspended automatically, without any regard to the Plaintiffs' abilities to pay and without any opportunity to show that their nonpayment was not willful. The Plaintiffs sought to represent a class that potentially includes hundreds of thousands of Virginia drivers whose licenses are currently suspended at least in part because of unpaid court costs, fines, and other monetary penalties. On March 13, 2017, the court dismissed the lawsuit on procedural grounds. In dismissing the Plaintiffs' complaint for jurisdictional reasons, the Court made it clear that it was not blessing the constitutionality of Virginia's license-for-payment system, stating: "Virginia law leads state judges to automatically suspend a defendant's driver's license for nonpayment of court fees and fines, regardless of his ability to pay. That unflinching command may very well violate Plaintiffs' constitutional rights to due process and equal protection." (Mem. Opinion p. 35) The Plaintiffs are now considering their options, including appeal or refile.

Ciolfi said the suit comes as the Virginia Supreme Court considers new rules regarding payment plans and the General Assembly prepares to hold a legislative study commission on these issues.

The complaint says the state has increased court fees in order to pay for operations and has authorized localities to do the same.

In 1989, court costs for all misdemeanor or traffic violations were \$20. Now they can run more than \$100, including local option fees, and that is before adding in any charges for things such as blood withdrawal or reimbursement of fees paid to lawyers appointed to represent people too poor to afford one.

Criminal Justice Leader Recognition Program, (AKA Clarence Earl Gideon Award)

During the past seventeen years, many of the successes the Charlottesville/Albemarle Public Defender's Office has experienced can be attributed to the support our clients have received from other community organizations and individuals. To show our appreciation, we decided to have a ceremony and award a plaque for outstanding service to the community.

After considering several worthy individuals for this year's recognition, Patricia L. Smith, who has served as Director of Offender Aid and Restoration/Jefferson Area Community Corrections since 1980 was chosen. Pat has an incredible record of achievement at the local, state, and national levels during her long and distinguished career as a criminal justice professional in pretrial services and community corrections. In 2005, the Virginia General Assembly commended her for enhancing public safety in Central Virginia by providing accountability for offenders and constructive alternatives to incarceration.

Pat currently has 31 staff members and has carried her work into Nelson, Greene, Louisa, Madison, Orange and Goochland Counties, and now serves approximately 3000 defendants per year providing a variety of services. Pat's work began with pretrial initiatives, allowing indigent defendants who are released to the community better access to defense counsel. This factor alone is and has been enormously helpful, not only because of better access to the clients, but because it gives them opportunities to establish positive track records in the community, not to mention clients on bond are saving the community money in saving jail bed days and are contributing to the community in many ways.

Pat has embraced and become a leader in Evidence Based Decision Making principles and has weathered many changes in the criminal justice system over time. She has been a leader in developing a matrix system to craft more appropriate and less severe responses to probation violations. This has reduced the number of violation letters to the court and reduced jail bed days at a significant savings of over \$2.5 million. This approach has become a nationwide model.

Pat has always appreciated the work of the Public Defender Office and has been a role model of leadership in bringing recognition and appreciation to the importance of indigent defense. The presentation was made May 11, 2016 at the Charlottesville Circuit Court at 4:00 pm. The year 2016 was the fourth year for this recognition.

Special Guests Attending Meetings

March 2, 2016

Rebecca Pensak Graduate Fellow

April 13, 2016

Ray Szwabowski, Post Graduate Fellow, UVA Law School

July 13, 2016

Chris Doyle 3L's Univ. of Richmond

Jeffrey Valentine 3L's Univ. of Richmond

Michaela Lieberman, Internship

Recognition

During the past eighteen years, Mr. James Hingeley, Public Defender, has involved the Committee in many projects, lasting from one month to several years. Jim is very passionate about working to assist others, training his staff, advising and working with our committee and co-sponsoring activities with other community groups.

On September 1, 2016 Jim retired from his Public Defender position. We owe a great debt of gratitude to Jim for 18 years of service and superb leadership to the committee and the communities for all he accomplished to improve the lives of others. On behalf of the Citizens Advisory Committee, we wish Jim the best in his retirement, with a sincere thank you.

Issues and Concerns

Our Committee remains concerned over the following realities:

- There are some geriatric inmates who prefer to return to prison, because they are unable to function after their release and commit other crimes to return to prison.
- The sad reality is that jail doesn't always work, too often inmates come out worse than when they went in.
- The restoration of felons voting rights, and providing them with assistance to navigate through the process to have their voting rights restored as soon as possible, needs more attention.

Future Goals

- The Committee embraces the idea of improving minority recruitment for the Public Defender's office.
- Continue efforts to explore the development of a Career Defender Program, modeled after the Career Prosecutor Program.
- Increase awareness of and support for the Public Defender Office and its role in strengthening the Criminal Justice System by offering quality legal service to the indigent and advocating for sentencing alternatives that benefit both the offender and the community.
- Continue to make available to the public, through public forums and other means, information about public policy issues significantly affecting the welfare and interests of Public Defender clients.
- Explore the quality and quantity of client support services in our community with a view toward improving services and/or advocating for additional services where appropriate.

Approved:
Citizens Advisory Committee
Rauzelle J. Smith, Chair
April 12, 2017