

Federal Act Provides Loan Repayment Funds for Public Defenders and Prosecutors

by David J. Johnson and Robert Harris

The integrity of our criminal justice system is strengthened and upheld when good lawyers can afford to choose public service. By becoming prosecutors and public defenders, they preserve the rule of law, protect our communities, and safeguard the rights of all citizens.

The challenge for prosecutor and public defender offices is the recruitment and retention of qualified lawyers. That effort has become harder as law students finish school with educational debt roughly equivalent to home mortgages and prosecutor and public defender salaries remain stagnant.

The cost of law school education continues to skyrocket. According to the American Bar Association, the average annual cost of tuition and fees in 2000 was \$21,790. By 2008, the cost was \$34,298. Graduates left law school with an average loan burden of nearly \$100,000 in 2008. The economic downturn has brought steady increases to the costs of law school and a corresponding amount of student loan debt.

Virginia's public defenders and prosecutors have been severely affected. The entry level salary for a public defender in Virginia is \$48,163. An assistant commonwealth's attorney salary starts at \$45,385 in jurisdictions without local salary supplements. Even in booming economic times public sector salaries increase slowly. Like other state employees, public defenders have not received raises in more than three years, and recent budget cuts required some commonwealth's attorneys to lay off prosecutors.

The math is simple: a \$100,000 student loan debt precludes a long-term commitment to public service at current salary scales. Many qualified attorneys are priced out of public service and

seek more lucrative private sector opportunities just to manage their student loan debt. By a wide margin, departing prosecutors and public defenders cite low pay and high student loan debt as the number one reason for leaving public service. For prosecutor and public defender offices, the exodus of lawyers from public service results in consistently higher turnover, with less-experienced attorneys handling increasingly unmanageable caseloads.

The John R. Justice Act

After many years of effort, the John R. Justice Prosecutors and Defenders Incentive Act has been passed and funded by Congress. The John R. Justice Student Loan Repayment Program provides loan repayment assistance for state and federal public defenders and state prosecutors who agree to remain employed as public defenders and prosecutors for at least three years. Although the amount of money available in the first year is modest, passage and implementation of the act is unquestionably a significant first step.

The \$10 million authorized by Congress in the first year has been apportioned among the states based on population. Virginia's share totals \$223,000. Funding for loan repayment

Virginia prosecutors and public defenders will equally share approximately \$190,000.

Attorneys receiving student loan relief agree to work in a public defender or prosecutor office for a minimum of three years. Qualifying loans include loans under the Federal Family Education Loan Program, William D. Ford Federal Direct Loans, Federal Perkins Loans, and Federal Consolidation and Federal Direct Consolidation Loans. Once fully funded, the act will allow attorneys to receive up to \$10,000 per year for a maximum of \$60,000 in student loan debt relief during their careers as public defenders or prosecutors.

Governor Robert F. McDonnell designated the Department of Criminal Justice Services as Virginia's managing agency. In the first year, available funds allow nineteen public defenders and nineteen prosecutors to each receive approximately \$5,000 in debt reduction awards. The department has developed an applicant review process designed to ensure that awards are need-based by focusing on the applicants' qualified law school loan debts relative to their incomes. The department will announce details for interested applicants in the near future. Prosecutors

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must be allocated equally between prosecutors and public defenders. The act allows for up to 15 percent of the funds to be used to help defray the costs of administering the program. This year,

and public defenders will receive additional information through the Virginia Commonwealth's Attorneys' Services Council and the Virginia Indigent Defense Commission.

Non-Virginia Military Lawyers Now Can Provide Limited Legal Assistance to Service Members in Virginia

Two Texas attorneys have been sworn in to practice before Virginia courts through a new Virginia State Bar membership category for military lawyers who help low-income service members with civil matters.

A lawyer with active/military legal assistance attorney (MLAA) status is limited to representing clients who are eligible for services through the military's Expanded Legal Assistance Program (ELAP).

The program assists service members who do not qualify for legal aid but who do not earn enough to hire counsel without incurring financial hardship.

Certification as a military legal assistance attorney is governed by Rule 1A:6 of the Rules of the Virginia Supreme Court and 10 U.S. Code § 1044.

The attorney must be a member of the armed services, stationed in Virginia, and licensed and in good standing with

another United States state or territory. The application must be approved by the Virginia Board of Bar Examiners.

Military legal assistance attorneys are subject to regulation by the VSB. They must complete the Professionalism Course and continuing legal education obligations required of all active-status Virginia lawyers.

VSB dues are waived for the first two years of MLAA certification.

The military legal assistance attorney may represent a qualified service member in matters involving family law, landlord-tenant disputes, estate matters, consumer issues such as breach of contract and repossession, and enforcement of rights under the Soldiers' and Sailors' Civil Relief Act and the Uniformed Reemployment Rights Act.

"These service members are unique in that all move every three to four years, and some are fresh from boot camp

without family support or life experience to guide them," according to a press release from the Naval Legal Service Office Mid-Atlantic.

"The military attorneys champion service members who are frequent targets of exploitation. Unscrupulous lenders and landlords often find service members' steady paychecks and inexperienced youth tempting for unfair practices.

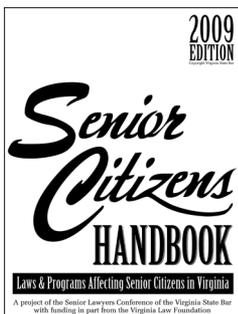
"The primary focus of the ELAP practice will be consumer litigation, with the first cases being against automobile dealerships that went out of business without fulfilling contracts and paying off service members' trade-ins."

Virginia's first two military legal assistance attorneys — U.S. Navy Lieutenants James Rhadbane and Lauren Mayo — were sworn in June 7, 2010, by Virginia Chief Justice Leroy R. Hassell Sr.

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Visit the Access/Pro Bono page on the VSB website for free and low-cost pro bono trainings and volunteer opportunities in Virginia. http://www.vsb.org/site/pro_bono/resources-for-attorneys

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