

# Office of the Commonwealth's Attorney

## Focus

The Commonwealth's Attorney is a constitutional officer of the Commonwealth of Virginia elected by the voters of Fairfax County and Fairfax City. As such, the Commonwealth's Attorney is not an officer or employee of the County.



The Office of the Commonwealth's Attorney (OCA) oversees the prosecution of crimes committed under the Code of Virginia occurring within Fairfax County. The OCA is committed to promoting the long-term safety of the community while reforming Fairfax County's justice system to mitigate mass incarceration and address racial and socioeconomic disparities. The office prosecutes all misdemeanor and felony criminal matters, as well as delinquency matters. As a result, the office practices in Fairfax County General District Court, Circuit Court, and Juvenile and Domestic Relations District Court. The OCA serves the entirety of Fairfax County, including the City of Fairfax, the Town of Herndon, and the Town of Vienna, a total of approximately 1.2 million residents that constitutes the Commonwealth's largest jurisdiction. The OCA's caseload is among the highest per prosecutor in the Commonwealth.

State law specifically mandates certain duties for the Commonwealth's Attorney, including advising the Grand Jury relative to their duties, representing the Electoral Board in certain election matters, and advising any officers or employees of Fairfax County or Fairfax City on matters involving conflict of interest. The OCA works collaboratively with numerous law enforcement units (e.g., State Police, Fairfax County Police, Fairfax City Police, the Town of Herndon, and Town of Vienna Police and game wardens) in the course of investigations and in response to questions concerning criminal law.

Employees in the OCA are in County positions and participate in County pay and benefit plans. The Commonwealth's Attorney is not an employee of the County, but does participate in County benefit plans, and receives a County supplement to the state-determined base salary. This supplement is regularly reviewed and approved by the Board of Supervisors. The Commonwealth of Virginia Compensation Board reimburses the County for a portion of expenses in the OCA. The mission of the Compensation Board is to determine a reasonable budget allocation on the part of the Commonwealth toward the total cost of office operations as it pertains to felony casework for Constitutional Officers, and to assist those officers and their staff, through automation, training, and other means, to improve efficiencies and to enhance the level of services provided to the citizens of Virginia. That said, the Compensation Board has historically underfunded Fairfax County in two specific ways. First, the formula the Compensation Board utilizes to determine funding for Commonwealth's Attorneys across the state only funds felony convictions. The formula is therefore structured to incentivize criminal convictions and incarceration, which renders it an obstacle to the OCA's efforts to prioritize diversion and reform the criminal justice system. Additionally, the formula is structurally biased toward smaller and less diverse jurisdictions. This structural bias was on full display when the Compensation Board's allocation to Fairfax County increased in the past fiscal year as a result of the temporary slowdown the courts experienced during the pandemic that rendered the level of activity more analogous to that of a smaller jurisdiction. To address this chronic funding challenge, the OCA worked with County leadership to pass a funding study through the General Assembly that will reassess the Compensation Board's formula. Adjusting the formula to be more precise and equitable also remains a top legislative priority for both the County and the OCA.

Beyond the chronic funding challenge presented by the Compensation Board's formula, recent developments have also contributed to an increased workload for the OCA. In 2019, the Board of Supervisors approved a Body-Worn Camera (BWC) program, which has necessitated additional attorneys and administrative staff to ensure the OCA is complying with requirements to review BWC footage. As a result, in FY 2020 an additional 23/23.0 FTE positions were included to provide support to the OCA for the BWC program.

In addition to positions added to accommodate the additional workload related to the BWC program, the County took action to mitigate the worst effects of the Compensation Board's inadequate funding formula. Specifically, the County recognized the need for additional staff to appropriately handle misdemeanor cases that the state does not fund. As a result, a multi-year plan was developed to grow the capacity of the OCA. As a first step, an additional 15/15.0 FTE positions were included in the FY 2022 budget to provide additional staffing support for the office. Six new positions are included in the FY 2023 budget, and the office is projected to continue to grow by six positions annually through FY 2027. The OCA is then projected to grow by five positions annually from FY 2028 through FY 2031, providing for a total of 65 additional positions over ten years.

## Budget and Staff Resources

Category	FY 2021 Actual	FY 2022 Adopted	FY 2022 Revised	FY 2023 Advertised
<b>FUNDING</b>				
<b>Expenditures:</b>				
Personnel Services	\$4,382,192	\$7,641,392	\$7,700,392	\$8,586,246
Operating Expenses	751,644	380,734	1,484,754	413,234
<b>Total Expenditures</b>	<b>\$5,133,836</b>	<b>\$8,022,126</b>	<b>\$9,185,146</b>	<b>\$8,999,480</b>
<b>Income:<sup>1</sup></b>				
Commonwealth's Attorney Fees	\$16,530	\$27,618	\$16,530	\$16,530
City of Fairfax Contract	118,535	118,535	99,303	125,942
State Shared Retirement - Commonwealth's Attorney	38,418	39,744	39,744	39,744
State Shared Commonwealth's Attorney Expenses	1,950,752	2,051,334	2,051,334	2,051,334
State Reimbursement Commonwealth's Attorney Witness	224	16,400	16,400	16,400
<b>Total Income</b>	<b>\$2,124,459</b>	<b>\$2,253,631</b>	<b>\$2,223,311</b>	<b>\$2,249,950</b>
<b>NET COST TO THE COUNTY</b>	<b>\$3,009,377</b>	<b>\$5,768,495</b>	<b>\$6,961,835</b>	<b>\$6,749,530</b>
<b>AUTHORIZED POSITIONS/FULL-TIME EQUIVALENT (FTE)</b>				
Regular	63 / 63	78 / 78	78 / 78	84 / 84
Exempt	2 / 2	2 / 2	2 / 2	2 / 2

<sup>1</sup>State shared income includes reimbursement for fringe benefits; however, the expenses associated with fringe benefits are reflected in Agency 89, Employee Benefits, and are not included in the expenditure amounts above.

## FY 2023 Funding Adjustments

The following funding adjustments from the FY 2022 Adopted Budget Plan are necessary to support the FY 2023 program:

**Employee Compensation** \$436,115  
An increase of \$436,115 in Personnel Services includes \$306,420 for a 4.01 percent market rate adjustment (MRA) for all employees and \$129,695 for performance-based and longevity increases for non-uniformed merit employees, both effective July 2022.

## **Positions to Support Caseload \$541,239**

An increase of \$541,239 and 6/6.0 FTE new positions are included to support workload requirements. At the September 22, 2020, Public Safety Committee Meeting, the Commonwealth's Attorney requested additional positions to cover workload that was backlogged or no longer covered due to a lack of resources. These new positions will allow the office to prosecute a wider array of crimes. It should be noted that an increase of \$263,019 in Fringe Benefits funding was included in Agency 89, Employee Benefits. For further information on Fringe Benefits, please refer to the Agency 89, Employee Benefits, narrative in the Nondepartmental program area section of Volume 1.

## **Changes to FY 2022 Adopted Budget Plan**

*The following funding adjustments reflect all approved changes in the FY 2022 Revised Budget Plan since passage of the FY 2022 Adopted Budget Plan. Included are all adjustments made as part of the FY 2021 Carryover Review, FY 2022 Mid-Year Review, and all other approved changes through December 31, 2021:*

### **Carryover Adjustments \$1,163,020**

As part of the *FY 2021 Carryover Review*, the Board of Supervisors approved funding of \$1,163,020, including \$59,000 in Personnel Services for a one-time compensation adjustment of \$1,000 for merit employees and \$500 for non-merit employees paid in November 2021. The remaining amount of \$1,104,020 is due to encumbered carryover.

## **Position Detail**

*The FY 2023 Advertised Budget Plan includes the following positions:*

OFFICE OF THE COMMONWEALTH'S ATTORNEY – 86 Positions			
1	Commonwealth's Attorney (Elected) E	1	Administrative Aide E
1	Chief Deputy Commonwealth's Attorney	1	Management Analyst III
4	Deputy Commonwealth's Attorneys	1	Business Analyst II
7	Sr. Asst. Commonwealth's Attorneys	1	Management Analyst II
11	Asst. Commonwealth's Attorneys III [+2]	1	Public Safety Information Officer IV
27	Asst. Commonwealth's Attorneys II [+1]	1	IT Tech II [+1]
3	Asst. Commonwealth's Attorneys I	1	Data Analyst III
1	Paralegal Supervisor	9	Administrative Assistants IV [+1]
12	Paralegals [+1]	3	Administrative Assistants III
+ Denotes New Position(s)			
E Denotes Exempt Position(s)			

## **Performance Measurement Results**

No Performance Indicators are available for this agency.