

**CHAPTER 6 - RECOVERY OF COURT-APPOINTED COUNSEL AND PUBLIC  
DEFENDER COSTS****I. INTRODUCTION**

The Code of Virginia provides several different methods to recover fines and costs. Some methods are more effective than others, and some methods apply only to specific situations. The following procedures are outlined to assist courts with the process.

- *Judgment:* [Virginia Code § 19.2-341](#) provides that penalties imposed and costs taxed shall constitute a judgment in favor of the Commonwealth and, if not paid at the time of imposition, execution may issue thereon in the same manner as upon any other monetary judgment. [Virginia Code §§ 19.2-339](#) through 19.2-358 describe proceedings to recover fines and costs and the methods for collection. The Commonwealth Attorney is to superintend the issuance of executions in circuit courts, and effective January 1, 1985, in district courts.
- *Payment at Time of Trial:* For Commonwealth cases, when the court-appointed counsel fee is collected at the time of trial, it should be treated as a recovered cost (Revenue Code 120) and form DC-40, LIST OF ALLOWANCES should be processed for payment. On local ordinance cases, the court-appointed counsel fee should be collected using the appropriate locality revenue code, and the locality should be invoiced for the court-appointed attorney payment.
- *Deferred or Partial Payment:* The court may allow the defendant to pay the fine and costs on an installment basis or allow the defendant a given time period to defer paying the entire amount in a lump sum by a given date. [Va. Code § 19.2-354](#).
- *Show Cause Summons:* The court may issue form DC-360, Show Cause Summons (Criminal) requiring the defendant to show cause why he should not be imprisoned or fined for non-payment when he has defaulted on an installment or deferred payment plan. [Va. Code § 19.2-358](#).
- *Debt Set-Off:* The court must also report unpaid fines and fees due the Commonwealth on criminal cases through the Debt Set-Off process. This method attaches any refund due the defendant from state income taxes and applies such amount as necessary to satisfy the court's claim. [Va. Code §§ 58.1-520](#) through 58.1-535.
- *Operators License Revocation:* If the defendant was convicted of a traffic violation reportable to the [Department of Motor Vehicles](#) and has not paid his/her fine and costs, the court on its own motion may revoke the defendant's operator's license. The court may also report the fact to the Department of Motor Vehicles and the Department will revoke the defendant's operator's license until such time as all fines and costs are paid. [Va. Code § 46.2-395](#).

- Commonwealth Attorney: The court must report all delinquent fines and cost cases to the Commonwealth Attorney. The Commonwealth Attorney can retain these cases to pursue collection efforts or elect to contract with a private collection agent or attorney, or forward delinquent cases to the [Department of Taxation](#) for collection. [Va. Code § 19.2-349](#).
- Juvenile Cases: In juvenile cases, the court shall assess the costs in whole or in part against the parents for court-appointed counsel in an amount not to exceed \$120 in district court and not to exceed \$100 in circuit court, if the court finds the parents are financially able to pay regardless of the adjudication of delinquency or a finding of guilt. [Va. Code § 16.1-267](#). In cases where a guardian ad litem has been appointed to represent a child in accordance with [Va. Code § 16.1-266](#), the court shall require parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, where able, to reimburse the court GAL fees.
- Community Service: The court may establish a program to provide an option to any person upon whom a fine and costs have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs [Va. Code § 19.2-354 \(C\)](#).

## II. RECOVERY OF COURT PUBLIC DEFENDER COSTS

For courts served by public defenders, the same guidelines for court-appointed counsel apply. The public defender is a salaried employee of the Commonwealth of Virginia. Thus, the court does not process form DC-40, LIST OF ALLOWANCES at the conclusion of a trial for payment with the Supreme Court of Virginia. Instead, the public defender is required to submit at the conclusion of trial form DC-52, [PUBLIC DEFENDER TIME SHEET](#). A copy of this form may, depending on your jurisdiction's requirements, also be used as an invoice to bill the locality for those instances where the public defender represented a defendant charged with a local violation. If a defendant represented by a public defender is convicted of a Commonwealth violation, then the same guidelines for the assessment of costs to the defendant as outlined for court-appointed counsel apply.

When the public defender represents an individual charged with a violation of a county, city or town ordinance, the Commonwealth of Virginia must be reimbursed by the locality for the amount of the court-appointed attorney fee awarded by the court. The [Auditor of Public Accounts](#) and the [Virginia Indigent Defense Commission](#) have approved the following procedures:

- The court is to bill the city, county, or town whenever services are rendered by the public defender on local violations.

- If the accused has been found guilty or is otherwise assessed the costs of court-appointed counsel, the clerk should assess this cost on the warrant under the appropriate locality recovered costs revenue account (Revenue Code 217 for county recovered court-appointed attorney fees).
- When payment is received from the local treasurer, the court should perform a general miscellaneous receipt for the funds, receipting them to Revenue Code 120 (Commonwealth Recovered Court-Appointed Attorney Fees) and remit the proceeds to the Commonwealth of Virginia in the usual manner.
- Should the defendant subsequently pay owed court-appointed counsel costs, the court should receipt it to the appropriate locality recovered costs revenue account and remit to the locality at the end of the month in the usual manner.

The following examples are offered to illustrate how to account for public defender fees in District Courts:

- Example No. 1

The public defender represents a defendant charged with a single Commonwealth violation. The defendant is not convicted. No costs are assessed against the defendant. The public defender completes and submits form DC-52, [PUBLIC DEFENDER TIME SHEET](#) but does not process form DC-40, LIST OF ALLOWANCES.

- Example No. 2

The public defender represents a defendant charged with a single county violation. The defendant is not convicted. No costs are assessed against the defendant. The Public Defender completes and submits form DC-52, [PUBLIC DEFENDER TIME SHEET](#). The judge awards the \$120 maximum for the public defender's services. The court submits a copy of the DC-52 as an invoice to the locality. The county pays the court \$120 and the proceeds from the county are receipted by the court using a general miscellaneous receipt to the Commonwealth recovered cost account (Revenue Code 120).

- Example No. 3

The public defender represents a defendant charged with a single county violation. The defendant is convicted. The public defender completes and submits form DC-52, [PUBLIC DEFENDER TIME SHEET](#). The judge awards the \$120 maximum for the public defender's services and that amount is assessed as court-appointed costs against the defendant. The court invoices the county for \$120. The county pays the court \$120 and the proceeds from the county are receipted via general miscellaneous receipt by the court to the Commonwealth recovered cost account (Revenue Code 120). The defendant subsequently pays the court \$120 for the public defender costs owed, which is receipted to the county

recovered cost account (Revenue Code 217) and remitted to the county at month-end in the usual fashion.

- Example No. 4

The public defender represents a defendant charged with three county violations. The defendant is not convicted. No costs are assessed against the defendant. The public defender completes and submits form DC-52, [PUBLIC DEFENDER TIME SHEET](#). In defending the three charges, the public defender stipulates to a total of three hours of service. The fee would be calculated as follows:  $3 \times \$90 = \$270$ . The judge may allow the \$270 since the fee total did not exceed the maximum allowed by law ( $3 \times \$120 = \$360$ ) for the public defender's services. The court invoices the county for \$270. The county pays the court \$270, which the court receipts to the Commonwealth recovered cost account (Revenue Code 120) using a general miscellaneous receipt.

- Example No. 5

The public defender represents a defendant charged with three Commonwealth violations. The defendant is convicted. The public defender completes and submits form DC-52, [PUBLIC DEFENDER TIME SHEET](#). In defending the three charges, the public defender stipulates a total of three hours of service. The fee would be calculated as follows:  $3 \times \$90 = \$270$ . The judge may allow the \$270 since the fee total did not exceed the maximum allowed by law ( $3 \times \$120 = \$360$ ) for the public defender's services. The court uses form DC-52, [PUBLIC DEFENDER TIME SHEET](#) to assess \$270 in public defender costs against the defendant. The defendant pays the court \$270, which is receipted by the court to the Commonwealth recovered cost account (Revenue Code 120).

- Summary

All recovered court-appointed fees should be receipted into the court's accounts under Revenue Code 120 for state appointed public defender fees. The locality should be invoiced (submit an appropriate invoice to the locality, such as a copy of form DC-52, [PUBLIC DEFENDER TIME SHEET](#)) for all instances in which the public defender represented a defendant charged with a local violation. When payment is received from the locality, the court should receipt the proceeds to Revenue Code 120 using a general miscellaneous receipt. Subsequent payments of local court-appointed public defender fees by defendants should be receipted to the appropriate locality revenue code.