



Contact: Rob Poggenklass
Tony Dunn Legal Fellow
804.523.2153
rpoggenklass@acluva.org

Support HB 1944 – Ensure Access to Counsel for All Virginians

House Bill 1944 would change Virginia’s definition of indigency, expanding access to court-appointed counsel for criminal defendants who cannot afford to hire their own attorney.

The Constitution guarantees everyone the right to counsel in a criminal case. In a landmark 1963 case, *Gideon v. Wainwright*, the Supreme Court of the United States announced that “any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” In subsequent cases, courts have interpreted the Sixth Amendment right to counsel to extend to all criminal defendants who face the possibility of jail time. As the Court said in *Gideon*, “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

No one who makes less than minimum wage can afford to hire their own attorney. The Supreme Court has never defined “who is too poor to hire a lawyer.” Instead, state legislatures have come up with their own definitions. Virginia defines indigent, or “too poor to hire a lawyer,” as income equal to 125% of the federal poverty guidelines, a measurement developed to determine whether a person’s basic life needs such as food and shelter are met. For comparison’s sake, someone who makes 185% over the federal poverty guidelines still qualifies for the Women, Infants & Children program; someone who makes 150% over the poverty guidelines qualifies for the Low Income Heating Assistance Program; someone who makes 130% over the guidelines qualifies for the Supplemental Nutritional Assistance Program or the School Lunch Program. Yet under Virginia’s definition of indigency, a person who makes \$7.01 an hour – less than the minimum wage of \$7.25 – does not qualify for court-appointed counsel.

The cost of a lawyer is a factor in whether a person is too poor to hire one. Virginia’s current definition of indigency does not consider how much a private criminal defense attorney costs. When courts determine if a person is too poor to hire a lawyer, they look only at the person’s income – not at what the person will have to pay. The federal poverty guidelines were designed to track a person’s ability to purchase basic necessities of life, such as food and shelter. They were not designed to track a person’s ability to hire a lawyer. And, the federal poverty guidelines do not adjust depending on whether you are in a more expensive place to hire a defense attorney, like the D.C. suburbs, or a less expensive place, like Southwest. For Virginia to truly accept its obligation under *Gideon*, it must take into account the true cost of counsel. HB 1944 makes the cost of private counsel a factor of eligibility for court-appointed counsel.

**HB 1944 would expand the access to counsel for thousands of Virginians.
The General Assembly should pass it.**