Justice Forward Virginia
2022 Legislative Priorities

Criminal justice reform is fundamentally bipartisan. Many of Justice Forward Virginia's 2022 legislative priorities have enjoyed bipartisan support in other states, and in some, efforts have even been led by Republicans. Below is a list of proposals we believe ought to garner bipartisan support during the 2022 legislative session.

1) De-felonize Drug Possession: Possession of most drugs of abuse is a felony offense in Virginia. That means prison time, loss of civil liberties, and loss of one's vitality and ability to earn an income. This approach is long out-of-date. Substance use disorder is at most a disease and public health problem, and ought not be a crime, let alone a felony. Eighteen states have already reduced punishment for simple possession of Schedule I or II drugs (e.g. cocaine, LSD, etc) from a felony to a misdemeanor, including many "red" states, such as Oklahoma, Utah, and Mississippi. Doing so will also lead to a cost savings which will permit the Commonwealth to invest in a more robust and effective behavioral health infrastructure.

2) Pay Parity for Public Defenders: Throughout the country and the Commonwealth, public defenders are paid less than the prosecutors who they face in court on a daily basis. This pay disparity is exacerbated in the Virginia jurisdictions that provide local salary supplements, which are essentially bonus pay from the city or county on top of the prosecutor's state salary. The greater the disparity between prosecutor and public defender pay—and it can be as much as 50% or 60% some places—the harder it is for defenders to recruit talented attorneys and retain a diverse and experienced staff. In a system that relies on a level playing field, this is a big reason why many poor defendants are at such a disadvantage. Pay parity would require any city, county or town that provides its prosecutors a salary supplement to provide a similar supplement to the public defenders serving that county.

3) Second Look Legislation: Second look legislation allows a judge a "second look" at lengthy prison sentences, years after they have been imposed, to determine if that severity of punishment is still necessary and appropriate. The law addresses criticisms of parole by vesting the power of leniency in the sentencing judge, a non-political actor, and giving significant rights to victims. In the current draft legislation, persons who were 25 or under when they were sentenced may request a "second look" after serving 10 years of their sentence. Older persons would have to wait at least 15 years. At the second-look hearing, the judge may reduce a sentence if it is clear the defendant has been rehabilitated, has paid their debt to society, and can be safely released to the community. Extreme sentences don't acknowledge people's

capacity to grow and change, don't make us safer and ultimately hurt disadvantaged communities. Second look reduces costs for care of older inmates—the percentage of Va's prison population over the age of 50 has skyrocketed in the past decade, from 13.1% in 2008 to now nearly a quarter of all DOC inmates. Research shows that people tend to age out of criminal behavior as they get older; our laws should reflect the science.

4) Counsel at First Appearance: In most Virginia jurisdictions, defendants cannot receive a judicial determination regarding pretrial release ("bail" or "bond motion") until at minimum two days following their arrest. That is because as currently written, the Code does not mandate the presence of counsel at a defendant's "first appearance," often referred to as an arraignment or advisement hearing. Jurisdictions where judges permit or mandate counsel at first appearance have significantly shorter periods of unnecessary pretrial detention. Research demonstrates that pretrial detention for even 2 or 3 days can have significant effects on one's livelihood, including loss of employment, public benefits, child custody/visitation, and housing. Moving up a judicial bond determination by even one day could dramatically improve the pretrial outcomes and reduce recidivism.

5) Repeal of Mandatory Minimums: Mandatory minimums don't work—not for any purpose. They don't reduce crime rates, they don't reduce recidivism rates, they don't make the court process more efficient, they aren't better for victims, and they don't even manage to hold people accountable for the crimes they actually committed. All they do is coerce defendants to plead guilty—including those who are innocent—and prevent judges from being fair in circumstances when fairness is warranted. The General Assembly should pursue at least a partial repeal of mandatory minimums this session.

Other Legislation

- **Discovery "fixes"**: (i) Make clear that a defendant can obtain their own copies of discovery; (ii) in certain circumstances, require prosecutors to specifically identify *Brady* information, rather than simply dump voluminous documents/data on the defense.
- **Grand jury proceedings**: Adopt the Federal rule allowing for recording of Grand Jury proceedings; require prior findings of no probable cause be conveyed to Grand Jurors.
- **Remedy for depriving defendant of preliminary hearing**: Despite the Code giving defendants a "right" to a preliminary hearing, a massive loophole exists allowing prosecutors to dismiss and directly indict, depriving defendants of that right. We propose to close the loophole in order to achieve the intent of the legislature.
- **Service of process by non-law enforcement public defenders**: the Code currently only allows public defenders to serve subpoenas if they employ a former police officer.
- **Bar use of juvenile/remote convictions for guidelines or enhancements**: crimes committed when someone was 15 say little about how that person should be punished at age 40. This bill would bar juvenile and remote convictions as sentencing considerations.
- **Assault on police–exclusions**: Exclude juveniles & individuals with ID/DD/serious mental illness from mandatory minimum for assault on law enforcement.