

IMPROVE ACCESS TO JUSTICE FOR LOW-INCOME FAMILIES: SUPPORT SB 1032**The Problem:**

Recent changes to Virginia's fee waiver statute have resulted in unequal access to Virginia's courts for low-income persons seeking civil justice.

- **2017** changes: The changes made in 2017 were intended to create more consistency between civil litigants and criminal litigants throughout the state by mirroring the code section that assesses indigency for criminal defendants; however, civil litigants and criminal litigants require separate processes. Civil litigants request access to the courts without paying fees, typically less than \$100, while criminal litigants seek the benefit of a court-appointed attorney.
- **2019** changes: While a few of the provisions of this bill were adopted in 2019, they were applied only to a fraction of litigants: those seeking a no-fault divorce.

The Solution:

SB 1032 will increase access to justice for low-income civil litigants by making the application process simpler and easier while easing the administrative burden on the courts. For instance:

- While it may be reasonable to require an indigent defendant facing a felony charge to seek a loan against the value of his or her assets, it makes little sense to force a civil litigant to seek such a loan to cover the *de minimus* filing fees.
- For civil fee waiver requests, clerks often serve as gatekeeper, while criminal defendants come before a judge for arraignment. A civil litigant's contact is with the clerk's office. Some applications are rejected without being presented to the judge.

Presumption for Public Assistance: SB 1032 would save time for applicants and court personnel, strengthening the presumption for all low-income civil litigants who receive public assistance. The 2019 change only strengthened a presumption for litigants receiving public assistance for no-fault divorces. Many courts require all other litigants to fill out the *entire* fee waiver form, even though an inquiry into the ability to pay should be required only if a litigant is not income-eligible for public benefits.

Presumption for Legal Aid Clients: Litigants represented by attorneys through Legal Aid offices are pre-screened to assure they satisfy the same poverty threshold the Courts use: 125% of the Federal Poverty Level (FPL). SB 1032 will ease the burden on the courts. (A small number of Legal Aid clients may qualify for services even if they have a slightly higher income level.)

Fiscal impact: In 2017, the DPB determined that similar bill language (as filed) would have no material impact on the state's budget. The 2019 bill's fiscal impact was indeterminate.

For more information, contact:

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