

# Navigating Through the Criminal Justice System in Virginia



*The Wilson Law Firm*  
WHEN RESULTS MATTER

## **Table of Contents**

Introduction .....	3
Arrest.....	3
The Magistrate.....	4
Pretrial Concerns .....	4
Getting Ready for Court.....	5
The Court Date .....	7
Inside the Courthouse .....	8
In the Courtroom .....	9
Virginia Courts .....	11
What Can You Do For Me? .....	12
Victims and Witnesses.....	18
Conclusion.....	18

## **Introduction**

The criminal justice system in Virginia can be extremely intimidating. Although every case involving contact with law enforcement is different, there are many aspects of the adventure that are common, yet commonly misunderstood. This guide was developed to help anyone who has a need, desire, or requirement to *navigate through the criminal justice system in Virginia*.

## **Arrest**

An ARREST is commonly thought of as the start to the criminal justice process. There are many definitions of ‘arrest’, but a good working definition is that an arrest is the deprivation of liberty in a significant manner by legal authority. It involves the authority to arrest, the intent to arrest and either actual restraint of the arrestee or a complete surrender by the arrestee to the officer’s authority and intent to arrest.

An arrest can occur with or without an arrest warrant. In some cases police investigate a crime, determine they have probable cause to believe a certain person committed the crime, find that person, take him/her into custody and ask the magistrate to then issue a warrant. In other cases, police obtain an arrest warrant from a magistrate first and then go find the named defendant.

After an arrest, the person is either released on a summons (given a ticket) or taken into custody by police. If you have ever been given a traffic ticket, you may not realize it, but you were arrested and then released on a summons (ticket).

The SUMMONS tells you what you are charged with, the date and time of the incident, and the date and time at which you must appear in court to address the charge. Many people believe that signing a summons is an acknowledgement of guilt, but this is simply not true. Signing the summons does not indicate that you are guilty. By signing the summons you merely agree to appear in court to address the charge. You should always sign the summons, because if you don’t, the police officer will have to take you into custody. If this happens you will be handcuffed and taken before a magistrate.

## **The Magistrate**

MAGISTRATES are state officials who can issue warrants for the arrest of persons based on complaints by citizens or observations by police officers. Magistrates also make the initial decision about whether a person who has been arrested will be released on bail or held in custody while awaiting trial.

The two main factors Magistrates consider when deciding whether to release a person on bail or hold them in jail are the degree to which the person presents a risk of flight and the perceived risk to the community. Persons who have strong ties to the community such as those who have been in the area for a long time, have a stable job, a family, own a home, etc. are generally considered to present less of a risk of flight than someone who has just moved to the area, has no job or family in the area and is currently sleeping on a friend's couch. Similarly, persons charged with relatively minor non-violent offenses who have never been in trouble with the law before are generally thought to present less of a risk to the community than those charged with serious violent felony offenses while on probation for another offense. After considering these, and many other factors, the Magistrate will make the initial decision about conditions of release.

Some people are released on their own recognizance, which means they just have to promise to appear in court and don't have to pay any money as long as they actually do come to court. Others may have to post a cash bond or pay a fee to a bondsman for a bail bond in order to ensure their appearance at trial. Others are held in jail if the magistrate believes they are dangerous or likely not to appear for trial.

## **Pretrial Concerns**

**The Office of Court Services** assists magistrates and judges by interviewing arrestees to gather information about job, family, address, etc., which will be used to determine whether an arrestee can be released on personal recognizance, third party or supervised release.

**Arraignment:** If you are not released by the magistrate and cannot make bail, you will appear before a judge in a hearing called an **ARRAIGNMENT**. The arraignment will likely occur the next business day following your arrest. At the arraignment the judge will inform you of the charge against you, notify you of your right to counsel, inquire about your plans regarding a lawyer, review the magistrate's decision regarding bail and the information provided by Court Services, and make a decision whether to change the bail conditions or not. If you were released on your

own recognizance by the magistrate or if you were able to post the required bond and were released, your arraignment will be scheduled for another date.

## **Getting Ready for Court**

**Getting an Attorney:** If you have been arrested or given a ticket in Virginia you have the right to be represented by an attorney - whether the allegation involves a simple traffic infraction or a serious criminal offense. It is my belief that in order to put yourself in the best position to get the best result you should take this right very seriously and always hire the best lawyer you can find in Virginia who has the specialized education, training and experience you need to help you navigate the criminal justice minefield. No one would dream of trying to handle their own dental emergency or medical emergency, yet every day people come to court in Virginia with the curious belief that they are somehow equipped to handle their own legal emergency. Perhaps the fact that the law allows people to represent themselves contributes to the generally foolish belief that it is actually a good idea to do so. Face it, most people have absolutely no idea how to protect their own interests in court because they don't understand the complexities of the criminal justice process in Virginia, they don't understand the rules of evidence used in Virginia and they don't understand the statutory and constitutional issues implicated by the case. For obvious reasons, when people choose to go forward without the assistance of a lawyer, even with the simplest of traffic infractions, they often times make the situation worse. Don't make that mistake.

Once you have realized you want and need the assistance of lawyer and have decided to hire one to represent your interests, you should immediately start the process of finding the right lawyer for you. Do not wait until the last minute to contact the lawyer you want to hire because the lawyer you want may be unable to assist you due to being scheduled to appear in another court on your scheduled court date. However, if you are prompt with selecting the best lawyer for you, even if there is a scheduling conflict, it can generally be resolved by rescheduling one or the other of the cases. Also consider that even if the lawyer you want happens to be available to handle your case, by waiting until the last minute to hire the lawyer you probably compromised the effectiveness of the lawyer, and your own best interests, by limiting the time available to investigate the case and gather information, do any necessary research and prepare the case for trial.

**Hiring a Lawyer:** Most people prefer to hire a lawyer of their choosing rather than take a chance with a court appointed lawyer or public defender. Unfortunately, although lawyers are everywhere, finding the *best lawyer for you* can be challenging. Since the Virginia State Bar allows lawyers to

advertise that they handle any type of case as long as they are, or can become, minimally competent in that field, ***the fact that a lawyer claims to handle a certain kind of case says absolutely nothing about the lawyer's degree of experience or expertise in that particular field.***

In an effort to select the best lawyer for your case, one thing to look for is experience. There simply isn't any substitute for experience. ***You don't want a rookie attorney who is learning the ropes at your expense.*** You want the veteran who has been there many times before, and through many years of experience, has seen it all.

However, experience is more than just years in practice. ***The experience you want is years of practice handling cases like yours.*** You want to look for specialization and expertise in a particular field. Stay away from 'jack of all trades' lawyers. Everyone understands that you wouldn't want your general practice doctor performing a complicated brain surgery - and the same principle is true with lawyers. You don't want a lawyer who dabbles in several types of law handling your case; you want a lawyer who focuses his practice on cases like yours.

In addition, ***look for extensive and ongoing advanced training*** in the particular field of interest. Ask about specialized training, certifications and attendance at national conferences. And since some lawyers will flat out lie to you in order to get you to hire them, go ahead and ask to see the certificates of attendance and the materials from the conference.

You may also wish to look for a lawyer who has been employed to teach law, is a published author or who has been consulted by the media as a consultant.

**Court Appointed Attorney:** If you cannot afford an attorney, and the offense you are charged with is serious enough that you could receive a jail sentence, you can ask the court to appoint a lawyer for you. You will be asked for information about your income to determine whether or not you are eligible for a court appointed attorney according to Virginia's state guidelines, and if you qualify, the court will appoint a lawyer for you. If you are found guilty, the cost of the attorney will be added to any fine and court costs you must pay. If you are found not guilty, you will not have to pay for the lawyer's services.

**Witnesses:** If you have witnesses you would like to use to support your defense, you must arrange for them to appear in court with you. A written statement by a witness, even if notarized, is not an acceptable alternative. Witnesses must come to court and testify, under oath, so the judge can see their demeanor and body language and so they can be cross-examined by the prosecuting attorney. You can ask the court to issue a subpoena to

require a person to appear as a witness, even if you do not hire an attorney, but you must file the request well in advance of the trial date to allow enough time for the court to process the request, the subpoena to be delivered and the witness to make necessary arrangements.

**Visit the Court:** Although it takes time out of your schedule, you may find some comfort in coming to court in advance of your scheduled court date for several reasons. First, if you do it at the time of day you will be coming on your actual court date, it can give you at least a rough estimate of how long it will take you to get to court. This is extremely important because if you are late to court you may be found guilty in your absence or the Court may issue a warrant for your arrest. In addition, you can learn where to park, where to go once inside the court house, where the dockets are posted and where the courtrooms are located. The public is always permitted to observe trials in both Virginia General District Courts and Virginia Circuit Courts, and you may be able to observe some trials in Virginia Juvenile and Domestic Relations District Courts.

## **The Court Date**

**Pre-paying a Ticket:** In Virginia, some offenses require you to come to court and other offenses are pre-payable, meaning you can pay the ticket in advance of the court date and avoid coming to court. It should be noted that *pre-paying a ticket will result in you being found guilty of that offense*. If your offense is pre-payable and you decide that you want to just pay the ticket and avoid coming to court, you must send the total amount of the fine and court costs to the court, and it should be received by the court several working days in advance of your scheduled trial date. The police officer may have provided you with a list of the most common pre-payable offenses, and if that information was not provided to you, you may call the Virginia court listed on your summons and inquire about pre-paying your ticket. If your offense is pre-payable, they should be able to tell you the correct amount you need to pay.

**Coming to Court:** In Virginia, if you elect not to pre-pay your ticket, or if your offense is not pre-payable, it is very important that you come to court on the date and at the time on your summons. Failure to do so may trigger one or more of the following consequences:

- You will lose any bond money you have posted for your release.
- You may be tried in your absence and found guilty.
- You may receive the maximum penalty allowed.
- Your license to drive may be suspended.
- You may have an arrest warrant issued for Failure to Appear and when arrested on that warrant, you may be held in jail.

**Parking:** Parking is often difficult when coming to court because parking is limited around most courthouses in Virginia and frequently requires a fee. You should allow enough time to find a place to park, walk to the courthouse and still arrive in advance of the time you were instructed to be there. In Virginia, you cannot know whether your case will be the first one called or the last one called and you don't want to risk having your case called before you arrive.

**Security:** In addition to possible delays due to traffic and parking, you should allow extra time to pass through the security stations when entering the courthouse. Most courthouses in Virginia require people submit to some sort of search and screening process before entering the courthouse, and many use metal detectors which, just like at the airport, can cause quite a backup and delay your entry into the courthouse for several minutes. No weapons, cameras or camera phones are allowed in Virginia courthouses, and in many jurisdictions, no cell phones are allowed in the courthouse. Security personnel will not hold your prohibited items for you so if you have something with you which you can't take into the courthouse you will have to walk all the way back to your car to drop it off.

## **Inside the Courthouse**

**Information Desk:** Most Virginia courthouses have an information desk with personnel who can help you figure out where you need to go.

**Docket Sheets:** The docket is simply a list of cases for the day. In Virginia, Docket Sheets are generally posted conspicuously in the courthouse somewhere close to the courtrooms, and list the cases which are scheduled to be heard that day - usually in alphabetical order by defendant's last name. Many courthouses in Virginia have multiple courtrooms within each level of court (Circuit Court, General District Court and Juvenile and Domestic Relations District Court), so it is important that you check carefully to determine the specific courtroom in which your case is scheduled to be heard. If this is not your first time to this particular courthouse, do not assume that your case will be heard in the same courtroom as the last time, as courtroom assignments frequently change.

**Interpreters:** For many people, English is a second language with which they are not completely comfortable, and many others do not speak English at all. In Virginia courts, interpreters can be provided to assist those who do not speak English. You should contact the court clerk's



office in advance of your court date to ensure there is plenty of time to make the necessary arrangements to have an interpreter present.

## **In the Courtroom**

### **People You Will Likely Find In The Courtroom**

- **JUDGE**: The judge is the most powerful and most important person in the courtroom. You should always be respectful of the judge and pay very close attention to what the judge says. If the judge gives directions, instructions or orders, you should be sure to do as you are told. Of course, you can ask reasonable questions and request clarification if you do not understand something in your case, as long as you do so in a respectful manner. Always remember, judges have the power to hold you in contempt and put you in jail if you do not behave appropriately in the courtroom.
- **BAILIFF**: You will probably see a Deputy Sheriff in all Virginia courtrooms, and this person is known as the bailiff. The main job of the bailiff is to ensure the safety of the judge and everyone else in the courtroom, and to maintain order in the courtroom. Generally, before court starts they will give a speech in which they state the rules that you are expected to follow. Although it varies from jurisdiction to jurisdiction in Virginia, they may remind you to turn off cell phones and pagers (if these are allowed in the courtroom), tell you not to talk or read material not related to your case while court is in session, tell you where to stand when your case is called, remind you to keep your hands out of your pockets when you approach the judge, tell you where to go if you are found guilty and have to pay a fine and court costs, etc.
- **CLERK**: Since there may be as many as a few hundred cases in a single courtroom on any given day, in most Virginia courtrooms there is a court clerk present to assist the judge. The court clerk will help by organizing the cases in the manner preferred by the judge, handing cases to the judge as they are called, providing necessary forms to the judge as needed, noting the outcome of each case, etc. You should not approach a court clerk in the courtroom unless you have been specific permission to do so from the bailiff or judge.
- **LAW ENFORCEMENT OFFICERS**: You will likely encounter both state and local law enforcement officers in Virginia courtrooms. This is because in criminal and traffic cases both

Virginia law and the United States Constitution require witnesses to come to court to testify about what they know or saw, and in most traffic and criminal cases the police officer, state trooper or deputy sheriff who wrote the ticket or made the arrest is a necessary witness.

- **COMMONWEALTH'S ATTORNEY**: In some situations a prosecuting attorney will be present in the courtroom to represent the Commonwealth and present the prosecution's case. In Virginia, prosecuting attorneys are called Commonwealth Attorneys – in other places they may be called State Attorneys or District Attorneys. The involvement of prosecuting attorneys in traffic and misdemeanor criminal cases in Virginia's District Courts varies from jurisdiction to jurisdiction. In Virginia, some Commonwealth Attorney offices are involved in the prosecution of all traffic and criminal cases; other Commonwealth Attorney offices only get involved in traffic and misdemeanor cases in the District Courts if a defense lawyer is involved; and some Commonwealth Attorney offices have chosen to not get involved in the prosecution of any traffic and misdemeanor criminal cases in the District Courts.
- **DEFENSE ATTORNEY**: If you chose to hire an attorney, or had one appointed for you by the Court, this person is your defense attorney. It is likely that your defense lawyer will attempt to speak with the prosecuting attorney, if there is one, as well as the law enforcement officer involved in the case and any other witnesses who are present. If an offer is made to resolve the case by agreement (often called a "plea agreement"), your lawyer should present that proposal to you, address the pros and cons of the offer, discuss the various ways you can proceed and answer your questions to help you decide what to do considering your stated goals. If the case proceeds to trial, your defense attorney will make objections to certain testimony or evidence, cross examine prosecution witnesses, present your side of the case and make arguments on your behalf.
- **COURT REPORTER**: Court reporters make verbatim recordings of proceedings in court. In felony cases being heard in a Virginia Circuit Court, a court reporter will always be provided by the Commonwealth of Virginia to record everything from the initial appearance through the trial. If your case is a misdemeanor case and you want a court reporter present to record the proceedings, you must hire your own to do so. Your Virginia defense lawyer can assist you with process.

- **JURY:** In Virginia General District Courts and Juvenile and Domestic Relations District Courts all cases are heard by judges. There are no jury trials in either of Virginia's District Courts. However, in Virginia Circuit Courts, cases may be decided by a judge or a jury. Members of the jury are selected from a larger panel and are called jurors. Many people believe the job of the jury is to reach a unanimous verdict – but this is absolutely not true. To the contrary, each juror is given the responsibility to listen to the evidence presented at trial, take the instructions of law provided by the judge, apply the law to the facts of the case and decide whether the government has proven the accusation beyond a reasonable doubt. If all of the jurors reach the same conclusion, then they will announce a verdict of either *guilty* or *not guilty*. If all of the jurors do not reach the same conclusion, the trial will end in a *hung jury*.

**Courtroom Demeanor:** Courthouses are places where people answer allegations of wrongdoing which could have very serious consequences in their lives. People are convicted of criminal offenses, are ordered to pay fines, have their ability to drive suspended and are sentenced to serve time in jail every day in Virginia courthouses. Due to the serious nature of the proceedings, it is important that you remember where you are, what is happening around you, and always conduct yourself in a professional and respectful manner. How you appear and behave impacts how you are perceived, so your clothing should be neat, clean, and respectful and you should always behave with respect and dignity. Virginia courthouses are not appropriate places for laughing and joking, or for young children. Courthouses are not day care centers or playgrounds, so if young children can not be quiet and behave appropriately, it is wise to make arrangements for someone to watch them rather than bring them to court with you.

## Virginia Courts

The court system in Virginia is made up of District Courts, Circuit Courts, the Virginia Court of Appeals and the Virginia Supreme Court. Trials are conducted in the District Courts and the Circuit Courts, but not in the Virginia Court of Appeals or the Virginia Supreme Court. The Virginia Court of Appeals and Virginia Supreme Court review proceedings from other courts looking for errors.

**The District Courts:** The District Court level is the entry level for courts in Virginia. These courts are not “courts of record”, meaning they do not use court reporters to make verbatim recordings of proceedings in those courts. In addition, all trials in Virginia District Courts are conducted by judges. Since there are no jury trials in Virginia District Courts,

defendants have an automatic right to appeal convictions and have a new trial in a Virginia Circuit Court, where a jury trial is an option. The Virginia District Court level is comprised of two different courts:

- **GENERAL DISTRICT COURT:** The General District Court is the court in Virginia which handles all cases that are not heard by the Juvenile and Domestic Relations District Court. Most cases involving adult defendants accused of misdemeanor and traffic infractions in Virginia are heard in this court. In addition, this court handles preliminary hearings for certain felony offenses involving adult defendants.
- **JUVENILE & DOMESTIC RELATIONS DISTRICT COURT:** The Juvenile and Domestic Relations District Court is the court in Virginia which, as the name suggests, hears cases involving juveniles and families, and is often called Juvenile Court or Family Court. Specifically, in the field of traffic and criminal offenses, this court hears cases in which: a juvenile is the alleged offender, a juvenile is the alleged victim, or the alleged offense was committed against a family or household member. Like the General District Court, the Juvenile and Domestic Relations District Court conducts preliminary hearings for certain felony offenses.

**The Circuit Court:** The Circuit Court is the general trial court in Virginia and proceedings are generally more rigid and formal than in the District Courts. All trials involving felony offenses, and some trials involving traffic and misdemeanor offenses, are conducted in Virginia Circuit Courts. A Circuit Court trial may be either a bench trial (a judge decides the verdict) or a jury trial (a jury decides the verdict). In Virginia, the Circuit Court is a “court of record”, which means a court reporter is present to record all proceedings involving felony offenses. The court reporter is provided by the Commonwealth at no expense to the accused. Due to the severity of the possible consequences and the formality of the proceedings, it is even more important for citizens to have the assistance of an experienced lawyer.

## **What Can You Do For Me?**

Every potential client who calls The Wilson Law Firm seeking assistance wants to know how we can help and what the result of the case is going to be before deciding to hire us. If you have spoken with a lawyer after being arrested or being given a ticket, you probably asked these very same questions in one form or another. Although I would love to answer these

questions, in most situations I can't because the answer can't be known. Unfortunately there are unethical lawyers who, despite having conducted no independent investigation and having gathered no outside information about the case, will say whatever the potential client wants to hear, generating false hope and unrealistic expectations, in order to get the potential client to hire the lawyer. On the other end of the spectrum, and equally unethical and embarrassing is the fact that there are lawyers who will tell the potential client the situation is far worse than it really is in order to scare the client into hiring the lawyer. If you are looking around and trying to choose a lawyer to represent you, you should run from both of these types of lawyers.

Any honest, experienced and skilled lawyer knows that there are far too many variables at play to make a meaningful prediction about the outcome of any particular case before any investigation is conducted and any information is gathered upon which an assessment can be made.

However, even after being hired, conducting a full investigation, gathering all possible information and researching all legal issues, when asked what the outcome is going to be, the answer from ethical, experienced trial lawyers will generally be the same: it can't be known. All trial lawyers have won cases they expected to lose, and have had clients convicted who they expected to be acquitted. The outcome of a trial can turn on specific questions asked, specific answers given, specific evidentiary rulings, specific arguments made by the lawyers, etc. – much like the outcome of a sporting event can turn on who plays well, who makes mistakes and what penalties are called by the officials. Once I explain to potential clients that asking me to predict the outcome of a trial is much like asking me to predict the outcome of a sporting event – and that it simply can not be known because it depends on things which are beyond my control, they seem to understand that the role of the lawyer is to have an impact on the outcome, rather than predict the outcome. Like the owner of a sports franchise, the purpose of assembling the best team possible (hiring the best lawyer you can) is to try and tip the scale in your favor and put yourself in the best position possible to get the best result.

### **Possible Types of Outcomes**

Although guaranteeing or making a prediction about specific results in any particular case should be avoided, lawyers should discuss the various types of outcomes which are possible. Below is a discussion about some of the possible types of outcomes once your case gets to court in Virginia:

**Dismissal or *Nolle Prosequi*:** The judge may decide to dismiss the charge against you, or the Commonwealth's Attorney, if one is involved in your case, may decide not to prosecute the charge against you and ask the judge to dismiss the charge. Either of these can happen for any number of reasons, including insufficient evidence of your guilt, absence of a necessary witness, subsequent compliance with a relatively minor violation, or because it is part of a negotiated plea agreement. Your Virginia defense attorney will be able to discuss this with you in more detail.

**Deferred Prosecution / Suspended Imposition of Sentence:** Virginia law allows courts to delay making a decision in certain cases for a period of time and to give the defendant an opportunity to fulfill certain conditions which, if successfully completed, could result in the charge being amended, reduced or dismissed at some point in the future. When cases are handled in this fashion, the defendant must typically remain of uniform good behavior, pay court costs, complete counseling of some sort (substance abuse, anger management, shoplifting, etc) and perform a certain number of hours of public and community service work. Your Virginia defense attorney will be able to explain whether your case is the type of case which can be handled in this manner, and if so, what the risks and benefits of choosing to do so are.

**Plea Agreement / Plea and Recommendation:** In Virginia, in situations where Commonwealth Attorneys are involved in the prosecution of the cases on the docket, the prosecuting attorney will generally make an offer to the defendant or defense counsel regarding how to resolve the case by agreement, rather than having an actual trial. In some Virginia jurisdictions, this is accomplished by a Plea Agreement and in other Virginia jurisdictions it is accomplished by a Plea and Recommendation. Although these terms are quite similar, the practices they describe are quite different.

If a Plea Agreement is utilized, the agreement includes the sentence to be imposed by the Court and the Court will indicate whether the Plea Agreement is acceptable to the Court.

If the situation is one where a Plea and Recommendation is used, the defendant is merely bargaining for the prosecuting attorney to make a recommendation to the Court regarding the sentence to be imposed – and there is no guarantee that the Court will accept the recommended sentence. In some Virginia cases, defense counsel negotiates for the prosecuting attorney to remain silent and not make any argument at all regarding the sentence to be imposed, or perhaps not to oppose an argument made by defense counsel.

Your Virginia defense attorney will be able to have a more in-depth discussion with you about the various ways negotiation is used in the criminal justice process, the specific details of any proposal made for an agreed disposition of your case, and whether it is in the form of a Plea Agreement or a Plea and Recommendation so you can know exactly what to expect when evaluating the offer and deciding how you wish to proceed.

**Not Guilty After Trial:** The Sixth Amendment to the United States Constitution guarantees you, among other things, the right to a speedy and public trial. If your case is not resolved by agreement, it will proceed to trial unless you give up your right to have a trial and enter a *guilty* plea. After trial, if the judge or jury believes the government has failed to prove the accusation beyond a reasonable doubt, you will be found *not guilty*. If this happens, you are free to go and no sanctions or punishment will be imposed.

**Guilty After Trial:** On the other hand, if your case proceeds to trial and the judge or jury believes that the government did prove the accusation beyond a reasonable doubt then you will be found *guilty*. If this occurs you will be required to pay court costs, and depending on the case, the Court will likely impose additional sanctions. Some of the more common punishments imposed by Virginia courts are discussed below.

- **FINE:** If you are convicted of an offense in Virginia, you may or may not be ordered to pay a fine. The maximum fine for misdemeanor offenses is \$2,500.00, and the amount of the fine can be significantly more if you are convicted of a felony offense. If a fine is imposed, you will be expected to pay this fine, along with court costs, immediately upon completion of your case. In Virginia, even if the judge suspends some, or all, of the fine, you are still required to pay court costs upon leaving the courtroom. Failure to make timely payment of the fine and court costs will result in the suspension of your privilege to drive in Virginia.
- **JAIL SENTENCE:** If you are convicted of a crime in Virginia, you may or may not be sentenced to serve time in jail. Although most criminal offenses in Virginia provide for possible incarceration, some provide for only the imposition of a fine. The maximum jail sentence allowed for any single misdemeanor criminal offense in Virginia is one year. If you spent any time in jail after being arrested and before your case came to trial, you will be given credit for that time and it will reduce the amount of time remaining to be served. The normal procedure is for you to be taken into custody immediately following the resolution of your case, so it is important that you not bring children with you to

court, and that you have someone drive you to court, so that your children and your vehicle are not abandoned if you are incarcerated. In certain limited circumstances the Court may authorize you to report to jail on a later date to begin serving the jail sentence, but you should not expect or anticipate that you will be afforded that luxury.

- **WORK RELEASE, HOME ELECTRONIC MONITORING, etc.:** In certain cases, offenders who are convicted of a crime in Virginia and sentenced to serve time in jail may be allowed to fulfill a sentence of incarceration by participating in an alternative sentencing program such as a Work Release program, a Home Electronic Monitoring program (sometimes called Electronic Incarceration) or a Weekend Jail program.
- **SUSPENDED SENTENCE:** If you are convicted of a criminal or traffic offense in Virginia, the Court may suspend some, or all, of the fine and /or jail sentence for a period of time, provided you comply with certain conditions placed upon you by the Court. If you satisfy all of the conditions placed upon you by the Court, you will never have to pay the suspended portion of the fine or serve the suspended portion of the jail sentence. However, if you fail to comply with any of the conditions placed upon you by the Court, it could result in some, or all, of the previously suspended fine and / or jail sentences being imposed.
- **PROBATION:** If you are convicted of a criminal offense in Virginia and have had a portion of your jail sentence suspended, you may be placed on probation with the Court for a period of time. If you are placed on probation, a probation officer will be assigned to supervise certain aspects of your life and report back to the Court. Probation officers monitor compliance with conditions placed upon you by the Court and have the authority to place additional conditions upon you. Some of the things a probation officer may require of a probationer and monitor for the Court include periodic drug testing, participation in various counseling and/or treatment programs (substance abuse, domestic violence, anger management, shoplifting, etc.), completion of community service work, payment of restitution, payment of court costs, attendance at school, obtaining and maintaining employment, compliance with all local, state and federal laws and general uniform good behavior.
- **PRISON SENTENCE:** If you are convicted of a felony offense in Virginia, you may be sentenced to serve a period of time in a state penitentiary / prison. The length of any particular prison sentence



will vary depending on the specific felony offense and the specific facts and circumstances of the case – and in certain cases in Virginia the possible punishment includes a sentence of incarceration for life. If you are convicted of a felony offense and are sentenced to serve time in the penitentiary, you will be housed in the local / regional jail until you are transferred to the custody of the Department of Corrections.

- **VASAP**: If you are found guilty of a DUI / DWI offense in Virginia (sometimes referred to as Driving While Intoxicated or Driving While Under the Influence of Alcohol) you will be required to enroll in and successfully complete the substance abuse education and treatment through the Virginia Alcohol Safety Action Program (VASAP), or a similar program approved by VASAP before your privilege to drive in Virginia will be reinstated. In addition, completion of VASAP is commonly required as a condition of a suspended fine and/or jail sentence. VASAP employees will perform an assessment of your drinking habits and establish a course of education and/or treatment for you which you must complete in order to satisfy the order of the Court. VASAP also essentially fulfills the role of a probation officer in Virginia because if you fail to comply with the treatment program established for you by VASAP it will be reported to the Court. If this happens it will likely result in the Court issuing a contempt citation requiring you to come before the Court and explain why you should not be incarcerated for failing to comply with Court's order.
- **SUSTANCE ABUSE TREATMENT**: If you have been found guilty, or have been given the benefit of a Deferred Disposition, in a case involving drugs and/or alcohol in Virginia, you may be required to complete a substance abuse counseling / treatment program in addition to, or as an alternative to, completing VASAP. Depending on the facts and circumstances of the case, this required counseling / treatment may be either on an inpatient or outpatient basis.

**Appeal**: If you are convicted of a traffic or criminal offense in either a General District Court or a Juvenile and Domestic Relations District Court in Virginia, you have the right to appeal the conviction and have a new trial in a Virginia Circuit Court. Unlike Virginia's General District Court and Juvenile and Domestic Relations District Court, when your case comes to trial in a Virginia Circuit Court you can have a jury trial if you wish to have one. The procedure you must follow to appeal a case is not complex, but it must be done within 10 calendar days of your conviction.

It is wise to consult with an attorney if you plan to appeal your case to the Circuit Court.

As previously discussed, if you are found guilty in a Virginia Circuit Court, you can appeal your case to either the Virginia Court of Appeals or the Virginia Supreme Court. However, this appeal is completely different than an appeal from a Virginia District Court to a Virginia Circuit Court. Unlike the appeal from a Virginia District Court to a Virginia Circuit Court, an appeal to the Virginia Court of Appeals or the Virginia Supreme Court does not result in a new trial. Instead, in an appeal to either the Virginia Court of Appeals or the Virginia Supreme Court, you are asking the appellate court to review your case and determine mistakes were made during your trial which prevented you from receiving a fair trial.

## **Victims and Witnesses**

Instead of being accused of committing a criminal or traffic infraction in Virginia, you may become involved with Virginia's criminal justice system because you were the victim of a crime or because you observed an alleged offense take place. In either case, you will likely receive a subpoena requiring you to come to court and testify about what you saw, what you know or what happened to you. Although coming to court to testify in such a case may be a frightening or frustrating experience for you, it is important that you do so.

In some Virginia jurisdictions there is a Victim Witness Assistance Program which may be able to provide assistance by:

- Providing crisis intervention and short-term counseling;
- Preparing you for your role in a trial;
- Notifying you of the status of your case, and of schedule changes;
- Providing transportation to and from court, and a court escort to all court proceedings;
- Assisting you to write a Victim Impact Statement, and to apply for Victim Compensation;
- Offering Victim and Survivor Support Groups.

## **Conclusion**

If you have made it through this consumer guide you have probably learned something. Virginia's criminal justice system is a complex mix of

laws, rules, policies and local practices, which is full of unusual terms and can be overwhelming to just about anyone other than us criminal defense lawyers who deal with it every day. It is my hope that this consumer guide has taken some of the mystery out of Virginia's criminal justice system and made it at least a little more understandable. In addition, I hope you realize how important it is to always seek the assistance of counsel, with many years of experience handling cases just like yours, when trying to navigate through the minefield that is Virginia's criminal justice system. Making the mistake of hiring a lawyer who lacks the necessary qualifications and expertise, or trying to represent yourself, is like walking blindfolded through the minefield - a single wrong step can have devastating consequences. If you or someone you know has been arrested or given a ticket in Virginia, call The Wilson Law Firm at 703-361-6100.