



# COMMONWEALTH of VIRGINIA

## *Office of the Attorney General*

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Attorney General

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*Delegate Todd Gilbert,  
Speaker of the House, Virginia House of Delegates*

*Delegate Terry Kilgore,  
Majority Leader, Virginia House of Delegates*

*Senator Dick Saslaw,  
Majority Leader, Senate of Virginia*

*Senator Louise Lucas,  
President Pro Tempore, Senate of Virginia*

During the 2021 Special Session I, the General Assembly passed [SB 1261](#), which guaranteed direct appellate review of all appeals of criminal cases in Virginia and removed the petition based process for appeal. The legislation had a delayed effective date and officially went into effect on January 1, 2022. SB 1261 also expanded the number of seats on the Virginia Court of Appeals, from 11 to 17 judges, to accommodate the increased workload. However, the Office of the Attorney General did not receive sufficient resources to hire additional Criminal Appeals lawyers to litigate the additional casework and represent the Commonwealth.

Under the old system, the Office of the Attorney General (OAG) handled approximately 250 criminal appeals cases per year, out of approximately 1500 petitions for appeal. The new system designates the OAG to handle all criminal appeals, dismissing the previous tiered system. In the first month of this year, the team was assigned more than 300 cases - more than they typically handled in an entire year. The skyrocketing increase in the number of appeals should not be shocking, since the fiscal impact for SB 1261 estimated the legislation would likely result in at least a 20% increase in the number of total criminal appeals received.

In 2021, former Attorney General Herring made a budget request to the General Assembly for additional funding, anticipating the problem we now have before

us. The Criminal Appeals unit requested funding for 54 new attorneys and 13 support staff. The budget adopted at the conclusion of the 2021 Special Session allocated enough funding for only 19 attorneys and 8 support staff.

Currently, the criminal appeals section has 30 lawyers, but are in need of approximately 75 total lawyers and staff to handle the significant caseload the office is facing due to this new appellate review law. Again, recognizing the severity of the issue, former Attorney General Herring also requested additional funding to be included in the introduced budget from Governor Northam, but no such funding was included. The law was essentially an unfunded mandate.

In order for our appellate attorneys to give every Virginian with an appellate case the due diligence and attention they deserve, additional funding is critically important. Without it, the office will run into a significant backlog of criminal appeals in the Commonwealth of Virginia. Recognizing the severity of this issue and the already staggering volume of appellate cases the office is facing, we are trying to address this issue before it worsens. I respect the authority of the General Assembly to enact legislation and am only asking for sufficient resources to accommodate the new appellate review law made in 2021.

I respectfully request the House and Senate leadership review this important issue and allocate additional funding to the Office of the Attorney General in the upcoming biennial budget.

Respectfully,

A handwritten signature in black ink, appearing to read "Jason S. Miyares". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jason S. Miyares  
Attorney General of Virginia