

**Compensation Board
Minimum Criteria for Career
Prosecutor Programs In
Commonwealth's Attorneys Offices**

Adopted by the
Compensation Board
September 1, 1997

Amended:
May 1, 2002
February 18, 2004
May 25, 2005
November 30, 2005

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Authority

Virginia Acts of Assembly - 1997 Session
Chapter 924

Title 2.1, Chapter 35.2,
Articles 1 through 6, Code of Virginia

Item 74, Paragraph G:

“The Compensation Board, with the assistance of the Commonwealth’s Attorneys Services Council (CASC), shall develop criteria for the establishment of a Career Prosecutor Program. Such criteria shall include the selection process, minimum length of service, job performance, continuing legal education, removal process and any other criteria deemed relevant by the Compensation Board. The Compensation Board shall provide its recommendations to the Chairmen of the House Appropriations and Senate Finance Committees by September 1, 1997.”

Executive Summary

The 1997 General Assembly directed the Compensation Board in cooperation with the Commonwealth's Attorneys Services Council to develop a Career Development Plan (CDP) for Assistant Commonwealth's Attorneys. A task force comprised of Compensation Board staff and Commonwealth's Attorneys was formed to develop the criteria for participation in the plan and to determine costs for the plan. The recommended plan sets the following criteria for participation in the Career Development Program: the Commonwealth's Attorney must have an employee evaluation program established, the applicant must have at least three years of experience as an Assistant Commonwealth's Attorney in the Commonwealth of Virginia, the two most recent written performance reviews must have been above average and no performance objective in the last two review periods should be below average, no public disciplinary action should have occurred from the Virginia State Bar within the last three years, the Assistant should have no more than one written reprimand from the Commonwealth's Attorney within the two years prior to selection, and the Assistant must complete a minimum of 40 hours of additional educational requirements above the Mandatory Continuing Legal Education credits that are currently required.

Upon certification by the Commonwealth's Attorney that all criteria have been met for the CDP adopted by the Commonwealth's Attorney, the Commonwealth's Attorney would reclassify eligible assistant Commonwealth's Attorney I positions (grade 13) to the Career Prosecutor level (grade 15). The task force also developed a model plan for the Commonwealth's Attorneys.

If the General Assembly wishes to make the CDP available to all 194 Assistant Commonwealth's Attorney I (grade 13) positions, the estimated salary and fringe benefits costs necessary to provide a two grade salary increase is \$1,355,478 each year. If the General Assembly wishes to make the CDP available to 50% of the Assistant Commonwealth's Attorneys (grade 13) positions (115 positions), the estimated salary and fringe benefits costs necessary to provide a two-grade salary increase is \$803,505 each year. (The criteria recommended for less than 100% eligibility is a minimum of one per office, rounded up to the next full position). If the General Assembly wishes to make the CDP available to 20% of the Assistant Commonwealth's Attorneys (grade 13) positions (72 positions), the estimated salary and fringe benefits costs necessary to provide a two-grade salary increase is \$503,064 each year.

The 2002 General Assembly approved budget reductions impacting Constitutional Officers. Implementation of this budget reduction by the Compensation Board includes a reduction of funding available for the Career Development Program. The 69 positions funded, as Career Prosecutors as of May 1, 2002, will remain funded; additional Career Prosecutor pay raises will require action by the Commonwealth's Attorney to request funding for the raise prior to July 1 of each year, and will require General Assembly approval. If approved by the General Assembly, the pay raise will become effective the following July 1.

The Compensation Board approved an audit procedure for the Career Prosecutor Program on May 25, 2005. The audit procedure is provided on Appendix D of this document.

Study Definition and Participants

In defining the scope of the study, the Compensation Board limited the application of the Career Prosecutor Program to assistant Commonwealth's Attorney I positions not allowed to engage in the private practice of law. The Compensation Board also developed a procedure by which Commonwealth's Attorneys could certify their participation in a Career Prosecutor Program, which met the Compensation Board's minimum criteria. Further, the Compensation Board developed a model plan for use by the Commonwealth's Attorneys.

Study Participants:

Bruce W. Haynes, Executive Secretary
James W. Matthews, Assistant Executive Secretary
Charlene M. Rollins, Management Analyst
Stephanie D. Davis, Management Analyst
William G. Petty, Commonwealth's Attorney, Lynchburg City
Richard Trodden, Commonwealth's Attorney, Arlington County
Linda Curtis, Commonwealth's Attorney, Hampton City

Compensation Board Minimum Criteria
for Career Prosecutor Programs
in Commonwealth's Attorneys Offices

Policy:

It is the policy of the Compensation Board to establish a Career Prosecutor pay grade, and minimum criteria for Career Prosecutor programs in Commonwealth's Attorneys offices.

Purpose:

The purpose of this policy is to encourage professionalism in Commonwealth's Attorneys offices by improving personal skills, knowledge, and abilities of ATTI and JATTI Assistants in order to meet department objectives, and to reduce Assistant turnover.

Procedures:

The Career Development Program (CDP) for ATTI and JATTI Assistant Commonwealth's Attorneys in Commonwealth's Attorneys offices shall incorporate the following criteria:

Employee Evaluation Plan

- The Commonwealth's Attorneys office must have an employee evaluation plan currently in effect that meets the minimum criteria established by the Compensation Board for such plans (Appendix C).

Selection Process

- A Career Prosecutor Board (CPB) may be established to make recommendations to the Commonwealth's Attorney regarding selection.
- The Commonwealth's Attorney makes the final decision regarding selection.

Minimum Length of Service

- The minimum length of service necessary to be considered for selection is three years as an Assistant Commonwealth's Attorney in the Commonwealth of Virginia.

Job Performance

- Job performance is a criterion for competitive selection.
- The two most recent written performance reviews must have been above average.
- The Assistant shall not be considered for selection if any job performance objective in the two most recent rating periods has been noted below average or below satisfactory performance.
- The Assistant shall not have any public disciplinary action imposed by the Virginia State Bar within the three years immediately preceding application for selection.

- The Assistant shall have no more serious disciplinary action than one written reprimand from the Commonwealth's Attorney within the two years immediately preceding application for selection.

Formal Education

- The Assistant must have completed a minimum of 40 hours of specialized training in addition to the required MCLE credits required by the Virginia State Bar within the 3 years preceding selection. The training should be designed to enhance the Assistant's career as a Career Prosecutor and must be other than those required by law or regulations as minimum training requirements. The course work must be approved by the Commonwealth's Attorney. The Commonwealth's Attorney must establish additional educational requirements above the minimum Virginia State Bar requirements to maintain Career Prosecutor status. The minimum requirements above the Virginia State Bar requirements are 5 MCLE credits per year.

Removal

- The CDP must include criteria for the removal of an Assistant from the CDP who does not maintain prescribed minimum standards as set by the Commonwealth's Attorney.

Equal Opportunity Statement

- The CDP must include a statement that the Career Prosecutor opportunities are available to all ATTI and JATTI Assistants, and that selection will be made regardless of race, religion, gender, national origin or political affiliation of Assistants.

Availability of CDP

- The CDP document in its entirety must be available to all Assistants in the office.

Statement of Purpose

- The CDP document must contain a statement that the purpose of the CDP is to encourage professionalism in the office by improving personal skills, knowledge, and abilities of ATTI and JATTI Assistants in order to meet department objectives, and to reduce Assistant turnover.

Employment Status of Assistants

- The document must contain the following statement verbatim:

"Notwithstanding anything to the contrary contained in this program, nothing herein is intended nor should be construed to contradict or diminish the power and authority of the Commonwealth's Attorney with respect to his/her appointees. All Assistant Commonwealth's Attorneys are, and shall remain, appointees of the Commonwealth's Attorney and shall not be considered or construed as employees of either the Commonwealth's Attorney or the (Name of

Career Prosecutor Program

Locality). Neither the creation nor the operation of this program shall confer on any Assistant Commonwealth's Attorney any grievance rights, and no Assistant Commonwealth's Attorney shall have the right to be represented by counsel when appearing before any administrators of this program in connection with the operation of this program."

Additional Compensation

- The Commonwealth's Attorney must certify his/her understanding that ATTI and JATTI Assistants may receive additional compensation reimbursed by the Compensation Board as a result of being selected for the CPB and that additional compensation shall not exceed a 19.48% increase in salary and reclassification shall be CPII and JCPII.
- The 69 positions funded as Career Prosecutors as of May 1, 2002, will remain funded; additional Career Prosecutor pay raises will require action by the Commonwealth Attorney to request funding for the raise prior to July 1 of each year and will require General Assembly approval. If approved by the General Assembly, the pay raise will become effective the following July 1.

Effective dates:

This policy and procedures are effective January 28, 1999 (and amended May 1, 2002, February 2004 & November 30, 2005), and shall remain in effect unless further amended by the Compensation Board.

Authority:

This policy and procedures have been adopted by the Compensation Board in accordance with §15.2-1636.6, et seq., Code of Virginia, and Chapter 464, Item 73, 1998 Acts of Assembly.

Approval:

Chairman, Compensation Board

Date

Certification of Career Prosecutor Program
(revised November 30, 2005)

Commonwealth's Attorney

Locality

The Career Development Plan for ATTI and JATTI Assistants currently in effect for this office incorporates the following criteria:

- Certification of participation in an employee evaluation plan meeting the minimum criteria established by the Compensation Board;
- Competitive selection process in which the Commonwealth's Attorney makes the final decision regarding selection;
- Minimum length of service requirement of three years as an Assistant Commonwealth's Attorney in Virginia;
- Job performance including two written evaluations which meet above average ratings, and no Virginia State Bar public disciplinary action in the past three years;
- Additional education requirements of forty hours above the minimum Virginia State Bar MCLE credits in the last three years preceding selection, and educational requirements above minimum Virginia State Bar MCLE requirements have been established to maintain career prosecutor status. (The minimum requirements above the Virginia State Bar requirements are 5 MCLE credits per year);
- A procedure for the removal of Assistants from the CDP for inadequate job performance, disciplinary action, a Virginia State Bar public disciplinary action, or failure to maintain minimum additional educational requirements;
- Equal opportunity for all Assistants;
- Statement of Purpose;
- Scope of the Plan;
- Understanding of employment status as an Assistant Commonwealth's Attorney;
- Additional Compensation.

This is to certify that the Career Prosecutor plan in this office meets the minimum criteria for such plans as established by the Compensation Board. I understand that funding to provide a salary increase associated with the selection as Career Prosecutor is contingent upon the approval of additional funding by the General Assembly.

The following ATTI and JATTI Assistant(s) in this office is/are expected to meet all criteria for selection as Career Prosecutor on the date(s) shown:

<u>Name of Incumbent</u>	<u>Position #</u>	<u>Anticipated Date of Selection</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Signature of Commonwealth's Attorney

Date

Appendix B
Model
Career Prosecutor Plan

Policy:

The _____ County/City Commonwealth's Attorneys office subscribes to the concept of the Career Prosecutor Program for Attorney I positions, as classified by the Compensation Board, and the minimum criteria as set forth in this plan and prescribed in Items _____, Chapter _____, Acts of Assembly and the Compensation Board's minimum criteria for career prosecutor programs, dated _____.

Purpose:

The overall purpose of this program is to encourage professionalism in Commonwealth's Attorneys offices by improving personal skills, knowledge and abilities of Assistant Commonwealth's Attorneys in order meet department objectives and reduce turnover.

The purpose of this plan is to provide each Assistant Commonwealth's Attorney with the eligibility criteria for the career prosecutor program.

Scope:

The Career Development Plan is a recognition and incentive program based upon individual accomplishments and maintenance of specific criteria. Selection in the CDP is not to be considered a promotion in rank. All Assistant Commonwealth's Attorneys selected to participate in the CDP shall be subject to current agency policies and procedures and any amendments to established policies. This policy may be amended by the Commonwealth's Attorney at any time. All financial incentives are subject to approved funding.

Procedures:

A. Employee Evaluation Program

The Commonwealth's Attorney must certify to the Compensation Board that an employee evaluation program has been adopted which meets the minimum criteria for such programs as approved by the Compensation Board.

The employee evaluation program used in this office incorporates the following:

1. A detailed job description is maintained for each permanent employee, which provides the elements for the evaluation of the employee's performance.
2. Each employee's written performance plan identifies and prioritizes job elements based upon the employee's job description, states expectations for the acceptable level of performance for each job element, and addresses the extent to which external factors impact the employee's ability to perform the job. Factors, which are not related to the job, such as race, sex, religion, level of salary or physical condition, are not considered in the evaluation process.
3. The written performance plan and evaluation expectations are discussed by the employee and his/her immediate supervisor at the beginning of the performance cycle and in at least one interview every twelve months. These meetings address ways to improve performance,

note areas of improvement already achieved, and provide a forum for discussion of goals, expectations, and factors affecting performance.

4. Both the employee and the employee's immediate supervisor sign the performance plan and the evaluation; copies are made available to the employee and the originals are maintained in the employee's permanent personnel file.
5. The Commonwealth's Attorney certifies each year to the Compensation Board through the on-line budget process that the written employee evaluation plan does meet the minimum specifications for such plans.

B. Certification of Career Development Program

The Commonwealth's Attorney has certified to the Compensation Board that the program in place meets the minimum criteria for such plans as approved by the Compensation Board.

C. Selection Process

The Commonwealth's Attorney makes the final decision in the selection process of the career prosecutor position. The Commonwealth's Attorney shall be responsible for reviewing a candidate's qualifications for entering the Career Development Program.

D. Eligibility Criteria

To be considered for the Career Development Program you must:

- √ Have had at least three years of continuous service as an Assistant Commonwealth's Attorney in a locality in the Commonwealth of Virginia.
- √ Have had two consecutive written employee evaluations in which you were rated above average overall and did not receive a below average on any specific performance objective.
- √ Have not had any Virginia State Bar public disciplinary action within the last three years preceding selection into the Career Development Program.
- √ Have not had more than one written reprimand from the Commonwealth's Attorney within the two years immediately preceding selection.
- √ Have completed at least 40 additional formal educational hours in addition to the Virginia State Bar minimum MCLE courses in subjects or topics approved by the Commonwealth's Attorney.

Classes, which meet requirements, include (TBD):

E. Appointment

Once the Commonwealth's Attorney has determined that the Assistant Commonwealth's Attorney has met all eligibility requirements, the Commonwealth's Attorney may reclassify the attorney to the career prosecutor status.

Reclassification of the Assistant Commonwealth's Attorney (ATTI) to the Career Prosecutor II (CPII) and Assistant Juvenile Commonwealth's Attorney (JATTI) to the Juvenile Career Prosecutor II (JCPII) will be based on the officer's request for the reclassification. Certification of the program does not automatically reclassify the position(s) and must be requested through the SNIP program via the Personnel Status Change Screen. Effective dates for the reclassification should be determined by the Commonwealth's Attorney.

F. Removal

Selection as a Career Prosecutor is not permanent. An Assistant admitted into the CDP shall be responsible for maintaining all stated minimum performance criteria in order to retain his/her CDP Career Prosecutor status.

Removal from the CDP may result from the following:

- √ Received written employee evaluations in which you were rated average or did not meet expectations overall and/or received a below average on any specific performance objective.
- √ Have been subject to any Virginia State Bar public disciplinary action during your participation in the Career Prosecutor Program.
- √ Have received one written reprimand from the Commonwealth's Attorney during your participation in the Career Prosecutor Program.
- √ Did not complete the educational requirements necessary to maintain the career prosecutor status as set by the Commonwealth's Attorney. The minimum requirements above the Virginia State Bar requirements in this office are ____ MCLE credits per year.

Upon removal from the Career Development Program, the Assistant Commonwealth's Attorney's salary and classification will revert back to an Assistant Commonwealth's Attorney (ATTI, with the appropriate decrease in salary, not to exceed a 19.48% decrease.

G. Compensation

The Compensation Board shall provide for a CPII and JCPII pay grade, equivalent to an Assistant Commonwealth's Attorney II, ATTII. Additional compensation shall not exceed a 19.48% increase in salary.

Funding to provide additional compensation is contingent upon request by the officer, with approval of the Governor and the General Assembly in the budget process.

H. Equal Opportunity Statement

The _____ county/city Commonwealth's Attorneys office certifies that Career Prosecutor opportunities are available to all ATTI and JATTI Assistant Commonwealth's Attorneys. Selection into the CDP will be made without regard to race, religion, gender, national origin or political affiliation of Assistants who chose to apply.

I. Employment Status of Assistant Commonwealth's Attorneys

Notwithstanding anything to the contrary contained in this program, nothing herein is intended nor should be construed to contradict or diminish the power and authority of the Commonwealth's Attorney with respect to his/her appointees. All Assistant Commonwealth's Attorneys are, and shall remain, appointees of the Commonwealth's Attorney and shall not be considered or construed as employees of either the Commonwealth's Attorney or the (Name of Locality). Neither the creation nor the operation of this program shall confer on any Assistant Commonwealth's Attorney any grievance rights, and no Assistant Commonwealth's Attorney shall have the right to be represented by counsel when appearing before any administrators of this program in connection with the operation of this program.

J. Availability

This plan shall be made available to all employees of this office. This plan shall be located in an area accessible to all employees.

K. Funding

In order to obtain funding for additional Career Prosecutor pay raises, subsequent to May 1, 2002, the Commonwealth's Attorney must request prior to July 1, and then the Compensation Board will seek the requisite additional funding in the budget process. If approved by the Governor and the General Assembly, pay raises will be available on July 1 of the year after the Commonwealth's Attorneys makes the funding request to the Compensation Board.

Effective Date:

This plan shall be effective _____, and shall remain in effect unless amended by the Commonwealth's Attorney

Authority:

This plan has been adopted by the Commonwealth's Attorneys office in accordance with the Compensation Board's policy for minimum criteria for Career Development Programs.

Approved:

Signature of Commonwealth's Attorney

Date

Appendix C

CERTIFICATION OF EMPLOYEE PERFORMANCE EVALUATION PLAN

TO: Compensation Board

**FROM: _____
Officer / Locality**

**The employee performance evaluation plan currently in effect for this office, adopted on, _____ incorporates all of the following features:
(date)**

1. JOB DESCRIPTION

A detailed job description is maintained for each permanent employee, which provides the elements for evaluation on the employee's performance plan.

2. WRITTEN PERFORMANCE PLAN

Each employee's performance plan identifies and prioritizes job elements based upon the employee's job description, states expectations for the acceptable level of performance for each job element, and addresses the extent to which external factors impact the employee's ability to perform the job. Factors, which are not related to the job, such as race, sex, religion, level of salary or physical condition, are not considered in the evaluation process.

3. PERFORMANCE EVALUATION AND INTERVIEW WITH EMPLOYEE

The performance plan and evaluation expectations are discussed by the employee and his/her immediate supervisor at the beginning of the performance cycle and in at least one interview every 12 months. These meetings address ways to improve performance, note areas of improvement already achieved, and provide a forum for discussion of goals, expectations, and factors affecting performance.

4. SIGNATURES OF EMPLOYEE AND IMMEDIATE SUPERVISOR

Both the employee and the employee's immediate supervisor sign the performance plan and the evaluation; copies are made available to the employee and the originals are maintained in the employee's permanent personnel file.

Signed: _____ Date: _____

Appendix D

Revised November 30, 2005

Career Prosecutor Audit Program

Policy: It is the policy of the Compensation Board to selectively audit Commonwealth's Attorneys' offices participating in the Career Prosecutor Program (CDP).

Purpose: The purpose of this policy is to insure that the intent of the CDP, as authorized by paragraph G, Item 74, Chapter 924, 1997 Acts of Assembly and adopted by the Compensation Board on September 1, 1997 is being met by all Commonwealth's Attorneys who certify their compliance with the provisions of the plan.

Procedure:

- A. On or before July 1 of each year, the Compensation Board shall request the President of the Virginia Association of Commonwealth's Attorneys (VACA) to appoint 3-5 Commonwealth's Attorneys who have adopted and are funded for the CDP to serve as the CDP Audit Committee.
- B. On or before October 1 of each year, the Compensation Board shall randomly select Commonwealth's Attorneys' offices to be audited.
- C. Upon selection, the Compensation Board will notify the Commonwealth's Attorney's office by fax and email that they have seven workdays to provide the following information in a sealed package to the Compensation Board:
 - A copy of the office's CDP
 - A copy of the Career Prosecutor's two most recent written performance evaluations (if the evaluation form does not clearly communicate that the score is "above average", the Commonwealth Attorney must, by letter, communicate that information to the Compensation Board.)
 - Documentation of the Career Prosecutor's additional legal education completed in the prior calendar year which exceed VSB minimum requirements
 - For any Career Prosecutor selected after July 1, 2006, documentation of the Career Prosecutors 40 hours of specialized training in addition to the required MCLE credits required by the Virginia State Bar within the 3 years preceding selection.
- D. The information requested in paragraph C above must be received at the Compensation Board within seven workdays after notification in a sealed package. Failure to provide the information will result in the termination of the Commonwealth's Attorney's participation in the CDP.

- E. The Compensation Board shall convene the Commonwealth's Attorneys' CDP Audit Committee at a reasonable time after receipt of audit materials. The Committee will meet, open the materials provided and conduct an audit. (Any member selected for audit will abstain from participating.) The Committee will recommend such action, as it deems appropriate to the Compensation Board.
- F. The Compensation Board will hear such recommendations as the Commonwealth's Attorneys' Audit Committee may wish to make and take such action as it deems appropriate based upon the facts provided.

Effective Date:

This policy and procedures are effective (date) and shall remain in effect unless further amended by the Compensation Board. This policy and procedures are hereby made a part of the Compensation Board's Minimum Criteria for CDP's in Commonwealth's Attorneys' offices.

Appendix E

Amendment Summary

The May 1, 2002 amendment restricted funds to the 69 currently funded Career Prosecutor positions due to the budget reductions.

The February 18, 2005 amendment corrected grammatical and syntax errors and removed strikethroughs from previous amendments. No policy changes were made.

On May 25, 2004 the Compensation Board approved the Career Prosecutor Audit Program.

On November 30, 2005 the Compensation Board approved changes to clarify that all job performance evaluations are to be written; if the evaluations do not clearly state "above average" the Commonwealth's Attorney will send the Compensation Board a letter stating that the Career Prosecutor 's evaluation ratings are above average (if the office is subject to audit), minimum requirements above the Virginia State Bar requirements are 5 MCLE credits pre year and any office subject to audit will be required to submit proof of the 40 hours of specialized training received by the Career Prosecutor prior to selection if the Career Prosecutor was selected after July 1, 2006.

Comments and Responses