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HOUSE BILL NO. 1312

Offered January 24, 2000

A *BILL to amend and reenact §§ 16.1-267 and 19.2-163 of the Code of Virginia, relating to compensation of appointed counsel.*

Patrons—Almand, Albo, Armstrong, Barlow, Brink, Bryant, Cantor, Christian, Crittenden, Darner, Diamonstein, Grayson, Griffith, Hall, Howell, Hull, Jackson, Jones, J.C., Kilgore, McEachin, Melvin, Moss, Robinson, Rust, Spruill, Tate, Van Yahres, Ware and Watts; Senators: Howell, Miller, Y.B., Mims, Norment, Stolle and Trumbo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-267 and 19.2-163 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in the amount awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed \$100 \$158 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 \$158 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

§ 19.2-163. Compensation of court-appointed counsel.

Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services in an amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case, not to exceed the amounts specified in the following schedule:

1. In a district court, a sum not to exceed \$100 \$120 or such other amount as may be provided by law; such amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted under § 19.2-306, without a requirement for accounting of time devoted thereto; thereafter, compensation for additional charges against the same accused also conducted by the same counsel shall be allowed on the basis of additional time expended as to such additional charges;

2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state correctional facility for a period of more than twenty years, or a charge of violation of probation for such offense, a sum not to exceed ~~\$845 beginning July 1, 1998, and \$882 beginning July 1, 1999, and thereafter \$1235;~~ (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed ~~\$305 beginning July 1, 1998, and \$318 beginning July 1, 1999, and thereafter \$445;~~ and (iv) to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense, a sum not to exceed ~~\$132 \$ 158~~. In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that may be punishable by death, such counsel shall continue to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition of the case.

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed attorney as it deems appropriate under the circumstances of the case. Counsel appointed

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60 by the court to represent an indigent charged with repeated violations of the same section of the Code of
61 Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall
62 be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such
63 offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines
64 established by the Supreme Court but shall have the sole discretion to fix the amount of compensation
65 to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

66 The circuit or district court shall direct that the foregoing payments shall be paid out by the
67 Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city or town,
68 if the defendant is charged with a violation of a county, city or town ordinance, to the attorney so
69 appointed to defend such person as compensation for such defense.

70 Counsel representing a defendant charged with a Class 1 felony may submit to the court, on a
71 monthly basis, a statement of all costs incurred and fees charged by him in the case during that month.
72 Whenever the total charges as are deemed reasonable by the court for which payment has not previously
73 been made or requested exceed \$1,000, the court may direct that payment be made as otherwise
74 provided in this section.

75 When such directive is entered upon the order book of the court, the Commonwealth, county, city or
76 town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
77 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
78 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected,
79 the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An
80 abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by
81 such court.

82 Any statement submitted by an attorney for payments due him for indigent representation or for
83 representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be
84 forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be,
85 responsible for payment.

86 For the purposes of this section, the defense of a case may be considered conducted through to its
87 conclusion and an appointed counsel entitled to compensation for his services in the event an indigent
88 accused fails to appear in court subject to a capias for his arrest or a show cause summons for his
89 failure to appear and remains a fugitive from justice for one year following the issuance of the capias or
90 the summons to show cause, and appointed counsel has appeared at a hearing on behalf of the accused.