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## HOUSE BILL NO. 2683

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Marye  
on February 20, 2001)

(Patron Prior to Substitute—Delegate Barlow)

*A BILL to amend and reenact §§ 19.2-163 and 19.2-163.2 of the Code of Virginia, relating to public defender office for Montgomery County; compensation of court-appointed counsel.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-163 and 19.2-163.2 of the Code of Virginia are amended and reenacted as follows:**

§ 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 \$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 \$1,235; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed \$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 \$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. *In the event counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district or circuit court.*

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed ~~attorney~~, *counsel* as it deems appropriate under the circumstances of the case. Counsel appointed by the court to represent an indigent charged with repeated violations of the same section of the Code of Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge that may be punishable by death.

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

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

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

60 such court.

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

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

70 § 19.2-163.2. Commission to appoint public defenders in selected locations; compensation, assistants,  
71 offices, etc., of public defenders.

72 The duties of the Public Defender Commission, hereinafter referred to as "the Commission," are:

73 1. To recommend to the General Assembly the areas in which a public defender office is to be  
74 established, and to establish such an office in:

75 a. the City of Virginia Beach;

76 b. the City of Petersburg;

77 c. the Cities of Buena Vista, Lexington, Staunton and Waynesboro and the Counties of Augusta and  
78 Rockbridge;

79 d. the City of Roanoke;

80 e. the City of Portsmouth;

81 f. the City of Richmond;

82 g. the Counties of Clarke, Frederick, Page, Shenandoah and Warren, and the City of Winchester;

83 h. the City and County of Fairfax;

84 i. the City of Alexandria;

85 j. the City of Radford and the Counties of Bland, Pulaski and Wythe;

86 k. the Counties of Fauquier, Loudoun and Rappahannock;

87 l. the City of Suffolk;

88 m. the City of Franklin and the Counties of Isle of Wight and Southampton;

89 n. the City of Bedford and the County of Bedford;

90 o. the City of Danville;

91 p. the Counties of Halifax, Lunenburg and Mecklenburg;

92 q. the City of Fredericksburg and the Counties of King George, Stafford and Spotsylvania;

93 r. the City of Lynchburg;

94 s. the City of Martinsville and the Counties of Henry and Patrick; ~~and~~

95 t. the City of Charlottesville and the County of Albemarle; *and*

96 *u. the County of Montgomery.*

97 2. To appoint a public defender for each of the above offices to serve at the pleasure of the  
98 Commission, who shall devote his full time to his duties and not engage in the private practice of law.  
99 The Commission shall fix the compensation of each public defender and all other personnel in each  
100 public defender office.

101 3. To authorize the public defender to employ such assistants as authorized by the Commission. Such  
102 assistants shall devote such time to the performance of their duties as may be required by the public  
103 defender or the Commission and may engage in the private practice of law.

104 4. To authorize the public defender to employ such staff, including secretarial and investigative  
105 personnel, as may be necessary to carry out the duties imposed upon the public defender office.

106 5. To authorize the public defender to secure such office space as needed, to purchase or rent office  
107 equipment, to purchase supplies and to incur such expenses as are necessary to carry out the duties  
108 imposed upon him.

109 6. To receive and expend moneys appropriated by the General Assembly of Virginia and to receive  
110 other moneys as they become available to it and expend the same in order to carry out the duties  
111 imposed upon it.

112 7. In any case in which a public defender or his assistant represents an indigent person charged with  
113 an offense and such person is convicted, such sum as would have been allowed a court-appointed  
114 attorney as compensation and as reasonable expenses shall be taxed against the person defended as a  
115 part of the costs of the prosecution, and, if collected, shall be paid to the Commonwealth or to the  
116 appropriate county, city or town if payment was made to the Commonwealth by a locality for defense of  
117 a local ordinance violation. An abstract of such costs shall be docketed in the judgment lien docket and  
118 execution book of the court.