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SENATE BILL NO. 1168

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 19.2-163 of the Code of Virginia, relating to waiver of compensation cap for court-appointed attorneys.

Patrons—Stolle, Bell, Blevins, Cuccinelli, Deeds, Edwards, Houck, Howell, Lambert, Lucas, Marsh, Norment, Puckett, Puller, Quayle, Reynolds, Saslaw, Ticer, Watkins and Williams

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-163 of the Code of Virginia is 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 upon written request made~~ Upon the submission to the court, for which appointed representation is provided, of a detailed written accounting of the time expended for that representation, made within 30 days of trial or preliminary hearing 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, the completion of all proceedings in that court, counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services on an hourly basis at a rate set by the Supreme Court of Virginia in a total amount 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 court or circuit court.

The circuit or district court shall direct the payment of such reasonable expenses incurred by such court-appointed 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.

Court-appointed counsel, who are not public defenders, may request a waiver of the limitations on compensation set forth herein. The request for waiver shall be submitted to the presiding judge, in writing, with a detailed accounting of the time spent and the justification for the waiver. The presiding judge shall determine, by considering the effort expended and the time reasonably necessary for the particular representation, whether the request for waiver is justified, and shall certify any justified waivers to the Executive Secretary of the Supreme Court of Virginia. If payment is approved by the Executive Secretary, the court shall direct that payment be made in accordance with the provisions of

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SB1168

58 *this section.*

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

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

68 When such directive is entered upon the order book of the court, the Commonwealth, county, city or
69 town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
70 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
71 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected,
72 the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. *In the*
73 *event that counsel for the defendant requests a waiver of the limitations on compensation, the court*
74 *shall assess against the defendant an amount equal to the compensation limit specified in this section*
75 *for each charge for which the defendant was convicted.* An abstract of such costs shall be docketed in
76 the judgment docket and execution lien book maintained by such court.

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

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