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## SENATE BILL NO. 1168

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 16, 2007)

(Patron Prior to Substitute—Senator Stolle)

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

**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 to the court 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. Upon submission to the court, for which appointed representation is provided, of a detailed accounting of the time expended for that representation, made within 30 days of 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, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$120 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; or such other amount as may be provided by law; ~~such~~. 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; provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$850 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed \$445; , provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$155 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; and (iv) in the circuit court only, 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.

Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may request an additional waiver exceeding the waivers provided for in subdivision 2. The request for any additional waiver shall be submitted to the presiding judge, in writing, with a detailed accounting of the time spent and the justification for the additional waiver. The presiding judge shall determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the request for an additional waiver is justified in whole or in part, by considering the effort expended and the time reasonably necessary for the particular representation, and, if so, shall forward

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60 *the request as approved to the Chief Judge of the Circuit Court for approval.*

61 *If at any time the funds appropriated to pay for waivers under this section become insufficient, the*  
62 *Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further*  
63 *waivers shall be approved.*

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

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

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

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

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

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