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**HOUSE BILL NO. 95**

Offered January 9, 2008

Prefiled December 17, 2007

*A BILL to amend and reenact §§ 16.1-69.48:1, 17.1-275.7, 19.2-303.4, 19.2-335, and 19.2-336 of the Code of Virginia and to amend the Code of Virginia by adding in Article 17 of Chapter 8 of Title 46.2 a section numbered 46.2-943.1, relating to deferral of proceedings for traffic infractions.*

Patron—Purkey

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-69.48:1, 17.1-275.7, 19.2-303.4, 19.2-335, and 19.2-336 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 17 of Chapter 8 of Title 46.2 a section numbered 46.2-943.1 as follows:**

§ 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.

A. Assessment of the fees provided for in this section shall be based on: (i) an appearance for court hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the defendant successfully complete traffic school or a driver improvement clinic, in lieu of a finding of guilty; or (v) a deferral of proceedings pursuant to §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-251 ~~or~~, 19.2-303.2, *or* 46.2-943.1.

In addition to any other fee prescribed by this section, a fee of \$20 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the applicable fixed fee provided in subsection B, C, or D of this section more than once for a single appearance or trial in absence related to that incident. However, when a defendant who has multiple charges arising from the same incident and who has been assessed a fixed fee for one of those charges is later convicted of another charge that arises from that same incident and that has a higher fixed fee, he shall be assessed the difference between the fixed fee earlier assessed and the higher fixed fee.

A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall also assess any costs otherwise specifically provided by statute.

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of \$61. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.573770);
2. Virginia Crime Victim-Witness Fund (.049180);
3. Regional Criminal Justice Training Academies Fund (.016393);
4. Courthouse Construction/Maintenance Fund (.032787);
5. Criminal Injuries Compensation Fund (.098361);
6. Intensified Drug Enforcement Jurisdiction Fund (.065574);
7. Sentencing/supervision fee (General Fund) (.131148); and
8. Virginia Sexual and Domestic Violence Victim Fund (.032787).

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of \$136. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.257353);
2. Virginia Crime Victim-Witness Fund (.022059);
3. Regional Criminal Justice Training Academies Fund (.007353);
4. Courthouse Construction/Maintenance Fund (.014706);
5. Criminal Injuries Compensation Fund (.044118);
6. Intensified Drug Enforcement Jurisdiction Fund (.029412);
7. Drug Offender Assessment and Treatment Fund (.551471);

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59 8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.058824); and  
60 9. Virginia Sexual and Domestic Violence Victim Fund (.014706).  
61 D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of  
62 \$51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by  
63 law, to the following funds in the fractional amounts designated:  
64 1. Processing fee (General Fund) (.764706);  
65 2. Virginia Crime Victim-Witness Fund (.058824);  
66 3. Regional Criminal Justice Training Academies Fund (.019608);  
67 4. Courthouse Construction/Maintenance Fund (.039216);  
68 5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and  
69 6. Virginia Sexual and Domestic Violence Victim Fund (.039216).  
70 § 17.1-275.7. Fixed misdemeanor fee.  
71 In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony;  
72 (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally  
73 charged as a felony and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,  
74 16.1-278.9, 18.2-57.3, or 19.2-303.2; or (iii) any and each conviction of a traffic infraction, *deferred*  
75 *disposition of proceedings pursuant to the terms and conditions of § 46.2-943.1*, or referral to a driver  
76 improvement clinic or traffic school in lieu of a finding of guilt for a traffic infraction, there shall be  
77 assessed as court costs a fee of \$70, to be known as the fixed misdemeanor fee. However, this section  
78 shall not apply to those proceedings provided for in § 17.1-275.8. This fee shall be in addition to any  
79 fee assessed in the district court.  
80 The amount collected, in whole or in part, for the fixed misdemeanor fee shall be apportioned, as  
81 provided by law, to the following funds in the fractional amounts designated:  
82 1. Sentencing/supervision fee (General Fund) (.0142857);  
83 2. Witness expenses/expert witness fee (General Fund) (.0285714);  
84 3. Virginia Crime Victim-Witness Fund (.0428571);  
85 4. Intensified Drug Enforcement Jurisdiction Fund (.0571429);  
86 5. Criminal Injuries Compensation Fund (.2857143);  
87 6. Commonwealth's Attorney Fund (state share) (.0357143);  
88 7. Commonwealth's Attorney Fund (local share) (.0357143);  
89 8. Regional Criminal Justice Academy Training Fund (.0142857);  
90 9. Warrant fee, as prescribed by § 17.1-272 (.1714286);  
91 10. Courthouse Construction/Maintenance Fund (.0285714); and  
92 11. Clerk of the circuit court (.2857143).  
93 § 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.  
94 A circuit or district court, which has deferred further proceedings, without entering a judgment of  
95 guilt, and placed a defendant on probation subject to terms and conditions pursuant to § 4.1-305,  
96 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 ~~or~~, 19.2-303.2, *or 46.2-943.1*,  
97 shall impose upon the defendant costs.  
98 § 19.2-335. Judge of district court to certify to clerk of circuit court costs of proceedings in criminal  
99 cases before him.  
100 A judge of a district court before whom there is any proceeding in a criminal case, including any  
101 proceeding which has been deferred upon probation of the defendant pursuant to § 16.1-278.8,  
102 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 ~~or~~, 19.2-303.2, *or 46.2-943.1*, shall certify to the  
103 clerk of the circuit court of his county or city, and a judge or court before whom there is, in a criminal  
104 case, any proceeding preliminary to conviction in another court, upon receiving information of the  
105 conviction from the clerk of the court wherein it is, shall certify to such clerk, all the expenses incident  
106 to such proceedings which are payable out of the state treasury.  
107 § 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.  
108 In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed  
109 on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1,  
110 18.2-67.2, 18.2-251 ~~or~~, 19.2-303.2, *or 46.2-943.1*, or, if the conviction is in a district court, the clerk to  
111 which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the  
112 expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for  
113 the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) of this  
114 title shall apply thereto in like manner as if, on the day of completing the statement, there was a  
115 judgment in such court in favor of the Commonwealth against the accused for such amount as a fine.  
116 However, in any case in which an accused waives trial by jury, at least 10 days before trial, but the  
117 Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be  
118 included in such statement or judgment.  
119 § 46.2-943.1. *Persons charged with first traffic offense may be placed on probation.*  
120 *Whenever any person who has not (i) previously been convicted of any traffic offense as defined in*

121 § 46.2-943, including any traffic infraction, or any statute of the United States or of any state relating to  
122 traffic offenses; (ii) previously been referred to a traffic school or driver improvement clinic in lieu of a  
123 conviction for a traffic infraction; or (iii) previously had proceedings against him dismissed pursuant to  
124 this section pleads or is found guilty of a traffic infraction, the court may, without entering a judgment  
125 of guilt and with the consent of the accused, defer further proceedings and place him on probation. As a  
126 condition of probation, the court shall require that the accused not be convicted of any additional traffic  
127 offenses committed within a six-month period from the date of the deferment. Upon violation of this  
128 condition, the court shall enter an adjudication of guilt and proceed as otherwise provided. Upon  
129 fulfillment of this condition, the court shall discharge the accused and dismiss the proceedings against  
130 him. Discharge and dismissal under this section shall be without adjudication of guilt and is a  
131 conviction only for the purposes of applying this section in subsequent proceedings.