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SENATE BILL NO. 71

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 23, 2012)

(Patron Prior to Substitute—Senator Reeves)

A BILL to amend and reenact §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 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 a section numbered 18.2-96.2, relating to first offense larceny.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 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 a section numbered 18.2-96.2 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; (v) a deferral of proceedings pursuant to §§ 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-96.2, 18.2-251, or 19.2-303.2; or (vi) proof of compliance with law under §§ 46.2-104 and 46.2-1158.02.

In addition to any other fee prescribed by this section, a fee of \$35 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:

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| 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:

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| 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); |
| 8. Forensic laboratory fee and sentencing/supervision | |

58 fee (General Fund) (.058824); and

59 9. Virginia Sexual and Domestic Violence Victim Fund (.014706).

60 D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of
61 \$51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by
62 law, to the following funds in the fractional amounts designated:

63 1. Processing fee (General Fund) (.764706);

64 2. Virginia Crime Victim-Witness Fund (.058824);

65 3. Regional Criminal Justice Training Academies Fund (.019608);

66 4. Courthouse Construction/Maintenance Fund (.039216);

67 5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and

68 6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

69 § 17.1-275.1. Fixed felony fee.

70 Upon conviction of any and each felony charge or upon a deferred disposition of proceedings in
71 circuit court in the case of any and each felony disposition deferred pursuant to the terms and conditions
72 of § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-96.2, or 18.2-251, there shall be assessed as court
73 costs a fee of \$375, to be known as the fixed felony fee.

74 The amount collected, in whole or in part, for the fixed felony fee shall be apportioned, as provided
75 by law, to the following funds in the fractional amounts designated:

76 1. Sentencing/supervision fee (General Fund) (.4705067);

77 2. Forensic science fund (.1033333);

78 3. Court reporter fund (.0887200);

79 4. Witness expenses/expert witness fund (.0053333);

80 5. Virginia Crime Victim-Witness Fund (.0080000);

81 6. Intensified Drug Enforcement Jurisdiction Fund (.0106667);

82 7. Criminal Injuries Compensation Fund (.0800000);

83 8. Commonwealth's attorney fund (state share) (.0533333);

84 9. Commonwealth's attorney fund (local share) (.0533333);

85 10. Regional Criminal Justice Academy Training Fund (.0026667);

86 11. Warrant fee (.0320000);

87 12. Courthouse construction/maintenance fund (.0053333); and

88 13. Clerk of the circuit court (.0867733).

89 § 17.1-275.2. Fixed fee for felony reduced to misdemeanor.

90 In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony
91 charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced
92 from a felony charge and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,
93 16.1-278.9, 18.2-57.3, 18.2-96.2, or 19.2-303.2, there shall be assessed as court costs a fee of \$227, to
94 be known as the fixed fee for felony reduced to misdemeanor. However, this section shall not apply to
95 those proceedings provided for in § 17.1-275.8.

96 The amount collected, in whole or in part, for the fixed fee for felony reduced to misdemeanor shall
97 be apportioned to the following funds in the fractional amounts designated:

98 1. Sentencing/supervision fee (General Fund) (.1695154);

99 2. Forensic science fund (.1707048);

100 3. Court reporter fund (.1465639);

101 4. Witness expenses/expert witness fund (.0088106);

102 5. Virginia Crime Victim-Witness Fund (.0132159);

103 6. Intensified Drug Enforcement Jurisdiction Fund (.0176211);

104 7. Criminal Injuries Compensation Fund (.0881057);

105 8. Commonwealth's attorney fund (state share) (.0881057);

106 9. Commonwealth's attorney fund (local share) (.0881057);

107 10. Regional Criminal Justice Academy Training Fund (.0044053);

108 11. Warrant fee (.0528634);

109 12. Courthouse construction/maintenance fund (.0088106); and

110 13. Clerk of the circuit court (.1431718).

111 § 17.1-275.7. Fixed misdemeanor fee.

112 In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony;
113 (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally
114 charged as a felony and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,
115 16.1-278.9, 18.2-57.3, 18.2-96.2, or 19.2-303.2; (iii) any and each conviction of a traffic infraction or
116 referral to a driver improvement clinic or traffic school in lieu of a finding of guilt for a traffic

infraction; or (iv) proof of compliance with law under §§ 46.2-104 and 46.2-1158.02, there shall be assessed as court costs a fee of \$80, to be known as the fixed misdemeanor fee. However, this section shall not apply to those proceedings provided for in § 17.1-275.8. This fee shall be in addition to any fee assessed in the district court.

The amount collected, in whole or in part, for the fixed misdemeanor fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Sentencing/supervision fee (General Fund) (.0125000);
2. Witness expenses/expert witness fee (General Fund) (.0250000);
3. Virginia Crime Victim-Witness Fund (.0375000);
4. Intensified Drug Enforcement Jurisdiction Fund (.0500000);
5. Criminal Injuries Compensation Fund (.2500000);
6. Commonwealth's Attorney Fund (state share) (.0937500);
7. Commonwealth's Attorney Fund (local share) (.0937500);
8. Regional Criminal Justice Academy Training Fund (.0125000);
9. Warrant fee, as prescribed by § 17.1-272 (.1500000);
10. Courthouse Construction/Maintenance Fund (.0250000); and
11. Clerk of the circuit court (.2500000).

§ 18.2-96.2. *Persons charged with first offense larceny may be placed on probation; conditions; assessment, treatment and education programs or services; costs and fees; violations; discharge.*

Whenever any person who has not previously been convicted of or charged with any offense relating to larceny, embezzlement, or fraud, any felony or any crime of moral turpitude under the Virginia Code or under any statute of the United States or of any state and has not previously had a proceeding against him for violation of such an offense dismissed as provided in this section pleads guilty to or enters a plea of not guilty to any offense deemed larceny, the court, upon such plea if the facts found by the court would justify a finding of guilt, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions.

As a term or condition, the court may require the accused to undergo an assessment and enter a treatment or education program or services, if available, such as, in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the assessment. The program or services may be located in the judicial district in which the charge is brought or in any other judicial district as the court may provide. The court shall require the person entering a program under the provisions of this section to pay all or part of the costs of the program, including the costs of the screening, assessment, testing, and treatment, based upon the accused's ability to pay unless the person is determined by the court to be indigent.

As a condition of probation, the court shall require the accused (i) to successfully complete any required treatment or education program or services, (ii) to make reasonable efforts to secure and maintain employment, (iii) to comply with a plan of at least 100 hours of community service for a felony and up to 24 hours of community service for a misdemeanor, and (iv) to make restitution to any victim.

The court shall, unless done at arrest, order the accused to report to the original arresting law-enforcement agency to submit to fingerprinting.

Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without adjudication of guilt and is a conviction only for the purposes of applying this section in subsequent proceedings.

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

A circuit or district court, which has deferred further proceedings, without entering a judgment of guilt, and placed a defendant on probation subject to terms and conditions pursuant to § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-96.2, 18.2-251, or 19.2-303.2, shall impose upon the defendant costs.

§ 19.2-335. Judge of district court to certify to clerk of circuit court costs of proceedings in criminal cases before him.

A judge of a district court before whom there is any proceeding in a criminal case, including any proceeding which has been deferred upon probation of the defendant pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-96.2, 18.2-251, or 19.2-303.2, shall certify to the clerk of the circuit court of his county or city, and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction from the clerk of the court wherein it is, shall certify to such clerk, all the expenses incident to such proceedings which are payable out of the state treasury.

§ 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.

177 In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed
178 on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1,
179 18.2-67.2, 18.2-96.2, 18.2-251, or 19.2-303.2, or, if the conviction is in a district court, the clerk to
180 which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the
181 expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for
182 the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) of this
183 title shall apply thereto in like manner as if, on the day of completing the statement, there was a
184 judgment in such court in favor of the Commonwealth against the accused for such amount as a fine.
185 However, in any case in which an accused waives trial by jury, at least 10 days before trial, but the
186 Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be
187 included in such statement or judgment.