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SENATE BILL NO. 173

Senate Amendments in [] — January 27, 2014

A *BILL to amend and reenact §§ 16.1-69.48:1, 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 19.2-303.6, relating to deferred disposition; persons with autism or intellectual disabilities.*

Patron Prior to Engrossment—Senator Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.48:1, 17.1-275.2, 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 19.2-303.6 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, 18.2-251 or 19.2-303.2, or 19.2-303.6; 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:

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);
8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.058824); and

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

D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of \$51. 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) (.764706);
2. Virginia Crime Victim-Witness Fund (.058824);
3. Regional Criminal Justice Training Academies Fund (.019608);
4. Courthouse Construction/Maintenance Fund (.039216);
5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and
6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

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

In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced from a felony charge and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~or~~ 19.2-303.2, *or* 19.2-303.6, there shall be assessed as court costs a fee of \$227, to be known as the fixed fee for felony reduced to misdemeanor. However, this section shall not apply to those proceedings provided for in § 17.1-275.8.

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

1. Sentencing/supervision fee (General Fund) (.1695154);
2. Forensic science fund (.1707048);
3. Court reporter fund (.1465639);
4. Witness expenses/expert witness fund (.0088106);
5. Virginia Crime Victim-Witness Fund (.0132159);
6. Intensified Drug Enforcement Jurisdiction Fund (.0176211);
7. Criminal Injuries Compensation Fund (.0881057);
8. Commonwealth's attorney fund (state share) (.0881057);
9. Commonwealth's attorney fund (local share) (.0881057);
10. Regional Criminal Justice Academy Training Fund (.0044053);
11. Warrant fee (.0528634);
12. Courthouse construction/maintenance fund (.0088106); and
13. Clerk of the circuit court (.1431718).

§ 17.1-275.7. Fixed misdemeanor fee.

In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony; (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally charged as a felony and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, ~~or~~ 19.2-303.2, *or* 19.2-303.6; (iii) any and each conviction of a traffic infraction or 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).

§ 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, 18.2-251 ~~or~~, 19.2-303.2, *or* 19.2-303.6 shall impose upon the defendant costs.

§ 19.2-303.6. Deferred disposition in a criminal case; persons with autism or intellectual disabilities.

A. In any criminal case [except an act of violence as defined in § 19.2-297.1] , upon a plea of guilty, or after a plea of not guilty, and the facts found by the court would justify a finding of guilt, the court may, if the defendant has been diagnosed by a psychiatrist or clinical psychologist with (i) an autism spectrum disorder as defined in the most recent edition of the "Diagnostic and Statistical Manual of Mental Disorders" published by the American Psychiatric Association or (ii) an intellectual disability as defined in § 37.2-100, without entering a judgment of guilt and with the consent of the accused, after giving due consideration to the position of the attorney for the Commonwealth and the views of the victim, defer further proceedings and place the accused on probation subject to terms and conditions set by the court. Upon violation of a term or condition, the court may enter an adjudication of guilt or, upon fulfillment of the terms and conditions, may discharge the person and dismiss the proceedings against him without an adjudication of guilt. This section shall not limit the authority of any juvenile and domestic relations court granted to it in Title 16.1.

B. Deferred disposition shall be available to the defendant even though he has previously been convicted of a criminal offense, been adjudicated delinquent as a juvenile, or had proceedings deferred and dismissed under this section or under any other provision of law, unless, after having considered the position of the attorney for the Commonwealth, the views of the victims, and any evidence offered by the defendant, the court finds that deferred disposition is inconsistent with the interests of justice.

C. This section shall not apply to any offense charged under § 4.1-305, 15.2-1812.2, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251, 18.2-258.1, or 19.2-303.2, irrespective of whether the defendant was convicted or had proceedings deferred and dismissed under any of these sections.

§ 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, 18.2-251 ~~or~~, 19.2-303.2, or 19.2-303.6, 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.

In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251 ~~or~~, 19.2-303.2, or 19.2-303.6, or, if the conviction is in a district court, the clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) shall apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such court in favor of the Commonwealth against the accused for such amount as a fine. However, in any case in which an accused waives trial by jury, at least 10 days before trial, but the Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be included in such statement or judgment recorded pursuant to § 17.1-275.5.