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HOUSE BILL NO. 1531

Offered January 22, 1996

A *BILL to amend and reenact § 16.1-267 as it is effective and as it may become effective, and § 19.2-163 of the Code of Virginia, relating to compensation of court-appointed counsel.*

Patron—Grayson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-267 as it is effective and as it may become effective, and § 19.2-163 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in the amount awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision (1) of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision (1) of *be paid and such services provided in accordance with § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.*

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

§ 16.1-267. (Delayed effective date) Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in the amount awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision (1) of § 19.2-163 if the action is in family court.

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision (1) of *be paid and such services provided in accordance with § 19.2-163 if the action is in family court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.*

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

§ 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 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, *at the rate of sixty dollars per hour*, not to exceed the amounts specified in the following schedule, *except for good cause shown*:

1. In a district court, a sum not to exceed \$1001,000 *for each defendant* or such other amount as may be provided by law; ~~such amount shall be allowed in any case wherein counsel conducts the~~

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60 defense of a single charge against the indigent through to its conclusion or a charge of violation of
61 probation at any hearing conducted under § 19.2-306, without a requirement for accounting of time
62 devoted thereto; thereafter, compensation for additional charges against the same accused also conducted
63 by the same counsel shall be allowed on the basis of additional time expended as to such additional
64 charges a charge of probation violation shall be included within this cap;

65 2. In a circuit court (i) to defend a felony charge that may be punishable by death an amount
66 deemed reasonable by the court upon an appeal of a misdemeanor from the district court a sum not to
67 exceed \$1,000 for a bench trial and \$1,750 for a jury trial; and (ii) to defend a sum not to exceed
68 \$3,500 for a bench trial and \$5,000 for a jury trial for any felony charge that may be punishable by
69 confinement in the state correctional facility for a period of more than twenty years, or a charge of
70 violation of probation for such offense, a sum not to exceed \$575; and (iii) to defend any other for
71 appointments to defend a person charged with a class 1 felony charge, or a charge of violation of
72 probation for such offense, a sum not to exceed \$265 an amount deemed reasonable by the court, based
73 upon the time expended by counsel and calculated at an hourly rate of not less than \$100; Counsel
74 shall continue to receive compensation as provided in this paragraph for the defense of the initial crime
75 charged, regardless of whether the charge is reduced or amended to a charge not be punishable by
76 death, prior to final disposition of the case; and (iv) to defend any misdemeanor charge punishable by
77 confinement in jail or a charge of a sum not to exceed \$600 for a charge of violation of probation for
78 such offense, a sum not to exceed \$132. In the event any case is required to be retried due to a mistrial
79 for any cause or reversed on appeal, the court may allow an additional fee for each case in an amount
80 not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an
81 indigent charged with a felony that may be punishable by death, such counsel shall continue to receive
82 compensation as provided in this paragraph for defending such a felony, regardless of whether the
83 charge is reduced or amended to a felony that may not be punishable by death, prior to final disposition
84 of the case,;

85 3. In the Court of Appeals, a sum not to exceed \$3,000 for the petition, a sum not to exceed an
86 additional \$2,000 if the appeal is granted and an additional \$2,000 if en banc review is granted;

87 4. In the Supreme Court, a sum not to exceed \$3,000 for the petition and a sum not to exceed an
88 additional \$2,000 if the appeal is granted;

89 5. In a court wherein a petition for habeas corpus has been filed by counsel appointed for such
90 purpose, a sum not to exceed \$3,500.

91 In the event any case is required to be retried due to a mistrial for any cause or reversed on appeal,
92 the court may allow an additional fee for each retrial in an amount not to exceed the amounts
93 allowable in the initial trial.

94 The circuit or district court shall direct the payment of such reasonable expenses incurred by such
95 court-appointed attorney as it deems appropriate under the circumstances of the case. Counsel for a
96 person who is financially unable to obtain investigative, expert, or other services necessary for adequate
97 representation may request them in an ex parte application. Upon finding after appropriate inquiry in
98 an ex parte proceeding, that the services are necessary and that the person is financially unable to
99 obtain them, the court shall authorize counsel to obtain the services. Counsel appointed under this
100 section may obtain, subject to later review, investigative, expert and other services without prior
101 authorization if necessary for adequate representation. Except as hereinafter provided, the total cost of
102 services obtained without prior authorization may not exceed \$300 and expenses reasonably incurred.
103 The court may, in the interest of justice, and upon the finding that timely procurement of necessary
104 services could not await prior authorization, approve payment for such services after they have been
105 obtained, even if the cost of such services exceeds \$300. On application of defense counsel, a system of
106 recording proceedings and attendant transcribing services or the services of a court reporter shall be
107 provided an indigent defendant for preliminary hearings.

108 Counsel appointed by the court to represent an indigent charged with repeated violations of the same
109 section of the Code of Virginia, with each of such violations arising out of the same incident,
110 occurrence, or transaction, shall be compensated in an amount not to exceed the fee prescribed for the
111 defense of a single charge, if such offenses are tried as part of the same judicial proceeding. The trial
112 judge shall consider any guidelines established by the Supreme Court but shall have the sole discretion
113 to fix the amount of compensation to be paid counsel appointed by the court to defend a felony charge
114 that may be punishable by death.

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

119 Counsel representing a defendant charged with a Class 1 felony may submit to the court, on a
120 monthly basis, a statement of all costs incurred and fees charged by him in the case during that month.
121 Whenever the total charges as are deemed reasonable by the court for which payment has not previously

122 been made or requested exceed \$1,000, the court may direct that payment be made as otherwise
123 provided in this section.

124 When such directive is entered upon the order book of the court, the Commonwealth, county, city or
125 town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
126 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
127 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected,
128 the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An
129 abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by
130 such court.

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