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HOUSE BILL NO. 313

Offered January 11, 2006

Prefiled January 4, 2006

A BILL to amend and reenact §§ 16.1-267 and 19.2-163 of the Code of Virginia, relating to compensation of court-appointed counsel.

Patrons—Albo and Ebbin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-267 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 subsection A of § 16.1-266 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 parents for such legal services in the maximum amount of that 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 the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.~~ Such counsel shall be compensated for his services pursuant to § 19.2-163.

When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266 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 § 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. Such counsel shall be compensated for his services pursuant to § 19.2-163.

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; ~~not to exceed the amounts specified in the following schedule:~~

1. In a district court, ~~a sum not to exceed \$120~~ *an hourly amount deemed reasonable by the court* or such other amount as may be provided by law; 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 hourly 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~~ *an hourly amount deemed reasonable by the court*; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, ~~a sum not to exceed \$445~~ *an hourly amount deemed reasonable by the court*; and (iv) 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~~ *an hourly amount deemed reasonable by the court*. 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~~ *allowed* 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

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59 provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or
60 amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district
61 court or circuit court.

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

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

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

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

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

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