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SENATE BILL NO. 1363

Offered January 14, 2009

Prefiled January 14, 2009

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

Patron—Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-163 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-163. Compensation of court-appointed counsel.**

Upon submission to the court, for which appointed representation is provided, of a detailed accounting of the time expended for that representation, made within 30 days of the completion of all proceedings in that court, counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services on an hourly basis at a rate set by the Supreme Court of Virginia in a total amount not to exceed the amounts specified in the following schedule:

1. In a district court, a sum not to exceed \$120, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to (i) an additional \$120 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; or (ii) an amount up to \$650 to defend, in the case of a juvenile, an offense that would be a felony if committed by an adult that may be punishable by confinement in the state correctional facility for a period of more than 20 years, or a charge of violation of probation for such offense, when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; or (iii) 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; 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 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 20 years, or a charge of violation of probation for such offense, a sum not to exceed \$1,235, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$850 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; (iii) to defend any other felony charge, or a charge of violation of probation for such offense, a sum not to exceed \$445, provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$155 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; and (iv) in the circuit court only, 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. 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 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 provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or circuit court.

Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may request an additional waiver exceeding the amounts provided for in this section. The request for

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59 any additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting
60 of the time spent and the justification for the additional amount. The presiding judge shall determine,
61 subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the
62 request for an additional amount is justified in whole or in part, by considering the effort expended and
63 the time reasonably necessary for the particular representation, and, if so, shall forward the request as
64 approved to the chief judge of the circuit court or district court for approval.

65 If at any time the funds appropriated to pay for waivers under this section become insufficient, the
66 Executive Secretary of the Supreme Court of Virginia shall so certify to the courts and no further
67 waivers shall be approved.

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

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

80 Counsel representing a defendant charged with a Class 1 felony, *or counsel representing an indigent*
81 *prisoner under sentence of death in a state habeas corpus proceeding*, may submit to the court, on a
82 monthly basis, a statement of all costs incurred and fees charged by him in the case during that month.
83 Whenever the total charges as are deemed reasonable by the court for which payment has not previously
84 been made or requested exceed \$1,000, the court may direct that payment be made as otherwise
85 provided in this section.

86 When such directive is entered upon the order book of the court, the Commonwealth, county, city or
87 town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
88 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
89 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected,
90 the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. In the
91 event that counsel for the defendant requests a waiver of the limitations on compensation, the court shall
92 assess against the defendant an amount equal to the pre-waiver compensation limit specified in this
93 section for each charge for which the defendant was convicted. An abstract of such costs shall be
94 docketed in the judgment docket and execution lien book maintained by such court.

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

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

104 Effective July 1, 2007, the Executive Secretary of the Supreme Court of Virginia shall track and
105 report the number and category of offenses charged involving adult and juvenile offenders in cases in
106 which court-appointed counsel is assigned. The Executive Secretary shall also track and report the
107 amounts paid by waiver above the initial cap to court-appointed counsel. The Executive Secretary shall
108 provide these reports to the Governor, members of the House Appropriations Committee, and members
109 of the Senate Finance Committee on a quarterly basis.