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HOUSE BILL NO. 1296

Offered January 10, 2018

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A BILL to amend and reenact §§ 18.2-254.1, 19.2-159, 19.2-163.01, 19.2-163.04, 19.2-163.3, 19.2-163.4, and 53.1-124 of the Code of Virginia, relating to establishment of statewide public defender system and appellate defender officer.

 Patron—Rasoul

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-254.1, 19.2-159, 19.2-163.01, 19.2-163.04, 19.2-163.3, 19.2-163.4, and 53.1-124 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-254.1. Drug Treatment Court Act.

A. This section shall be known and may be cited as the "Drug Treatment Court Act."

B. The General Assembly recognizes that there is a critical need in the Commonwealth for effective treatment programs that reduce the incidence of drug use, drug addiction, family separation due to parental substance abuse, and drug-related crimes. It is the intent of the General Assembly by this section to enhance public safety by facilitating the creation of drug treatment courts as means by which to accomplish this purpose.

C. The goals of drug treatment courts include: (i) reducing drug addiction and drug dependency among offenders; (ii) reducing recidivism; (iii) reducing drug-related court workloads; (iv) increasing personal, familial and societal accountability among offenders; and, (v) promoting effective planning and use of resources among the criminal justice system and community agencies.

D. Drug treatment courts are specialized court dockets within the existing structure of Virginia's court system offering judicial monitoring of intensive treatment and strict supervision of addicts in drug and drug-related cases. Local officials must complete a recognized planning process before establishing a drug treatment court program.

E. Administrative oversight for implementation of the Drug Treatment Court Act shall be conducted by the Supreme Court of Virginia. The Supreme Court of Virginia shall be responsible for (i) providing oversight for the distribution of funds for drug treatment courts; (ii) providing technical assistance to drug treatment courts; (iii) providing training for judges who preside over drug treatment courts; (iv) providing training to the providers of administrative, case management, and treatment services to drug treatment courts; and (v) monitoring the completion of evaluations of the effectiveness and efficiency of drug treatment courts in the Commonwealth.

F. A state drug treatment court advisory committee shall be established to (i) evaluate and recommend standards for the planning and implementation of drug treatment courts; (ii) assist in the evaluation of their effectiveness and efficiency; and (iii) encourage and enhance cooperation among agencies that participate in their planning and implementation. The committee shall be chaired by the Chief Justice of the Supreme Court of Virginia or his designee and shall include a member of the Judicial Conference of Virginia who presides over a drug treatment court; a district court judge; the Executive Secretary or his designee; the directors of the following executive branch agencies: Department of Corrections, Department of Criminal Justice Services, Department of Juvenile Justice, Department of Behavioral Health and Developmental Services, Department of Social Services; a representative of the following entities: a local community-based probation and pretrial services agency, the Commonwealth's Attorney's Association, the Virginia Indigent Defense Commission, the Circuit Court Clerk's Association, the Virginia Sheriff's Association, the Virginia Association of Chiefs of Police, the Commission on VASAP, and two representatives designated by the Virginia Drug Court Association.

G. Each jurisdiction or combination of jurisdictions that intend to establish a drug treatment court or continue the operation of an existing one shall establish a local drug treatment court advisory committee. Jurisdictions that establish separate adult and juvenile drug treatment courts may establish an advisory committee for each such court. Each advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the drug treatment court or courts that serve the jurisdiction or combination of jurisdictions. Advisory committee membership shall include, but shall not be limited to the following people or their designees: (i) the drug treatment court judge; (ii) the attorney for the Commonwealth, or, where applicable, the city or county attorney who has responsibility for the prosecution of misdemeanor offenses; (iii) the public defender or a member of the local criminal defense

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59 bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the drug
60 treatment court is located; (v) a representative of the Virginia Department of Corrections, or the
61 Department of Juvenile Justice, or both, from the local office which serves the jurisdiction or
62 combination of jurisdictions; (vi) a representative of a local community-based probation and pretrial
63 services agency; (vii) a local law-enforcement officer; (viii) a representative of the Department of
64 Behavioral Health and Developmental Services or a representative of local drug treatment providers; (ix)
65 the drug court administrator; (x) a representative of the Department of Social Services; (xi) county
66 administrator or city manager; and (xii) any other people selected by the drug treatment court advisory
67 committee.

68 H. Each local drug treatment court advisory committee shall establish criteria for the eligibility and
69 participation of offenders who have been determined to be addicted to or dependent upon drugs. Subject
70 to the provisions of this section, neither the establishment of a drug treatment court nor anything herein
71 shall be construed as limiting the discretion of the attorney for the Commonwealth to prosecute any
72 criminal case arising therein which he deems advisable to prosecute, except to the extent the
73 participating attorney for the Commonwealth agrees to do so. As defined in § 17.1-805 or 19.2-297.1,
74 adult offenders who have been convicted of a violent criminal offense within the preceding 10 years, or
75 juvenile offenders who previously have been adjudicated not innocent of any such offense within the
76 preceding 10 years, shall not be eligible for participation in any drug treatment court established or
77 continued in operation pursuant to this section.

78 I. Each drug treatment court advisory committee shall establish policies and procedures for the
79 operation of the court to attain the following goals: (i) effective integration of drug and alcohol
80 treatment services with criminal justice system case processing; (ii) enhanced public safety through
81 intensive offender supervision and drug treatment; (iii) prompt identification and placement of eligible
82 participants; (iv) efficient access to a continuum of alcohol, drug, and related treatment and rehabilitation
83 services; (v) verified participant abstinence through frequent alcohol and other drug testing; (vi) prompt
84 response to participants' noncompliance with program requirements through a coordinated strategy; (vii)
85 ongoing judicial interaction with each drug court participant; (viii) ongoing monitoring and evaluation of
86 program effectiveness and efficiency; (ix) ongoing interdisciplinary education and training in support of
87 program effectiveness and efficiency; and (x) ongoing collaboration among drug treatment courts, public
88 agencies, and community-based organizations to enhance program effectiveness and efficiency.

89 J. Participation by an offender in a drug treatment court shall be voluntary and made pursuant only
90 to a written agreement entered into by and between the offender and the Commonwealth with the
91 concurrence of the court.

92 K. Nothing in this section shall preclude the establishment of substance abuse treatment programs
93 and services pursuant to the deferred judgment provisions of § 18.2-251.

94 L. Each offender shall contribute to the cost of the substance abuse treatment he receives while
95 participating in a drug treatment court pursuant to guidelines developed by the drug treatment court
96 advisory committee.

97 M. Nothing contained in this section shall confer a right or an expectation of a right to treatment for
98 an offender or be construed as requiring a local drug treatment court advisory committee to accept for
99 participation every offender.

100 N. The Office of the Executive Secretary shall, with the assistance of the state drug treatment court
101 advisory committee, develop a statewide evaluation model and conduct ongoing evaluations of the
102 effectiveness and efficiency of all local drug treatment courts. A report of these evaluations shall be
103 submitted to the General Assembly by December 1 of each year. Each local drug treatment court
104 advisory committee shall submit evaluative reports to the Office of the Executive Secretary as requested.

105 O. Notwithstanding any other provision of this section, no drug treatment court shall be established
106 subsequent to March 1, 2004, unless the jurisdiction or jurisdictions intending or proposing to establish
107 such court have been specifically granted permission under the Code of Virginia to establish such court.
108 The provisions of this subsection shall not apply to any drug treatment court established on or before
109 March 1, 2004, and operational as of July 1, 2004.

110 P. Subject to the requirements and conditions established by the state Drug Treatment Court
111 Advisory Committee, there shall be established a drug treatment court in the following jurisdictions: the
112 City of Chesapeake and the City of Newport News.

113 Q. Subject to the requirements and conditions established by the state Drug Treatment Court
114 Advisory Committee, there shall be established a drug treatment court in the Juvenile and Domestic
115 Relations District Court for the County of Franklin, provided that such court is funded solely through
116 local sources.

117 R. Subject to the requirements and conditions established by the state Drug Treatment Court
118 Advisory Committee, there shall be established a drug treatment court in the City of Bristol and the
119 County of Tazewell, provided that the court is funded within existing state and local appropriations.

120 § 19.2-159. Determination of indigency; guidelines; statement of indigence; appointment of

counsel.

A. If the accused shall claim that he is indigent, and the charge against him is a criminal offense which may be punishable by death or confinement in the state correctional facility or jail, subject to the provisions of § 19.2-160, the court shall determine from oral examination of the accused or other competent evidence whether or not the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

B. In making its finding, the court shall determine whether or not the accused is a current recipient of a state or federally funded public assistance program for the indigent. If the accused is a current recipient of such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough examination of the financial resources of the accused shall be made with consideration given to the following:

1. The net income of the accused, which shall include his total salary and wages minus deductions required by law. The court also shall take into account income and amenities from other sources including but not limited to social security funds, union funds, veteran's benefits, other regular support from an absent family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

2. All assets of the accused which are convertible into cash within a reasonable period of time without causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment. Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be considered in terms of the amounts which could be raised by a loan on the property. For purposes of eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the accused's household, shall be considered, unless the spouse was the victim of the offense or offenses allegedly committed by the accused.

3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him from being able to secure private counsel. Such items shall include but not be limited to costs for medical care, family support obligations, and child care payments.

The available funds of the accused shall be calculated as the sum of his total income and assets less the exceptional expenses as provided in paragraph 3 above. If the accused does not waive his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

C. If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this _____ day of _____, 20____, by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel and I hereby request the court to appoint counsel for me."

(signature of accused)

The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines prescribed in this section.

D. ~~Except in jurisdictions having a Defense services for indigents charged withailable offenses shall be provided by the public defender; or~~ unless (i) the public defender is unable to represent the defendant

182 by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to
183 attain the ends of justice, *in which case* counsel appointed by the court for representation of the accused
184 shall be selected by a fair system of rotation among members of the bar practicing before the court
185 whose names are on the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01.
186 If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably
187 available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated
188 to the court's satisfaction an appropriate level of training and experience. The court shall provide notice
189 to the Commission of the appointment of the attorney.

190 **§ 19.2-163.01. Virginia Indigent Defense Commission established; powers and duties.**

191 A. The Virginia Indigent Defense Commission (hereinafter Indigent Defense Commission or
192 Commission) is established. The Commission shall be supervisory and shall have sole responsibility for
193 the powers, duties, operations, and responsibilities set forth in this section.

194 The Commission shall have the following powers and duties:

195 1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as
196 court-appointed counsel for indigent defendants pursuant to § 19.2-159.

197 2. To develop initial training courses for attorneys who wish to begin serving as court-appointed
198 counsel, and to review and certify legal education courses that satisfy the continuing requirements for
199 attorneys to maintain their eligibility for receiving court appointments.

200 3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as
201 court-appointed counsel for indigent defendants based upon the official standards and to disseminate the
202 list by July 1 of each year and updates throughout the year to the Office of the Executive Secretary of
203 the Supreme Court for distribution to the courts. In establishing and updating the list, the Commission
204 shall consider all relevant factors, including but not limited to, the attorney's background, experience,
205 and training and the Commission's assessment of whether the attorney is competent to provide quality
206 legal representation.

207 4. To establish official standards of practice for court-appointed counsel and public defenders to
208 follow in representing their clients, and guidelines for the removal of an attorney from the official list of
209 those qualified to receive court appointments and to notify the Office of the Executive Secretary of the
210 Supreme Court of any attorney whose name has been removed from the list.

211 5. To develop initial training courses for public defenders and to review and certify legal education
212 courses that satisfy the continuing requirements for public defenders to maintain their eligibility.

213 6. To periodically review and report to the Virginia State Crime Commission, the House and the
214 Senate Committees for Courts of Justice, the House Committee on Appropriations, and the Senate
215 Committee on Finance on the caseload handled by each public defender office.

216 7. To maintain all public defender and regional capital defender offices established by the General
217 Assembly.

218 8. *To maintain an appellate defender office established by the General Assembly.*

219 9. To hire and employ and, at its pleasure, remove an executive director, counsel, and such other
220 persons as it deems necessary, and to authorize the executive director to appoint, after prior notice to the
221 Commission, a deputy director, and for each of the above offices a public defender, *appellate defender*,
222 or capital defender, as the case may be, who shall devote his full time to his duties and not engage in
223 the private practice of law.

224 ~~9.~~ 10. To authorize the public defender, *appellate defender*, or capital defender to employ such
225 assistants as authorized by the Commission.

226 ~~10.~~ 11. To authorize the public defender, *appellate defender*, or capital defender to employ such
227 staff, including secretarial and investigative personnel, as may be necessary to carry out the duties
228 imposed upon the public defender office.

229 ~~11.~~ 12. To authorize the executive director of the Commission, in consultation with the public
230 defender, *appellate defender*, or capital defender to secure such office space as needed, to purchase or
231 rent office equipment, to purchase supplies and to incur such expenses as are necessary to carry out the
232 duties imposed upon him.

233 ~~12.~~ 13. To approve requests for appropriations and receive and expend moneys appropriated by the
234 General Assembly of Virginia, to receive other moneys as they become available to it and expend the
235 same in order to carry out the duties imposed upon it.

236 ~~13.~~ 14. To require and ensure that each public defender office collects and maintains caseload data
237 and fields in a case management database on an annual basis.

238 ~~14.~~ 15. To report annually on or before October 1 to the Virginia State Crime Commission, the
239 House and Senate Committees for Courts of Justice, the House Committee on Appropriations, and the
240 Senate Committee on Finance on the state of indigent criminal defense in the Commonwealth, including
241 Virginia's ranking amongst the 50 states in terms of pay allowed for court-appointed counsel appointed
242 pursuant to § 19.2-159 or subdivision C 2 of § 16.1-266.

243 B. The Commission shall adopt rules and procedures for the conduct of its business. The

Commission may delegate to the executive director or, in the absence of the executive director, the deputy executive director, such powers and duties conferred upon the Commission as it deems appropriate, including powers and duties involving the exercise of discretion. The Commission shall ensure that the executive director complies with all Commission and statutory directives. Such rules and procedures may include the establishment of committees and the delegation of authority to the committees. The Commission shall review and confirm by a vote of the Commission its rules and procedures and any delegation of authority to the executive director at least every three years.

C. The executive director shall, with the approval of the Commission, fix the compensation of each public defender and all other personnel in each public defender office. The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law.

§ 19.2-163.04. Public Defender offices.

~~Public~~ The Commission shall maintain public defender offices ~~are established in:~~ in every judicial circuit set forth in § 17.1-506.

- a. The City of Virginia Beach;
- b. The City of Petersburg;
- c. The Cities of Buena Vista, Lexington, Staunton and Waynesboro and the Counties of Augusta and Rockbridge;
- d. The City of Roanoke;
- e. The City of Portsmouth;
- f. The City of Richmond;
- g. The Counties of Clarke, Frederick, Page, Shenandoah and Warren, and the City of Winchester;
- h. The City and County of Fairfax;
- i. The City of Alexandria;
- j. The City of Radford and the Counties of Bland, Pulaski and Wythe;
- k. The Counties of Fauquier, Loudoun and Rappahannock;
- l. The City of Suffolk;
- m. The City of Franklin and the Counties of Isle of Wight and Southampton;
- n. The County of Bedford;
- o. The City of Danville;
- p. The Counties of Halifax, Lunenburg and Mecklenburg;
- q. The City of Fredericksburg and the Counties of King George, Stafford and Spotsylvania;
- r. The City of Lynchburg;
- s. The City of Martinsville and the Counties of Henry and Patrick;
- t. The City of Charlottesville and the County of Albemarle;
- u. The City of Norfolk;
- v. The County of Arlington and the City of Falls Church;
- w. The City of Newport News;
- x. The City of Chesapeake; and
- y. The City of Hampton.

§ 19.2-163.3. Duties of public defenders.

Public defenders shall carry out the following duties in accordance with the guidance, policies, and authorizations of the Indigent Defense Commission:

(a) To assist the executive director of the Commission in securing office space, to employ a staff, to fix salaries and to do such other things necessary to carry out the duties imposed upon them with the approval of the Commission.

(b) To represent or supervise assistants in representing within their respective jurisdictions as set out in § 19.2-163.04 indigent persons charged with a crime or offense when such persons are entitled to be represented by law by court-appointed counsel in a court of record or a court not of record.

(c) To represent or supervise assistants in representing indigent persons who are entitled to be represented by ~~court-appointed counsel~~ the appellate defender office in an appeal of their conviction to the Court of Appeals or the Supreme Court of Virginia.

(d) To submit such reports as required by the Commission.

§ 19.2-163.4. Inapplicability of §§ 17.1-606 and 19.2-163 where public defender offices established; exception.

In counties and cities in which public defender offices are established pursuant to § ~~19.2-163.04~~, defense ~~Defense~~ services for indigents charged with jailable offenses shall be provided by the public defenders unless (i) the public defender is unable to represent the defendant or petitioner by reason of conflict of interest or (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice. Except for the provisions of § 19.2-163 relating to reasonable expenses, §§ 17.1-606 and 19.2-163 shall not apply when defense services are provided by the public defenders.

§ 53.1-124. Sheriffs and jail superintendents to report to the courts.

A. If requested by the judge, the sheriffs of all local jails and the jail superintendents of all regional jails of this Commonwealth shall, on the first day of each term of the circuit court, make written reports to the judge thereof, to the attorney for the Commonwealth, and to city attorneys whose duties include prosecuting certain cases, showing the number of prisoners in jail on that day. The report shall show the name, date of commitment, offense and sentence of each prisoner. The judge of such court, after examining the report, shall enter an order directing the clerk to file the same in the clerk's office of such court.

B. If requested by the chief judge of the circuit court, general district court or juvenile and domestic relations district court, the sheriffs of all local jails and the jail superintendents of all regional jails of the Commonwealth shall report semimonthly to the circuit court, general district court, and juvenile and domestic relations district court, to the attorney for the Commonwealth, and to the public defender, if any, as established in Article 3.1 (§ 19.2-163.01 et seq.) of Chapter 10 of Title 19.2, showing the number of prisoners in jail on that day awaiting trial. The report shall include the name, offense, date of commitment to jail, and amount of bail established.

C. If requested by the judge, the sheriffs of all local jails and the jail superintendents of all regional jails shall report weekly to the juvenile and domestic relations district court located within that county, city or region concerning the identity and number of juveniles kept in their jails and the length of time such juveniles have been incarcerated therein.