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SENATE BILL NO. 878

Senate Amendments in [] - February 7, 2020

A BILL to amend and reenact § 19.2-163 of the Code of Virginia, relating to compensation of court-appointed counsel; waiver in child welfare cases.

Patron Prior to Engrossment—Senator Marsden

Referred to Committee on the Judiciary

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 additional \$120 if the court has appointed counsel to represent a parent, guardian, or other adult pursuant to subsection D of § 16.1-266;* (iii) 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)~~ (iv) 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; ~~and~~ (v) *when an appeal has been taken pursuant to § 16.1-296 and the court has appointed counsel to represent a parent, guardian, or other adult pursuant to subsection D of § 16.1-266, a sum not to exceed \$158, 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 \$158 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.* 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

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59 by death, prior to final disposition of the case. In the event counsel is appointed to defend an indigent
60 charged with any other felony, such counsel shall receive compensation as provided in this paragraph for
61 defending such a felony, regardless of whether the charge is reduced or amended to a misdemeanor or
62 lesser felony prior to final disposition of the case in either the district court or circuit court.

63 Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders,
64 may request an additional waiver exceeding the amounts provided for in this section. The request for
65 any additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting
66 of the time spent and the justification for the additional amount. The presiding judge shall determine,
67 subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the
68 request for an additional amount is justified in whole or in part, by considering the effort expended and
69 the time reasonably necessary for the particular representation, and, if so, shall forward the request as
70 approved to the chief judge of the circuit court or district court for approval.

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

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

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

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

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

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

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

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

116 **[2. That the provisions of this act shall not become effective unless an appropriation effectuating**
117 **the purposes of this act is included in a general appropriation act passed in 2020 by the General**
118 **Assembly that becomes law.]**