

20201289D

HOUSE BILL NO. 5062

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Surovell
on October 1, 2020)

(Patron Prior to Substitute—Delegate Mullin)

A *BILL to amend and reenact §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.7, 19.2-265.6, 19.2-303.4, 19.2-335, and 19.2-336 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-298.02, relating to court authority in criminal cases; prosecutorial discretion to dispose of a criminal case.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.48:1, 17.1-275.1, 17.1-275.2, 17.1-275.7, 19.2-265.6, 19.2-303.4, 19.2-335, and 19.2-336 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-298.02 as follows:

§ 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.

A. Assessment of the fees provided for in this section shall be based on (i) an appearance for court hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the defendant successfully complete traffic school, a mature driver motor vehicle crash prevention course, or a driver improvement clinic, in lieu of a finding of guilty; (v) a deferral of proceedings pursuant to § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6; or (vi) proof of compliance with law under §§ 46.2-104, 46.2-324, 46.2-613, 46.2-646, 46.2-711, 46.2-715, 46.2-716, 46.2-752, 46.2-1000, 46.2-1003, 46.2-1052, 46.2-1053, and 46.2-1158.02.

In addition to any other fee prescribed by this section, a fee of \$35 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the applicable fixed fee provided in subsection B, C, or D more than once for a single appearance or trial in absence related to that incident. However, when a defendant who has multiple charges arising from the same incident and who has been assessed a fixed fee for one of those charges is later convicted of another charge that arises from that same incident and that has a higher fixed fee, he shall be assessed the difference between the fixed fee earlier assessed and the higher fixed fee.

A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall also assess any costs otherwise specifically provided by statute.

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of \$61. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.573770);
2. Virginia Crime Victim-Witness Fund (.049180);
3. Regional Criminal Justice Training Academies Fund (.016393);
4. Courthouse Construction/Maintenance Fund (.032787);
5. Criminal Injuries Compensation Fund (.098361);
6. Intensified Drug Enforcement Jurisdiction Fund (.065574);
7. Sentencing/supervision fee (General Fund) (.131148); and
8. Virginia Sexual and Domestic Violence Victim Fund (.032787).

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of \$136. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund) (.257353);
2. Virginia Crime Victim-Witness Fund (.022059);
3. Regional Criminal Justice Training Academies Fund (.007353);
4. Courthouse Construction/Maintenance Fund (.014706);
5. Criminal Injuries Compensation Fund (.044118);
6. Intensified Drug Enforcement Jurisdiction Fund (.029412);
7. Drug Offender Assessment and Treatment Fund (.551471);

- 60 8. Forensic laboratory fee and sentencing/supervision fee (General Fund) (.058824); and
61 9. Virginia Sexual and Domestic Violence Victim Fund (.014706).
62 D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of
63 \$51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by
64 law, to the following funds in the fractional amounts designated:
65 1. Processing fee (General Fund) (.764706);
66 2. Virginia Crime Victim-Witness Fund (.058824);
67 3. Regional Criminal Justice Training Academies Fund (.019608);
68 4. Courthouse Construction/Maintenance Fund (.039216);
69 5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and
70 6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

71 **§ 17.1-275.1. Fixed felony fee.**

72 Upon conviction of any and each felony charge or upon a deferred disposition of proceedings in
73 circuit court in the case of any and each felony disposition deferred pursuant to the terms and conditions
74 of § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, ~~or~~ 18.2-251, 19.2-298.02, or 19.2-303.6, there shall be
75 assessed as court costs a fee of \$375, to be known as the fixed felony fee.

76 The amount collected, in whole or in part, for the fixed felony fee shall be apportioned, as provided
77 by law, to the following funds in the fractional amounts designated:

- 78 1. Sentencing/supervision fee (General Fund) (.4705067);
79 2. Forensic science fund (.1033333);
80 3. Court reporter fund (.0887200);
81 4. Witness expenses/expert witness fund (.0053333);
82 5. Virginia Crime Victim-Witness Fund (.0080000);
83 6. Intensified Drug Enforcement Jurisdiction Fund (.0106667);
84 7. Criminal Injuries Compensation Fund (.0800000);
85 8. Commonwealth's attorney fund (state share) (.0533333);
86 9. Commonwealth's attorney fund (local share) (.0533333);
87 10. Regional Criminal Justice Academy Training Fund (.0026667);
88 11. Warrant fee (.0320000);
89 12. Courthouse construction/maintenance fund (.0053333); and
90 13. Clerk of the circuit court (.0867733).

91 **§ 17.1-275.2. Fixed fee for felony reduced to misdemeanor.**

92 In circuit court, upon the conviction of a person of any and each misdemeanor reduced from a felony
93 charge, or upon a deferred disposition of proceedings in the case of any and each misdemeanor reduced
94 from a felony charge and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,
95 16.1-278.9, 18.2-57.3, 19.2-298.02, 19.2-303.2, or 19.2-303.6, there shall be assessed as court costs a fee
96 of \$227, to be known as the fixed fee for felony reduced to misdemeanor. However, this section shall
97 not apply to those proceedings provided for in § 17.1-275.8.

98 The amount collected, in whole or in part, for the fixed fee for felony reduced to misdemeanor shall
99 be apportioned to the following funds in the fractional amounts designated:

- 100 1. Sentencing/supervision fee (General Fund) (.1695154);
101 2. Forensic science fund (.1707048);
102 3. Court reporter fund (.1465639);
103 4. Witness expenses/expert witness fund (.0088106);
104 5. Virginia Crime Victim-Witness Fund (.0132159);
105 6. Intensified Drug Enforcement Jurisdiction Fund (.0176211);
106 7. Criminal Injuries Compensation Fund (.0881057);
107 8. Commonwealth's attorney fund (state share) (.0881057);
108 9. Commonwealth's attorney fund (local share) (.0881057);
109 10. Regional Criminal Justice Academy Training Fund (.0044053);
110 11. Warrant fee (.0528634);
111 12. Courthouse construction/maintenance fund (.0088106); and
112 13. Clerk of the circuit court (.1431718).

113 **§ 17.1-275.7. Fixed misdemeanor fee.**

114 In circuit court, upon (i) conviction of any and each misdemeanor, not originally charged as a felony;
115 (ii) a deferred disposition of proceedings in the case of any and each misdemeanor not originally
116 charged as a felony and deferred pursuant to the terms and conditions of § 4.1-305, 16.1-278.8,
117 16.1-278.9, 18.2-57.3, 19.2-298.02, 19.2-303.2, or 19.2-303.6; (iii) any and each conviction of a traffic
118 infraction or referral to a driver improvement clinic or traffic school in lieu of a finding of guilt for a
119 traffic infraction; or (iv) proof of compliance with law under §§ 46.2-104 and 46.2-1158.02, there shall
120 be assessed as court costs a fee of \$80, to be known as the fixed misdemeanor fee. However, this
121 section shall not apply to those proceedings provided for in § 17.1-275.8. This fee shall be in addition to

any fee assessed in the district court.

The amount collected, in whole or in part, for the fixed misdemeanor fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Sentencing/supervision fee (General Fund) (.0125000);
2. Witness expenses/expert witness fee (General Fund) (.0250000);
3. Virginia Crime Victim-Witness Fund (.0375000);
4. Intensified Drug Enforcement Jurisdiction Fund (.0500000);
5. Criminal Injuries Compensation Fund (.2500000);
6. Commonwealth's Attorney Fund (state share) (.0937500);
7. Commonwealth's Attorney Fund (local share) (.0937500);
8. Regional Criminal Justice Academy Training Fund (.0125000);
9. Warrant fee, as prescribed by § 17.1-272 (.1500000);
10. Courthouse Construction/Maintenance Fund (.0250000); and
11. Clerk of the circuit court (.2500000).

§ 19.2-265.6. Dismissal of criminal charges on Commonwealth's motion; effect of dismissal of criminal charges.

A. Upon motion of the Commonwealth to dismiss a charge, whether with or without prejudice, and with the consent of the defendant, a court shall grant the motion unless the court finds by clear and convincing evidence that the motion was made as the result of (i) bribery or (ii) bias or prejudice toward a victim as defined in § 19.2-11.01 because of the race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin of the victim.

B. No dismissal of any criminal charge by a court shall bar subsequent prosecution of the charge unless jeopardy attached at the earlier proceeding or unless the dismissal order explicitly states that the dismissal is with prejudice.

§ 19.2-298.02. Deferred disposition in a criminal case.

A. A trial court presiding in a criminal case may, with the agreement of the defendant and the Commonwealth, after any plea or trial, with or without a determination, finding, or pronouncement of guilt, and notwithstanding the entry of a conviction order, upon consideration of the facts and circumstances of the case, including (i) mitigating factors relating to the defendant or the offense, (ii) the request of the victim, or (iii) any other appropriate factors, defer proceedings, defer entry of a conviction order, if none, or defer entry of a final order, and continue the case for final disposition, on such reasonable terms and conditions as may be agreed upon by the parties and placed on the record, or if there is no agreement, as may be imposed by the court. Final disposition may include (a) conviction of the original charge, (b) conviction of an alternative charge, or (c) dismissal of the proceedings.

B. Upon violation of a term or condition, the court may enter an adjudication of guilt, if not already entered, and make any final disposition of the case provided by subsection A. Upon fulfillment of the terms and conditions, the court shall adjudicate the matter consistent with the agreement of the parties or, if none, by conviction of an alternative charge or dismissal of the case.

C. By consenting to and receiving a deferral of proceedings or a deferral of entry of a final order of guilt and fulfilling the conditions as specified by the court as provided by subsection A, the defendant waives his right to appeal such entry of a final order of guilt.

Prior to granting a deferral of proceedings, a deferral of entry of a conviction order, if none, or a deferral of a final order, the court shall notify the defendant that he would be waiving his rights to appeal any final order of guilt if such deferral is granted.

D. Upon agreement of all parties, a charge that is dismissed pursuant to this section may be considered as otherwise dismissed for purposes of expungement of police and court records in accordance with § 19.2-392.2, and such agreement of all parties and expungement eligibility shall be indicated in the final disposition order.

§ 19.2-303.4. Payment of costs when proceedings deferred and defendant placed on probation.

A circuit or district court, which has deferred further proceedings, without entering a judgment of guilt, and placed a defendant on probation subject to terms and conditions pursuant to § 4.1-305, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6 shall impose upon the defendant costs.

§ 19.2-335. Judge of district court to certify to clerk of circuit court costs of proceedings in criminal cases before him.

A judge of a district court before whom there is any proceeding in a criminal case, including any proceeding that has been deferred upon probation of the defendant pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6, shall certify to the clerk of the circuit court of his county or city, and a judge or court before whom there is, in a criminal case, any proceeding preliminary to conviction in another court, upon receiving information of the conviction

183 from the clerk of the court wherein it is, shall certify to such clerk, all the expenses incident to such
184 proceedings which are payable out of the state treasury.

185 **§ 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.**

186 In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed
187 on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1,
188 18.2-67.2, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6 or, if the conviction is in a district court, the
189 clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of
190 all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and
191 execution for the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339
192 et seq.) shall apply thereto in like manner as if, on the day of completing the statement, there was a
193 judgment in such court in favor of the Commonwealth against the accused for such amount as a fine.
194 However, in any case in which an accused waives trial by jury, at least 10 days before trial, but the
195 Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be
196 included in such statement or judgment recorded pursuant to § 17.1-275.5.