

# Department of Planning and Budget

## 2023 Fiscal Impact Statement

**1. Bill Number:** SB940E

**House of Origin**    ☐ Introduced    ☐ Substitute    ☒ Engrossed

**Second House**    ☐ In Committee    ☐ Substitute    ☐ Enrolled

**2. Patron:** Edwards

**3. Committee:** Senate Finance and Appropriations

**4. Title:** Compensation of court-appointed counsel

**5. Summary:** The engrossed bill amends § 19.2-163 to increase compensation for court-appointed counsel as shown in the table below:

	<b>Current Statutory Cap</b>	<b>Proposed Statutory Cap</b>
District Court	\$120	\$240
District Court (when time expended, case difficulty warrant waiver)	\$120 additional	\$240 additional
District Court (to defense a juvenile in a case where the offense 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)	\$650	\$1,300
Circuit Court (to defend Class 1 felony...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)	\$1,235	\$2,470
Circuit Court (when time expended, case difficulty warrant waiver- Class 1 felony, felony punishable by more than 20 years of confinement a state correctional facility)	\$850 additional	\$1,700 additional
Circuit Court (to defend any other felony charge, or a charge of violation of probation for such offense)	\$445	\$890
Circuit Court (when time expended, case difficulty warrant waiver-for other felony charges)	\$155 additional	\$310 additional
Circuit Court (to defend any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such offense)	\$158	\$316

The bill establishes that the provisions of this legislation do not become effective unless an appropriation effectuating the purposes of this legislation is included in a general appropriation act passed in 2023 by the General Assembly that becomes law.

- 6. Budget Amendment Necessary:** Yes, Item 44, 45, 46, 47
- 7. Fiscal Impact Estimates:** Preliminary (see Item 8 below)
- 8. Fiscal Implications:** Currently, court-appointed counsel are compensated at a rate of \$90 an hour for representation of indigent defendants in criminal matters. The statutory caps in district court range from \$120 (e.g. misdemeanor) to \$1,300 (e.g. defense of juvenile against a case that would be a felony if committed by an adult). In district court, a judge is able to waive the \$120 misdemeanor fee cap and approve payment of an additional \$120 (district waiver amount) if the time, effort, and/or circumstances of representation warrant additional payment. In circuit court, the statutory caps range from \$158 (e.g. misdemeanor) to \$1,235 (e.g. felony charge that may be punishable by confinement for a period of more than 20 years). The waiver amounts in circuit court range from \$155 to \$850, and must be approved by the judge.

The bill would double the statutory payment caps and waiver payment caps within Va. Code § 19.2-163. According to the Office of the Executive Secretary of the Supreme Court (OES), attorneys providing representation in misdemeanor cases are often approved for compensation of the full cap amount, as only fewer than 2 hours of attorney time is necessary to reach the current compensation cap. OES assumes that if the misdemeanor cap were doubled, nearly all misdemeanor payment requests would still be eligible for the increased cap amount. In Fiscal Year 2022, the Criminal Fund expenditure for representation of Indigent defendants charged with misdemeanors were \$12,958,881. Assuming that a doubling of the payment cap would result in a 90 percent increase in the amounts paid from the Criminal Fund for such misdemeanor representation in both district and circuit court, this would result in additional general fund expenditures in the amount of \$12,309,917 annually.

In felony representation cases, there is typically a greater investment of time required for an attorney to meet the current statutory caps that are in place. OES assumes that the percentage of increase that would result from this legislation would not be as high for felony representation compensation. In Fiscal Year 2022, payments in the amount of \$35,816,913 were paid from the Criminal Fund for representation of indigent defendants charged with felonies. Assuming that a doubling of the payment cap would result in a 50 percent increase in the amounts paid from the Criminal Fund for such felony representation, this would result in additional expenditures in the amount of \$17,908,457 annually.

As noted by the OES, since the legislation doubles all the limits on both the basic caps and the waivers, it is possible that the potential impact of the legislation would be to double the compensation currently being paid for indigent representation under Va. Code § 19.2-163. That assumption would produce an estimated general fund fiscal impact for both misdemeanors and felonies of \$48,775,794 annually.

- 9. Specific Agency or Political Subdivisions Affected:** Courts
- 10. Technical Amendment Necessary:** No
- 11. Other Comments:** None