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HOUSE BILL NO. 102

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 21, 2024)

(Patron Prior to Substitute—Delegate Reaser)

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

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 in this section, or other such amount as may be provided by law. Such amounts shall be allowed in any case wherein counsel conducts the defense of a single charge against the indigent accused 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:

1. In a district court, except as provided in subdivisions 2 and 3, a sum not to exceed ~~\$120~~ \$240, 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 for a charge of violation of probation for a violation of any misdemeanor charge, a sum not to exceed \$180;

2. For misdemeanor charges in a district court for violations of § 18.2-266, 18.2-266.1, 18.2-270, or 46.2-341.24, a sum not to exceed \$240, 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 \$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 for a charge of violation of probation for a violation of any misdemeanor charge specified in this subdivision, a sum not to exceed \$180;

3. For juvenile cases in a district court, 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 \$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;

4. In a circuit court (i) to defend a Class 1 felony charge, compensation for each appointed attorney in 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 any felony charge listed in § 18.2-35, 18.2-36, 18.2-36.1, 18.2-41, 18.2-51, 18.2-67.3, 18.2-79, 18.2-80, 18.2-370, 18.2-370.1, or 18.2-371.1, a sum not to exceed \$1,320, 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 except those listed in clause (i) or (ii), a sum not to exceed \$445 \$525,

60 provided that, notwithstanding the foregoing limitation, the court in its discretion, and subject to
61 guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the limitation
62 of fees up to an additional \$155 \$445 when the effort expended, the time reasonably necessary for the
63 particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a
64 waiver; ~~and~~ (iv) *for a charge of violation of probation for a violation of any felony charge, except Class*
65 *1 felonies, a sum not to exceed \$445;* (v) in the circuit court only, to defend any misdemeanor charge
66 punishable by confinement in jail ~~or a charge of violation of probation for such offense~~, a sum not to
67 exceed ~~\$158~~ \$440; (vi) *for a charge of violation of probation for a violation of any misdemeanor*
68 *charge, a sum not to exceed \$180; or (vii) for an appeal of a juvenile adjudication from a district court,*
69 *a sum not to exceed \$445.* In the event any case is required to be retried due to a mistrial for any cause
70 or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed
71 the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged
72 with a felony that is punishable as a Class 1 felony, each attorney appointed shall continue to receive
73 compensation as provided in this paragraph for defending such a felony, regardless of whether the
74 charge is reduced or amended to a lesser felony, prior to final disposition of the case. In the event
75 counsel is appointed to defend an indigent charged with any other felony, such counsel shall receive
76 compensation as provided in this paragraph for defending such a felony, regardless of whether the
77 charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of the case in
78 either the district court or circuit court.

79 Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders,
80 may request an additional waiver exceeding the amounts provided for in this section. The request for
81 any additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting
82 of the time spent and the justification for the additional amount. The presiding judge shall determine,
83 subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the
84 request for an additional amount is justified in whole or in part, by considering the effort expended and
85 the time reasonably necessary for the particular representation, and, if so, shall forward the request as
86 approved to the chief judge of the circuit court or district court for approval. If the presiding judge
87 determines that the request for an additional amount is not justified in whole or in part, such presiding
88 judge shall provide to the requesting attorney, in writing, the reasons for such determination and shall, if
89 such request has been approved in part, include a copy of such writing when forwarding the request as
90 approved to the chief judge of the circuit court or district court for approval. If the chief judge of the
91 circuit court or district court, upon review of the request as approved, determines, subject to the
92 guidelines issued by the Executive Secretary of the Supreme Court of Virginia, that any part of the
93 request for an additional amount is not justified, such chief judge shall provide to the requesting
94 attorney and to the presiding judge, in writing, the reason for such determination.

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

98 The circuit or district court shall direct the payment of such reasonable expenses incurred by such
99 court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed
100 by the court to represent an indigent charged with repeated violations of the same section of the Code of
101 Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall
102 be compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such
103 offenses are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines
104 established by the Supreme Court but shall have the sole discretion to fix the amount of compensation
105 to be paid counsel appointed by the court to defend a felony charge that is punishable as a Class 1
106 felony.

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

111 Counsel representing a defendant charged with a Class 1 felony may submit to the court, on a
112 monthly basis, a statement of all costs incurred and fees charged by him in the case during that month.
113 Whenever the total charges as are deemed reasonable by the court for which payment has not previously
114 been made or requested exceed \$1,000, the court may direct that payment be made as otherwise
115 provided in this section.

116 When such directive is entered upon the order book of the court, the Commonwealth, county, city, or
117 town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
118 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
119 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected,
120 the same shall be paid to the Commonwealth, or the county, city, or town, as the case may be. In the
121 event that counsel for the defendant requests a waiver of the limitations on compensation, the court shall

122 assess against the defendant an amount equal to the pre-waiver compensation limit specified in this
123 section for each charge for which the defendant was convicted. An abstract of such costs shall be
124 docketed in the judgment docket and execution lien book maintained by such court.

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

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

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