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## SENATE BILL NO. 356

Offered January 10, 2024

Prefiled January 9, 2024

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

Patrons—Perry and Carroll Foy

Referred to Committee for Courts of Justice

**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 below, 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~~ For misdemeanors in a district court, except as provided in subdivisions 2 and 3, a sum not to exceed ~~\$120~~ \$440, 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;

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 \$597, 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;

3. For juvenile cases in a district court, a sum not to exceed \$906, 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; and

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 any charge that may be punishable by confinement in the state correctional facility for a period of more than 20 years defined in subsection C of § 17.1-805, or a charge of violation of probation for such offense, a sum not to exceed ~~\$1,235~~ \$2,256, 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~~ \$1,112, provided that, notwithstanding the foregoing limitation, the court in its

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

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

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

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

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

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

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

120 Any statement submitted by an attorney for payments due him for indigent representation or for

121 representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be  
122 forwarded forthwith by the clerk to the Commonwealth, county, city or town, as the case may be,  
123 responsible for payment.

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

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