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HOUSE BILL NO. 2186

Offered January 23, 1995

A BILL to amend and reenact § 16.1-267 of the Code of Virginia, as it is currently effective and as it may become effective, and § 19.2-163 of the Code of Virginia, relating to fees for court-appointed counsel.

Patrons—Robinson and Almand

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-267 of the Code of Virginia, as it is currently effective and as it may become effective, and § 19.2-163 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-267. (For effective date - See note) Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in the amount awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed \$100/120 if the action is in circuit court or the maximum amount specified in subdivision (1) of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100/120 if the action is in circuit court or the maximum amount specified in subdivision (1) of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

§ 16.1-267. (Delayed effective date - See notes) Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to § 16.1-266 A and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parent for such legal services in the amount awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed \$100/120 if the action is in circuit court or the maximum amount specified in subdivision (1) of § 19.2-163 if the action is in family court.

When the court appoints counsel to represent a child pursuant to § 16.1-266 B and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100/120 if the action is in circuit court or the maximum amount specified in subdivision (1) of § 19.2-163 if the action is in family court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

§ 19.2-163. Compensation of court-appointed counsel.

Counsel appointed to represent an indigent accused in a criminal case shall be compensated for his services in an amount fixed by each of the courts in which he appears according to the time and effort expended by him in the particular case, not to exceed the amounts specified in the following schedule:

1. In a district court, a sum not to exceed \$100/120 or 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 without a requirement for accounting of time devoted thereto; thereafter, compensation for additional charges against the same accused also conducted by the

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60 same counsel shall be allowed on the basis of additional time expended as to such additional charges;

61 2. In a circuit court to defend a felony charge that may be punishable by death an amount deemed
62 reasonable by the court; and to defend a felony charge that may be punishable by confinement in the
63 state correctional facility for a period of more than twenty years, a sum not to exceed \$575 700; and to
64 defend any other felony charge, a sum not to exceed \$265 325; and to defend any misdemeanor charge
65 punishable by confinement in jail, a sum not to exceed \$132 160. In the event any case is required to be
66 retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee for
67 each case in an amount not to exceed the amounts allowable in the initial trial.

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

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

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

85 When such directive is entered upon the order book of the court, the Commonwealth, county, city or
86 town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
87 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
88 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected,
89 the same shall be paid to the Commonwealth, or the county, city or town, as the case may be. An
90 abstract of such costs shall be docketed in the judgment docket and execution lien book maintained by
91 such court.

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