

HOUSE BILL NO. 824

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations

on February 9, 2024)

(Patron Prior to Substitute--Delegate Cousins)

A BILL to amend and reenact §§ 19.2-163 and 19.2-163.4:1 of the Code of Virginia, relating to rate of fees; legal representation of indigent defendant.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-163 and 19.2-163.4:1 of the Code of Virginia are 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:

- 1. In a district court, a sum not to exceed \$120, 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

27 of violation of probation at any hearing conducted under § 19.2-306; thereafter, compensation for
28 additional charges against the same accused also conducted by the same counsel shall be allowed on the
29 basis of additional time expended as to such additional charges;

30 2. In a circuit court (i) to defend a Class 1 felony charge, compensation for each appointed attorney
31 in an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by
32 confinement in the state correctional facility for a period of more than 20 years, or a charge of violation
33 of probation for such offense, a sum not to exceed \$1,235, provided that, notwithstanding the foregoing
34 limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary of the
35 Supreme Court of Virginia, may waive the limitation of fees up to an additional \$850 when the effort
36 expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the
37 issues, or other circumstances warrant such a waiver; (iii) to defend any other felony charge, or a charge
38 of violation of probation for such offense, a sum not to exceed \$445, provided that, notwithstanding the
39 foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary
40 of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$155 when the
41 effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty
42 of the issues, or other circumstances warrant such a waiver; and (iv) in the circuit court only, to defend
43 any misdemeanor charge punishable by confinement in jail or a charge of violation of probation for such
44 offense, a sum not to exceed \$158. In the event any case is required to be retried due to a mistrial for any
45 cause or reversed on appeal, the court may allow an additional fee for each case in an amount not to exceed
46 the amounts allowable in the initial trial. In the event counsel is appointed to defend an indigent charged
47 with a felony that is punishable as a Class 1 felony, each attorney appointed shall continue to receive
48 compensation as provided in this paragraph for defending such a felony, regardless of whether the charge
49 is reduced or amended to a lesser felony, prior to final disposition of the case. In the event counsel is
50 appointed to defend an indigent charged with any other felony, such counsel shall receive compensation
51 as provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or
52 amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court
53 or circuit court.

54 Counsel appointed to represent an indigent accused in a criminal case, who are not public
55 defenders, may request an additional waiver exceeding the amounts provided for in this section. The
56 request for any additional amount shall be submitted to the presiding judge, in writing, with a detailed
57 accounting of the time spent and the justification for the additional amount. The presiding judge shall
58 determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia,
59 whether the request for an additional amount is justified in whole or in part, by considering the effort
60 expended and the time reasonably necessary for the particular representation, and, if so, shall forward the
61 request as approved to the chief judge of the circuit court or district court for approval. If the presiding
62 judge determines that the request for an additional amount is not justified in whole or in part, such
63 presiding judge shall provide to the requesting attorney, in writing, the reasons for such determination and
64 shall, if such request has been approved in part, include a copy of such writing when forwarding the
65 request as approved to the chief judge of the circuit court or district court for approval. If the chief judge
66 of the circuit court or district court, upon review of the request as approved, determines, subject to the
67 guidelines issued by the Executive Secretary of the Supreme Court of Virginia, that any part of the request
68 for an additional amount is not justified, such chief judge shall provide to the requesting attorney and to
69 the presiding judge, in writing, the reason for such determination.

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

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

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

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

90 When such directive is entered upon the order book of the court, the Commonwealth, county, city
91 or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
92 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
93 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the
94 same shall be paid to the Commonwealth, or the county, city or town, as the case may be. In the event that
95 counsel for the defendant requests a waiver of the limitations on compensation, the court shall assess
96 against the defendant an amount equal to the pre-waiver compensation limit specified in this section for
97 each charge for which the defendant was convicted. An abstract of such costs shall be docketed in the
98 judgment docket and execution lien book maintained by such court. Notwithstanding any provision to the
99 contrary, no person found indigent pursuant to § 19.2-159 shall have fees assessed against him for any
100 amount paid for his legal representation pursuant to this article in an amount greater than the amount such
101 defendant would have owed if the assessment took place on or before June 30, 2024.

102 Any statement submitted by an attorney for payments due him for indigent representation or for
103 representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded
104 forthwith by the clerk to the Commonwealth, county, city, or town, as the case may be, responsible for
105 payment. Notwithstanding any provision to the contrary, if the court has determined such child's parents
106 or other persons responsible for his care to be indigent pursuant to § 19.2-159, no fee shall be taxed by the

107 clerk against any such child in an amount greater than the amount the clerk would have taxed against such
108 child if the assessment took place on or before June 30, 2024.

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

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

120 **§ 19.2-163.4:1. Repayment of representation costs by convicted persons.**

121 In any case in which an attorney from a public defender office represents an indigent person
122 charged with an offense and such person is convicted, the sum that would have been allowed a court-
123 appointed attorney as compensation and as reasonable expenses shall be taxed against the person defended
124 as a part of the costs of the prosecution, and, if collected, shall be paid to the Commonwealth or, if payment
125 was made to the Commonwealth by a locality for defense of a local ordinance violation, to the appropriate
126 county, city or town. An abstract of such costs shall be docketed in the judgment lien docket and execution
127 book of the court. Notwithstanding any provision to the contrary, no person found indigent pursuant to §
128 19.2-159 shall have fees assessed against him for any amount paid for his legal representation pursuant to
129 this article in an amount greater than the amount such defendant would have owed if the assessment took
130 place on or before June 30, 2024.

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