

SENATE BILL NO. 356

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Senator Perry)

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 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 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~~

27 ~~committed by an adult that may be punishable by confinement in the state correctional facility for a period~~
28 ~~of more than 20 years, or a charge of violation of probation for such offense, when the effort expended,~~
29 ~~the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or~~
30 ~~other circumstances warrant such a waiver; or (iii) such other amount as may be provided by law. Such~~
31 ~~amount shall be allowed in any case wherein counsel conducts the defense of a single charge against the~~
32 ~~indigent through to its conclusion or a charge of violation of probation at any hearing conducted under §~~
33 ~~19.2-306; thereafter, compensation for additional charges against the same accused also conducted by the~~
34 ~~same counsel shall be allowed on the basis of additional time expended as to such additional charges for~~
35 a charge of violation of probation for a violation of any misdemeanor charge, a sum not to exceed \$180;

36 2. For misdemeanor charges in a district court for violations of § 18.2-266, 18.2-266.1, 18.2-270,
37 or 46.2-341.24, a sum not to exceed \$597, provided that, notwithstanding the foregoing limitation, the
38 court in its discretion and subject to guidelines issued by the Executive Secretary of the Supreme Court of
39 Virginia may waive the limitation of fees up to an additional \$120 when the effort expended, the time
40 reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other
41 circumstances warrant such a waiver or for a charge of violation of probation for a violation of any
42 misdemeanor charge specified in this subdivision, a sum not to exceed \$180;

43 3. For juvenile cases in a district court a sum not to exceed \$906, provided that, notwithstanding
44 the foregoing limitation, the court in its discretion and subject to guidelines issued by the Executive
45 Secretary of the Supreme Court of Virginia may waive the limitation of fees up to an additional \$120
46 when the effort expended, the time reasonably necessary for the particular representation, the novelty and
47 difficulty of the issues, or other circumstances warrant such a waiver;

48 4. In a circuit court (i) to defend a Class 1 felony charge, compensation for each appointed attorney
49 in an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by
50 confinement in the state correctional facility for a period of more than 20 years; or a charge of violation
51 of probation for such offense, a sum not to exceed \$1,235 any felony charge listed in § 18.2-35, 18.2-36,
52 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
53 to exceed \$2,256, provided that, notwithstanding the foregoing limitation, the court in its discretion; and

54 subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, may waive the
55 limitation of fees up to an additional \$850 when the effort expended, the time reasonably necessary for
56 the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such
57 a waiver; (iii) to defend any other felony charge, ~~or a charge of violation of probation for such offense~~
58 except those listed in clause (i) or (ii), a sum not to exceed ~~\$445~~ \$1,112, provided that, notwithstanding
59 the foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive
60 Secretary of the Supreme Court of Virginia, may waive the limitation of fees up to an additional ~~\$155~~
61 \$445 when the effort expended, the time reasonably necessary for the particular representation, the novelty
62 and difficulty of the issues, or other circumstances warrant such a waiver; ~~and~~ (iv) for a charge of violation
63 of probation for a violation of any felony charge, except Class 1 felonies, a sum not to exceed \$445; (v)
64 in the circuit court only, to defend any misdemeanor charge punishable by confinement in jail or a charge
65 of violation of probation for such offense, a sum not to exceed ~~\$158~~ \$440; or (vi) for a charge of violation
66 of probation for a violation of any misdemeanor charge, a sum not to exceed \$180. In the event any case
67 is required to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an
68 additional fee for each case in an amount not to exceed the amounts allowable in the initial trial. In the
69 event counsel is appointed to defend an indigent charged with a felony that is punishable as a Class 1
70 felony, each attorney appointed shall continue to receive compensation as provided in this paragraph for
71 defending such a felony, regardless of whether the charge is reduced or amended to a lesser felony, prior
72 to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any
73 other felony, such counsel shall receive compensation as provided in this paragraph for defending such a
74 felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to
75 final disposition of the case in either the district court or circuit court.

76 Counsel appointed to represent an indigent accused in a criminal case, who are not public
77 defenders, may request an additional waiver exceeding the amounts provided for in this section. The
78 request for any additional amount shall be submitted to the presiding judge, in writing, with a detailed
79 accounting of the time spent and the justification for the additional amount. The presiding judge shall
80 determine, subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia,

81 whether the request for an additional amount is justified in whole or in part, by considering the effort
82 expended and the time reasonably necessary for the particular representation, and, if so, shall forward the
83 request as approved to the chief judge of the circuit court or district court for approval. If the presiding
84 judge determines that the request for an additional amount is not justified in whole or in part, such
85 presiding judge shall provide to the requesting attorney, in writing, the reasons for such determination and
86 shall, if such request has been approved in part, include a copy of such writing when forwarding the
87 request as approved to the chief judge of the circuit court or district court for approval. If the chief judge
88 of the circuit court or district court, upon review of the request as approved, determines, subject to the
89 guidelines issued by the Executive Secretary of the Supreme Court of Virginia, that any part of the request
90 for an additional amount is not justified, such chief judge shall provide to the requesting attorney and to
91 the presiding judge, in writing, the reason for such determination.

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

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

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

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

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

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

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

130 Effective July 1, 2007, the Executive Secretary of the Supreme Court of Virginia shall track and
131 report the number and category of offenses charged involving adult and juvenile offenders in cases in
132 which court-appointed counsel is assigned. The Executive Secretary shall also track and report the
133 amounts paid by waiver above the initial cap to court-appointed counsel. The Executive Secretary shall

134 provide these reports to the Governor, members of the House Committee on Appropriations, and members
135 of the Senate Committee on Finance and Appropriations on a quarterly basis.

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