

SENATE BILL NO. 356

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

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~~ \$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~~

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 \$240, 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 \$445, 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 \$1,320, 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~~ \$525, provided that, notwithstanding the  
59 foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary  
60 of the Supreme Court of Virginia, may waive the limitation of fees up to an additional ~~\$155~~ \$445 when  
61 the effort expended, the time reasonably necessary for the particular representation, the novelty and  
62 difficulty of the issues, or other circumstances warrant such a waiver; ~~and~~ (iv) for a charge of violation of  
63 probation for a violation of any felony charge, except Class 1 felonies, a sum not to exceed \$445; (v) in  
64 the circuit court only, to defend any misdemeanor charge punishable by confinement in jail or a charge of  
65 violation of probation for such offense, a sum not to exceed ~~\$158~~ \$440; (vi) for a charge of violation of  
66 probation for a violation of any misdemeanor charge, a sum not to exceed \$180; or (vii) for an appeal of  
67 a juvenile adjudication from a district court, a sum not to exceed \$445. In the event any case is required  
68 to be retried due to a mistrial for any cause or reversed on appeal, the court may allow an additional fee  
69 for each case in an amount not to exceed the amounts allowable in the initial trial. In the event counsel is  
70 appointed to defend an indigent charged with a felony that is punishable as a Class 1 felony, each attorney  
71 appointed shall continue to receive compensation as provided in this paragraph for defending such a  
72 felony, regardless of whether the charge is reduced or amended to a lesser felony, prior to final disposition  
73 of the case. In the event counsel is appointed to defend an indigent charged with any other felony, such  
74 counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless  
75 of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition  
76 of the case in either the district court or circuit court.

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

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

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

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

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

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

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

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

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

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

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

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