

HOUSE BILL NO. 102

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance and Appropriations

on _____)

(Patron Prior to Substitute--Delegate Reaser)

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~~ this section, 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 subdivision 2, (i) a sum not to exceed \$240 or (ii) for a charge of violation of probation for any misdemeanor offense, a sum not to exceed \$180, 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 provided under clause (i) or (ii) 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

27 such a waiver or (ii) an amount up to \$650 to defend, in the case of a juvenile, an offense that would be a
28 felony if committed by an adult that may be punishable by confinement in the state correctional facility
29 for a period of more than 20 years, or a charge of violation of probation for such offense, when the effort
30 expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the
31 issues, or other circumstances warrant such a waiver; or (iii) such other amount as may be provided by
32 law. Such amount shall be allowed in any case wherein counsel conducts the defense of a single charge
33 against the indigent through to its conclusion or a charge of violation of probation at any hearing conducted
34 under § 19.2-306; thereafter, compensation for additional charges against the same accused also conducted
35 by the same counsel shall be allowed on the basis of additional time expended as to such additional
36 charges;

37 2. For a juvenile charge in a district court, (i) a sum not to exceed \$445 or (ii) for a charge of
38 violation of probation for any offense, a sum not to exceed \$180, 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 provided under clause (i) or (ii) up to
41 (a) an additional \$120 or (b) an additional \$650 for an offense that would be a felony if committed by an
42 adult that may be punishable by confinement in the state correctional facility for a period of more than 20
43 years or a charge of violation of probation for such offense, when the effort expended, the time reasonably
44 necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances
45 warrant such a waiver;

46 3. In a circuit court (i) to defend a Class 1 felony charge, compensation for each appointed attorney
47 in an amount deemed reasonable by the court; (ii) to defend a felony charge that may be punishable by
48 confinement in the state correctional facility for a period of more than 20 years; or a charge of violation
49 of probation for such offense, a sum not to exceed \$1,235 any felony charge listed in § 18.2-35, 18.2-36,
50 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
51 to exceed \$1,320, provided that, notwithstanding the foregoing limitation, the court in its discretion; and
52 subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia; may waive the
53 limitation of fees up to an additional \$850 when the effort expended, the time reasonably necessary for

54 the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such
55 a waiver; (iii) to defend any other felony charge, ~~or a charge of violation of probation for such offense~~
56 except those listed in clause (i) or (ii), a sum not to exceed \$445 \$525, provided that, notwithstanding the
57 foregoing limitation, the court in its discretion, and subject to guidelines issued by the Executive Secretary
58 of the Supreme Court of Virginia, may waive the limitation of fees up to an additional \$155 \$445 when
59 the effort expended, the time reasonably necessary for the particular representation, the novelty and
60 difficulty of the issues, or other circumstances warrant such a waiver; and (iv) ~~in the circuit court only, for~~
61 a charge of violation of probation for any felony offense, except Class 1 felonies, a sum not to exceed
62 \$445, provided that, notwithstanding the foregoing limitation, the court in its discretion and subject to
63 guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation
64 of fees up to (a) an additional \$850 for a charge of violation of probation for any felony described in clause
65 (ii) or (b) an additional \$155 for a charge of violation of probation of any other felony, when the effort
66 expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the
67 issues, or other circumstances warrant such a waiver; (v) to defend any misdemeanor charge punishable
68 by confinement in jail ~~or a charge of violation of probation for such offense~~, a sum not to exceed \$158
69 \$240; (vi) for a charge of violation of probation for any misdemeanor offense, a sum not to exceed \$180;
70 or (vii) for an appeal of a juvenile adjudication from a district court, a sum not to exceed \$445. In the
71 event any case is required to be retried due to a mistrial for any cause or reversed on appeal, the court may
72 allow an additional fee for each case in an amount not to exceed the amounts allowable in the initial trial.
73 In the event counsel is appointed to defend an indigent charged with a felony that is punishable as a Class
74 1 felony, each attorney appointed shall continue to receive compensation as provided in this paragraph for
75 defending such a felony, regardless of whether the charge is reduced or amended to a lesser felony, prior
76 to final disposition of the case. In the event counsel is appointed to defend an indigent charged with any
77 other felony, such counsel shall receive compensation as provided in this paragraph for defending such a
78 felony, regardless of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to
79 final disposition of the case in either the district court or circuit court.

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

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

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

107 The circuit or district court shall direct that the foregoing payments shall be paid out by the
108 Commonwealth, if the defendant is charged with a violation of a statute, or by the county, city₂ or town,
109 if the defendant is charged with a violation of a county, city₂ or town ordinance, to the attorney so
110 appointed to defend such person as compensation for such defense.

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

116 When such directive is entered upon the order book of the court, the Commonwealth, county, city₂,
117 or town, as the case may be, shall provide for the payment out of its treasury of the sum of money so
118 specified. If the defendant is convicted, the amount allowed by the court to the attorney appointed to
119 defend him shall be taxed against the defendant as a part of the costs of prosecution and, if collected, the
120 same shall be paid to the Commonwealth, or the county, city₂ or town, as the case may be. In the event
121 that counsel for the defendant requests a waiver of the limitations on compensation, the court shall assess
122 against the defendant an amount equal to the pre-waiver compensation limit specified in this section for
123 each charge for which the defendant was convicted. An abstract of such costs shall be docketed in the
124 judgment docket and execution lien book maintained by such court.

125 Any statement submitted by an attorney for payments due him for indigent representation or for
126 representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded
127 forthwith by the clerk to the Commonwealth, county, city₂ or town, as the case may be, responsible for
128 payment.

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

