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HOUSE BILL NO. 847
Offered January 10, 2024
Prefiled January 9, 2024

A *BILL to amend and reenact §§ 19.2-160.1 and 19.2-163 of the Code of Virginia, relating to appointment of counsel for accused; felonies punishable by a mandatory minimum term of confinement for life.*

Patron—Davis

Referred to Committee on Criminal

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-160.1 and 19.2-163 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-160.1. Appointment of counsel in Class 1 felony cases or cases involving a felony punishable by a mandatory minimum term of confinement for life.

A. In any case in which an indigent defendant is charged with a Class 1 felony *or any felony punishable by a mandatory minimum term of confinement for life* in a jurisdiction in which a public defender office is established, the court shall, upon request for the appointment of counsel and in the absence of a conflict, appoint such public defender office to represent the defendant. Upon motion of the attorney from a public defender office, the judge of the circuit court shall appoint a competent, qualified, and experienced attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to serve as co-counsel.

If the public defender notifies the court of a conflict and withdraws from representation, and the court had appointed one additional counsel to assist the public defender's office, then upon the withdrawal of the public defender's office the court shall appoint one additional competent, qualified, and experienced attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to serve as co-counsel for the defendant.

B. In any case in which an indigent defendant is charged with a Class 1 felony *or any felony punishable by a mandatory minimum term of confinement for life* in a jurisdiction in which there is no public defender, upon request for the appointment of counsel, the court shall appoint two competent, qualified, and experienced attorneys, from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to serve as co-counsels for the defendant.

§ 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 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;

2. In a circuit court (i) to defend a Class 1 felony charge *or any felony charge punishable by a mandatory minimum term of confinement for life*, compensation for each appointed attorney in an amount deemed reasonable by the court; (ii) to defend a felony charge 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, a sum not to exceed \$1,235, 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 an additional \$850 when the effort expended, the time reasonably necessary for the particular representation, the novelty and difficulty of the issues, or other circumstances warrant such

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

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

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

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

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 the
105 defendant is charged with a violation of a county, city or town ordinance, to the attorney so appointed to
106 defend such person as compensation for such defense.

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

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

120 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 to
128 appear and remains a fugitive from justice for one year following the issuance of the capias or the summons
129 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 report the
131 number and category of offenses charged involving adult and juvenile offenders in cases in which court-
132 appointed counsel is assigned. The Executive Secretary shall also track and report the amounts paid by
133 waiver above the initial cap to court-appointed counsel. The Executive Secretary shall provide these reports
134 to the Governor, members of the House Committee on Appropriations, and members of the Senate
135 Committee on Finance and Appropriations on a quarterly basis.

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