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HOUSE BILL NO. 2322

Offered January 13, 2025

Prefiled January 8, 2025

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.

Patrons—Davis, Lovejoy and Owen

Referred to Committee for Courts of Justice

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 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 subdivisions 2 and 3, (i) a sum not to exceed \$330 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 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;

2. For a misdemeanor charge in a district court for a violation of § 18.2-266, 18.2-266.1, 18.2-270, or 46.2-341.24, (i) a sum not to exceed \$448 or (ii) for a charge of violation of probation for such a 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 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;

3. For a juvenile charge in a district court, (i) a sum not to exceed \$680 or (ii) for a charge of violation of probation for any 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 (a) an additional \$120 or (b) an additional \$650 for an offense that would be a felony if committed by an adult that may be punishable by

59 confinement in the state correctional facility for a period of more than 20 years or a charge of violation of  
60 probation for such offense when the effort expended, the time reasonably necessary for the particular  
61 representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver;

62 4. In a circuit court (i) to defend a Class 1 felony charge *or any felony charge punishable by a mandatory*  
63 *minimum term of confinement for life*, compensation for each appointed attorney in an amount deemed  
64 reasonable by the court; (ii) to defend a felony charge that may be punishable by confinement in the state  
65 correctional facility for a period of more than 20 years or any felony violation of § 18.2-35, 18.2-36,  
66 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 to  
67 exceed \$1,692, provided that, notwithstanding the foregoing limitation, the court in its discretion and subject  
68 to guidelines issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation of  
69 fees up to an additional \$850 when the effort expended, the time reasonably necessary for the particular  
70 representation, the novelty and difficulty of the issues, or other circumstances warrant such a waiver; (iii) to  
71 defend any other felony charge, except those described in clause (i) or (ii), a sum not to exceed \$834,  
72 provided that, notwithstanding the foregoing limitation, the court in its discretion and subject to guidelines  
73 issued by the Executive Secretary of the Supreme Court of Virginia may waive the limitation of fees up to an  
74 additional \$155 when the effort expended, the time reasonably necessary for the particular representation, the  
75 novelty and difficulty of the issues, or other circumstances warrant such a waiver; (iv) for a charge of  
76 violation of probation for any felony offense, except Class 1 felonies *or felonies punishable by a mandatory*  
77 *minimum term of confinement for life*, a sum not to exceed \$445, provided that, notwithstanding the foregoing  
78 limitation, the court in its discretion and subject to guidelines issued by the Executive Secretary of the  
79 Supreme Court of Virginia may waive the limitation of fees up to (a) an additional \$850 for a charge of  
80 violation of probation for any felony described in clause (ii) or (b) an additional \$155 for a charge of  
81 violation of probation of any other felony when the effort expended, the time reasonably necessary for the  
82 particular representation, the novelty and difficulty of the issues, or other circumstances warrant such a  
83 waiver; (v) to defend a misdemeanor violation of § 18.2-266, 18.2-266.1, 18.2-270, or 46.2-341.24, a sum not  
84 to exceed \$448 and to defend any other misdemeanor charge punishable by confinement in jail, a sum not to  
85 exceed \$330; (vi) for a charge of violation of probation for any misdemeanor offense, a sum not to exceed  
86 \$180; (vii) for a juvenile adjudication appealed from a district court, a sum not to exceed \$680; or (viii) for a  
87 charge of violation of probation for any juvenile adjudication appealed from a district court, a sum not to  
88 exceed \$180. In the event any case is required to be retried due to a mistrial for any cause or reversed on  
89 appeal, the court may allow an additional fee for each case in an amount not to exceed the amounts allowable  
90 in the initial trial. In the event counsel is appointed to defend an indigent charged with a felony that is  
91 punishable as a Class 1 felony *or any felony punishable by a mandatory minimum term of confinement for life*  
92 , each attorney appointed shall continue to receive compensation as provided in this paragraph for defending  
93 such a felony, regardless of whether the charge is reduced or amended to a lesser felony, prior to final  
94 disposition of the case. In the event counsel is appointed to defend an indigent charged with any other felony,  
95 such counsel shall receive compensation as provided in this paragraph for defending such a felony, regardless  
96 of whether the charge is reduced or amended to a misdemeanor or lesser felony prior to final disposition of  
97 the case in either the district court or circuit court.

98 Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may  
99 request an additional waiver exceeding the amounts provided for in this section. The request for any  
100 additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting of the time  
101 spent and the justification for the additional amount. The presiding judge shall determine, subject to  
102 guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the request for an  
103 additional amount is justified in whole or in part, by considering the effort expended and the time reasonably  
104 necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge  
105 of the circuit court or district court for approval. If the presiding judge determines that the request for an  
106 additional amount is not justified in whole or in part, such presiding judge shall provide to the requesting  
107 attorney, in writing, the reasons for such determination and shall, if such request has been approved in part,  
108 include a copy of such writing when forwarding the request as approved to the chief judge of the circuit court  
109 or district court for approval. If the chief judge of the circuit court or district court, upon review of the request  
110 as approved, determines, subject to the guidelines issued by the Executive Secretary of the Supreme Court of  
111 Virginia, that any part of the request for an additional amount is not justified, such chief judge shall provide  
112 to the requesting attorney and to the presiding judge, in writing, the reason for such determination.

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

116 The circuit or district court shall direct the payment of such reasonable expenses incurred by such  
117 court-appointed counsel as it deems appropriate under the circumstances of the case. Counsel appointed by  
118 the court to represent an indigent charged with repeated violations of the same section of the Code of  
119 Virginia, with each of such violations arising out of the same incident, occurrence, or transaction, shall be

120 compensated in an amount not to exceed the fee prescribed for the defense of a single charge, if such offenses  
 121 are tried as part of the same judicial proceeding. The trial judge shall consider any guidelines established by  
 122 the Supreme Court but shall have the sole discretion to fix the amount of compensation to be paid counsel  
 123 appointed by the court to defend a felony charge that is punishable as a Class 1 felony *or any felony*  
 124 *punishable by a mandatory minimum term of confinement for life.*

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

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

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

146 Any statement submitted by an attorney for payments due him for indigent representation or for  
 147 representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded  
 148 forthwith by the clerk to the Commonwealth, county, city, or town, as the case may be, responsible for  
 149 payment. Notwithstanding any provision to the contrary, if the court has determined such child's parents or  
 150 other persons responsible for his care to be indigent pursuant to § 19.2-159, no fee shall be taxed by the clerk  
 151 against any such child in an amount greater than the amount the clerk would have taxed against such child if  
 152 the assessment took place on or before June 30, 2024.

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

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