

HOUSE BILL NO. 852
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Appropriations
on _____)
(Patron Prior to Substitute— Delegate Cousins)

A BILL to amend and reenact §§ 16.1-266, 16.1-267, 17.1-275.5, 19.2-159, 19.2-163, 19.2-163.4:1, and 19.2-336 of the Code of Virginia, relating to abolition of fees; legal representation of indigent defendant; jury trial costs.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-266, 16.1-267, 17.1-275.5, 19.2-159, 19.2-163, 19.2-163.4:1, and 19.2-336 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-266. Appointment of counsel and guardian ad litem.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention hearing held pursuant to § 16.1-250, the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. For the purposes of appointment of counsel for the detention hearing held pursuant to § 16.1-250 only, a child's indigence shall be presumed. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.

C. Subsequent to the detention hearing, if any, and prior to the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision, or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel ~~and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267~~ and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or
2. Request that the court appoint counsel, provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court shall determine that the child is indigent

within the contemplation of the law pursuant to guidelines set forth in § 19.2-159 by requiring the child's parent, guardian, legal custodian or other person standing in loco parentis to complete a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement, and upon determination of indigence the court shall appoint an attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent the child; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. A child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.

D. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.

Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or guardian.

E. In those cases described in subsections A, B, C and D, which in the discretion of the court require counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult party in addition to the representation provided in those subsections, a discreet and competent attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

F. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law may be appointed by the court. However, in cases where the custody of a child or children is the subject of controversy or requires determination and each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented.

G. Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit a guardian ad litem or counsel for the child appointed pursuant to this section to inspect and copy, without the consent of the child or his parents, any records relating to the child whom the guardian or counsel represents upon presentation by him of a copy of the court order appointing him or a court order specifically allowing him such access. Upon request therefor by the guardian ad litem or counsel for the child made at least 72 hours in advance, a mental health care provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the

attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian, or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163. When the court appoints counsel to represent a parent, guardian, or other adult pursuant to § 16.1-266 in a child dependency case as defined in § 16.1-266.1, such counsel shall be compensated for his services in an amount not to exceed \$330, except that in matters arising under § 16.1-283, such counsel shall be compensated for his services in an amount not to exceed \$680. Notwithstanding the foregoing, no court may waive the limitation of fees as set forth therein.

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266, the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement ~~except where the court finds good cause to do so~~. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court may adjust the cost sought by the guardian ad litem of such services.

3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

§ 17.1-275.5. Amounts to be added; judgment in favor of the Commonwealth.

A. The clerk shall assess, in addition to the fees provided for by § 17.1-275.1, 17.1-275.2, 17.1-275.3,

17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, 17.1-275.11, 17.1-275.11:1, or 17.1-275.12, the following costs:

- ~~1. Any amount paid by the Commonwealth for legal representation of the defendant;~~
- ~~2. Any amount paid for trial transcripts;~~
- ~~3. 2. Extradition costs;~~
- ~~4. 3. Costs of psychiatric evaluation;~~
- ~~5. 4. Costs taxed against the defendant as appellant under Rule 5A:30 of the Rules of the Supreme Court;~~
- ~~6. 5. Any fee for a returned check or disallowed credit card charge assessed pursuant to subdivision A 28 of § 17.1-275;~~
- ~~7. Any jury costs;~~
- ~~8. 6. Any assessment made pursuant to subdivision A 10 of § 17.1-275;~~
- ~~9. 7. Any fees prescribed in §§ 18.2-268.8 and 46.2-341.26;8;~~
- ~~10. 8. Any court costs related to an ignition interlock device;~~
- ~~11. 9. Any fee for testing for HIV;~~
- ~~12. 10. Any fee for processing an individual admitted to jail as prescribed in § 15.2-1613.1;~~
- ~~13. 11. Any fee for courthouse security personnel as prescribed in § 53.1-120;~~
- ~~14. 12. Any fee for a DNA sample as prescribed in § 19.2-310.2;~~
- ~~15. 13. Reimbursement to the Commonwealth of medical fees as prescribed in § 19.2-165.1;~~
- ~~16. 14. Any fee for a local criminal justice training academy as prescribed in § 9.1-106;~~
- ~~17. 15. Any fee prescribed by §§ 16.1-69.48:1.01 and 17.1-275.11;~~
- ~~18. 16. Any expenses charged pursuant to subsection B or F of § 19.2-187.1; and~~
- ~~19. 17. Any fee for an electronic summons system as prescribed in § 17.1-279.1.~~

B. The total amount of assessments described in subsection A, including (i) the fees provided for by § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, 17.1-275.11, 17.1-275.11:1, or 17.1-275.12 and (ii) all other fines and costs, shall be docketed by the clerk as a judgment against the defendant in favor of the Commonwealth in accordance with § 8.01-446.

C. No fee shall be assessed to the defendant for any amount paid by the Commonwealth or the locality for legal representation of the defendant.

§ 19.2-159. Determination of indigency; guidelines; statement of indigence; appointment of counsel.

A. If the accused shall claim that he is indigent, and the charge against him is a criminal offense that may be punishable by confinement in the state correctional facility or jail, subject to the provisions of § 19.2-160,

154 the court shall determine from oral examination of the accused or other competent evidence whether or not
155 the accused is indigent within the contemplation of law pursuant to the guidelines set forth in this section.

156 B. In making its finding, the court shall determine whether or not the accused is a current recipient of a
157 state or federally funded public assistance program for the indigent. If the accused is a current recipient of
158 such a program and does not waive his right to counsel or retain counsel on his own behalf, he shall be
159 presumed eligible for the appointment of counsel. This presumption shall be rebuttable where the court finds
160 that a more thorough examination of the financial resources of the defendant is necessary. If the accused shall
161 claim to be indigent and is not presumptively eligible under the provisions of this section, then a thorough
162 examination of the financial resources of the accused shall be made with consideration given to the
163 following:

164 1. The net income of the accused, which shall include his total salary and wages minus deductions
165 required by law. The court also shall take into account income and amenities from other sources including but
166 not limited to social security funds, union funds, veteran's benefits, other regular support from an absent
167 family member, public or private employee pensions, dividends, interests, rents, estates, trusts, or gifts.

168 2. All assets of the accused which are convertible into cash within a reasonable period of time without
169 causing substantial hardship or jeopardizing the ability of the accused to maintain home and employment.
170 Assets shall include all cash on hand as well as in checking and savings accounts, stocks, bonds, certificates
171 of deposit, and tax refunds. All personal property owned by the accused which is readily convertible into cash
172 shall be considered, except property exempt from attachment. Any real estate owned by the accused shall be
173 considered in terms of the amounts which could be raised by a loan on the property. For purposes of
174 eligibility determination, the income, assets, and expenses of the spouse, if any, who is a member of the
175 accused's household, shall be considered, unless the spouse was the victim of the offense or offenses
176 allegedly committed by the accused.

177 3. Any exceptional expenses of the accused and his family which would, in all probability, prohibit him
178 from being able to secure private counsel. Such items shall include but not be limited to costs for medical
179 care, family support obligations, and child care payments.

180 The available funds of the accused shall be calculated as the sum of his total income and assets less the
181 exceptional expenses as provided in the first paragraph of this subdivision 3. If the accused does not waive
182 his right to counsel or retain counsel on his own behalf, counsel shall be appointed for the accused if his

available funds are equal to or below 125 percent of the federal poverty income guidelines prescribed for the size of the household of the accused by the federal Department of Health and Human Services. The Supreme Court of Virginia shall be responsible for distributing to all courts the annual updates of the federal poverty income guidelines made by the Department.

If the available funds of the accused exceed 125 percent of the federal poverty income guidelines and the accused fails to employ counsel and does not waive his right to counsel, the court may, in exceptional circumstances, and where the ends of justice so require, appoint an attorney to represent the accused. However, in making such appointments, the court shall state in writing its reasons for so doing. The written statement by the court shall be included in the permanent record of the case.

C. If the court determines that the accused is indigent as contemplated by law pursuant to the guidelines set forth in this section, the court shall provide the accused with a statement which shall contain the following:

"I have been advised this _____ day of _____, 20____, by the (name of court) court of my right to representation by counsel in the trial of the charge pending against me; I certify that I am without means to employ counsel and I hereby request the court to appoint counsel for me."

_____ (signature of accused)

The court shall also require the accused to complete a written financial statement to support the claim of indigency and to permit the court to determine whether or not the accused is indigent within the contemplation of law. The accused shall execute the said statements under oath, and the said court shall appoint competent counsel to represent the accused in the proceeding against him, including an appeal, if any, until relieved or replaced by other counsel.

The executed statements by the accused and the order of appointment of counsel shall be filed with and become a part of the record of such proceeding.

All other instances in which the appointment of counsel is required for an indigent shall be made in accordance with the guidelines prescribed in this section.

D. Except in jurisdictions having a public defender, or unless (i) the public defender is unable to represent the defendant by reason of conflict of interest; (ii) the court finds that appointment of other counsel is necessary to attain the ends of justice; or (iii) the public defender, with the concurrence of the executive director of the Virginia Indigent Defense Commission or his designee, determines that the current active

caseload would preclude the public defender from providing adequate representation to new clients, counsel appointed by the court for representation of the accused shall be selected by a fair system of rotation among members of the bar practicing before the court whose names are on the list maintained by the Virginia Indigent Defense Commission pursuant to § 19.2-163.01. If no attorney who is on the list maintained by the Virginia Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience. The court shall provide notice to the Commission of the appointment of the attorney.

E. No person shall have fees assessed against him for any amount paid by the Commonwealth or the locality for legal representation.

§ 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 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;

4. In a circuit court (i) to defend a Class 1 felony charge, 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 any felony violation of § 18.2-35, 18.2-36, 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 exceed \$1,692, 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 a waiver; (iii) to defend any other felony charge, except those described in clause (i) or (ii), a sum not to exceed \$834, 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 \$155 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; (iv) for a charge of violation of probation for any felony offense, except Class 1 felonies, a sum not to exceed \$445, 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 (a) an additional \$850 for a charge of violation of probation for any felony described in clause (ii) or (b) an additional \$155 for a charge of violation of probation of any other felony 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; (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 to exceed \$448 and to defend any other misdemeanor charge punishable by confinement in jail, a sum not to exceed \$330; (vi) for a charge of violation of probation for any

274 misdemeanor offense, a sum not to exceed \$180; (vii) for a juvenile adjudication appealed from a district
275 court, a sum not to exceed \$680; or (viii) for a charge of violation of probation for any juvenile adjudication
276 appealed from a district court, a sum not to exceed \$180. In the event any case is required to be retried due to
277 a mistrial for any cause or reversed on appeal, the court may allow an additional fee for each case in an
278 amount not to exceed the amounts allowable in the initial trial. In the event counsel is appointed to defend an
279 indigent charged with a felony that is punishable as a Class 1 felony, each attorney appointed shall continue
280 to receive compensation as provided in this paragraph for defending such a felony, regardless of whether the
281 charge is reduced or amended to a lesser felony, prior to final disposition of the case. In the event counsel is
282 appointed to defend an indigent charged with any other felony, such counsel shall receive compensation as
283 provided in this paragraph for defending such a felony, regardless of whether the charge is reduced or
284 amended to a misdemeanor or lesser felony prior to final disposition of the case in either the district court or
285 circuit court.

286 Counsel appointed to represent an indigent accused in a criminal case, who are not public defenders, may
287 request an additional waiver exceeding the amounts provided for in this section. The request for any
288 additional amount shall be submitted to the presiding judge, in writing, with a detailed accounting of the time
289 spent and the justification for the additional amount. The presiding judge shall determine, subject to
290 guidelines issued by the Executive Secretary of the Supreme Court of Virginia, whether the request for an
291 additional amount is justified in whole or in part, by considering the effort expended and the time reasonably
292 necessary for the particular representation, and, if so, shall forward the request as approved to the chief judge
293 of the circuit court or district court for approval. If the presiding judge determines that the request for an
294 additional amount is not justified in whole or in part, such presiding judge shall provide to the requesting
295 attorney, in writing, the reasons for such determination and shall, if such request has been approved in part,
296 include a copy of such writing when forwarding the request as approved to the chief judge of the circuit court
297 or district court for approval. If the chief judge of the circuit court or district court, upon review of the request
298 as approved, determines, subject to the guidelines issued by the Executive Secretary of the Supreme Court of
299 Virginia, that any part of the request for an additional amount is not justified, such chief judge shall provide
300 to the requesting attorney and to the presiding judge, in writing, the reason for such determination.

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

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

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

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

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

Any statement submitted by an attorney for payments due him for indigent representation or for representation of a child pursuant to § 16.1-266 shall, after the submission of the statement, be forwarded

forthwith by the clerk to the Commonwealth, county, city, or town, as the case may be, responsible for payment. ~~Notwithstanding any provision to the contrary, if the court has determined such child's parents or other persons responsible for his care to be indigent pursuant to § 19.2-159 and such child was represented by either a public defender or court-appointed counsel, no fee shall be taxed by the clerk against any such child in an amount greater than the amount the clerk would have taxed against such child if the assessment took place on or before June 30, 2024. No such amount allowed by the court to the attorney appointed to defend such child shall be taxed against him as part of the costs of prosecution.~~

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

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

§ 19.2-163.4:1. Repayment of representation costs by convicted persons.

In any case in which an attorney from a public defender office represents an indigent person charged with an offense and such person is convicted, the sum that would have been allowed a court-appointed attorney as compensation and as reasonable expenses shall *not* be taxed against the person defended as a part of the costs of the prosecution; ~~and, if collected, shall be paid to the Commonwealth or, if payment was made to the Commonwealth by a locality for defense of a local ordinance violation, to the appropriate county, city or town. An abstract of such costs shall be docketed in the judgment lien docket and execution book of the court.~~

§ 19.2-336. Clerk to make up statement of whole cost, and issue execution therefor.

In every criminal case the clerk of the circuit court in which the accused is found guilty or is placed on probation during deferral of the proceedings pursuant to § 16.1-278.8, 16.1-278.9, 18.2-61, 18.2-67.1, 18.2-67.2, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6 or, if the conviction is in a district court, the

clerk to which the judge thereof certifies as aforesaid, shall, as soon as may be, make up a statement of all the expenses incident to the prosecution, including such as are certified under § 19.2-335, and execution for the amount of such expenses shall be issued and proceeded with. Chapter 21 (§ 19.2-339 et seq.) shall apply thereto in like manner as if, on the day of completing the statement, there was a judgment in such court in favor of the Commonwealth against the accused for such amount as a fine. ~~However, in any case in which an accused waives trial by jury, at least 10 days before trial, but the Commonwealth or the court trying the case refuses to so waive, then the cost of the jury shall not be included in such statement or judgment recorded pursuant to § 17.1-275.5~~ *However, in no case shall such statement of the expenses incident to the prosecution include any (i) amount paid by the Commonwealth or the locality for legal representation for the accused or (ii) jury costs associated with the prosecution of the accused.*

2. That the provisions of the first enactment of this act shall not become effective unless reenacted by the 2027 Session of the General Assembly and the 2028 Session of the General Assembly.

3. That the Indigent Defense Commission, in consultation with the Executive Secretary of the Supreme Court or his designee, shall convene a work group composed of all relevant stakeholders, including the Attorney General or his designee and representatives from the Compensation Board, the Virginia State Crime Commission, the Virginia Joint Legislative Audit and Review Commission, the Virginia Court Clerk's Association, the Virginia Association of Commonwealth's Attorneys, the Virginia Probation and Parole Association, staff from the House Appropriations and Senate Finance and Appropriations Committees, and two criminal justice reform organizations that work on fees and other financial assessments imposed in criminal prosecutions in Virginia. The work group shall examine issues surrounding fees and other financial assessments imposed in criminal prosecutions, including (i) identifying current collections practices for all fees assessed to defendants, including (a) amounts assessed and collected by type of offense, (b) any guidelines or data related to the fees assessed for various types of cases, (c) the allocation between state and local reimbursement, and (d) available data on the imposition of interest, collection costs, and other additional costs on delinquent accounts; (ii) determining the use of funds received as a result of fee payments, including determining any programs such funds support, and the programs' reliance on such funds; (iii) evaluating the burden of a fee assessment on indigent individuals; (iv) identifying practices used by other states to avoid, eliminate, or lessen public defense and trial by jury costs; (v) developing options other than fee elimination to lessen the burden on indigent defendants, such as fee caps; and (vi) identifying potential methods to limit,

394 phase out, or eliminate fees. When developing recommendations specific to fee lessening or elimination,
395 the work group shall also consider recommendations to address current outstanding balances. The
396 work group shall submit an interim executive summary and report of its findings and
397 recommendations to the Governor and the General Assembly by November 1, 2026, and a final report
398 no later than November 1, 2027.