

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. **Bill Number:** SB356 S3

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron:** Perry

3. **Committee:** Passed both Houses

4. **Title:** Compensation of court-appointed counsel.

5. **Summary:** This bill changes the maximum amounts that can be paid to attorneys who have been appointed to represent indigent defendants in criminal cases. The bill applies different fee caps for certain specified offenses. The bill also establishes separate fee cap amounts for probation violations that are different from the respective fee cap amounts for the underlying offenses.

The bill also establishes that, notwithstanding any provision to the contrary, no person found indigent pursuant to § 19.2- 159 can have fees assessed against him for any amount paid for his legal representation in an amount greater than the amount such defendant would have owed if the assessment took place on or before June 30, 2024.

The substitute bill has a delayed effective date of January 1, 2025.

6. **Budget Amendment Necessary:** See Item 8 below.

7. **Fiscal Impact Estimates:** Final. See Item 8 below.

8. **Fiscal Implications:** According to the Office of the Executive Secretary of the Supreme Court (OES), the impact upon the Criminal Fund from the increased payment caps cannot be accurately calculated because there is no proper method to segregate payments for appointed counsel that were based on initial offenses from those which were based on probation violations of such offenses.

However, the OES provided the following information on how the bill impacts fee caps:

- The bill increases the fee cap for representation of most misdemeanor cases in district court from \$120 to \$330 (a 175% increase). Representation for probation violations of such cases would now be capped at \$180;
- For misdemeanor charges in district court for violations of Va. Code §§ 18.2-266, 18.2-266.1, 18.2-270, and 46.2-341.24, all of which pertain to driving under the influence of alcohol, the fee cap would be raised from \$120 to \$448 (a 273% increase). The fee cap for representation of probation violations of such cases would be \$180;

- For juvenile cases heard in juvenile and domestic relations district court, the fee cap would be established at \$680, or \$180 for a charge of violation of probation for any offense, with the opportunity to have the cap waived for an additional \$120 or 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;
- A charge for a juvenile adjudication appealed from district court would be capped at \$680, and a violation of probation for any juvenile adjudication appealed from district court would also be capped at \$180;
- Representation of misdemeanor cases in circuit court would now be capped at \$330, as opposed to the current cap of \$158 (109% increase for most misdemeanors), while the probation violations of such misdemeanors would be capped at \$180;
- Representation for felonies that may be punishable by confinement of more than 20 years, or any felony charge listed in the bill would be capped at \$1,692 instead of the current rate of \$1,235 (37% increase), with the potential to have the fee cap waived for an additional \$850, which is unchanged;
- Other felonies, aside from Class 1 felonies, would have the fee cap raised from \$445 to \$834 (87% increase), with the fee cap waiver remaining at \$155;
- Representation for a charge of violation of probation for a violation of any felony charge, except Class 1 felonies, would be capped at \$445 with the opportunity to have the fee cap waived for the same amounts as would be applicable to the underlying offense, \$850 and \$155 respectively.

The OES reports that this bill would require updates to existing systems to allow for the processing of payments to attorneys under new categories of compensation caps and creating separate categories for probation violation cases to be separately designated from the underlying offenses. The OES estimates the one-time cost to make such system enhancements at \$112,252.

9. Specific Agency or Political Subdivisions Affected: Courts

10. Technical Amendment Necessary: No

11. Other Comments: None