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## SENATE BILL NO. 392

Offered January 12, 2022

Prefiled January 11, 2022

*A BILL to amend and reenact §§ 16.1-274 and 19.2-266.4 of the Code of Virginia, relating to copies of orders to counsel.*

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Patron—Surovell

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Referred to Committee on the Judiciary

**Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-274 and 19.2-266.4 of the Code of Virginia is amended and reenacted as follows:****§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.**

A. Whenever any court directs an investigation pursuant to subdivision A of § 16.1-237 or § 16.1-273 or 9.1-153, or an evaluation pursuant to § 16.1-278.5, the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than 72 hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports filed pursuant to § 9.1-153 referenced above.

B. Notwithstanding the provisions of §§ 16.1-69.48:2 and 17.1-275, when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate local department of social services or court services unit to conduct an investigation pursuant to § 16.1-273 or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services or by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § 16.1-273 or, in the case of a request from another state pursuant to a provision corresponding to § 16.1-273, or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation.

D. In any matter in which the court appoints a guardian ad litem to represent a child, such guardian ad litem shall conduct an investigation in accordance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia. Prior to the commencement of the dispositional hearing of any such matter, the guardian ad litem shall file with the court, with a copy to all attorneys representing parties to such matter and all parties proceeding pro se in such matter, a certification of the guardian ad litem's compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia, specifically addressing compliance with such standards requiring face-to-face contact with the child in such certification. The guardian ad litem shall document the hours spent satisfying such face-to-face contact requirements in such certification, which shall be compensated at the same rate as that for

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59 in-court service.

60 **§ 19.2-266.4. Expert assistance for indigent defendants.**

61 A. In any case in which a defendant is (i) charged with a felony offense or a Class 1 misdemeanor  
62 and (ii) determined to be indigent by the court pursuant to § 19.2-159, the defendant or his attorney  
63 may, upon notice to the Commonwealth, move the circuit court to designate another judge in the same  
64 circuit to hear an ex parte request for appointment of a qualified expert to assist in the preparation of  
65 the defendant's defense. No ex parte proceeding, communication, or request may be considered pursuant  
66 to this section unless the defendant or his attorney states under oath or in a sworn declaration that a  
67 need for confidentiality exists. A risk that trial strategy may be disclosed unless the hearing is ex parte  
68 shall be sufficient grounds to establish a need for confidentiality.

69 B. Upon receiving the defendant's or his attorney's declaration of a need for confidentiality, the  
70 designated ex parte judge shall conduct an ex parte hearing on the request for authorization to obtain  
71 expert assistance. This hearing shall occur as soon as practicable. After a hearing upon the motion and  
72 upon a showing that the provision of the requested expert services would materially assist the defendant  
73 in preparing his defense and the denial of such services would result in a fundamentally unfair trial, the  
74 court shall order the appointment of a qualified expert. *The clerk of the court shall provide a copy of*  
75 *the appointment order to the defendant or his attorney and to the appointed expert.*

76 Any expert appointed pursuant to this subsection shall be compensated in accordance with  
77 § 19.2-332. The designated judge shall direct requests for scientific investigations to the Department of  
78 Forensic Science or Division of Consolidated Laboratory Services whenever practicable.

79 C. All ex parte hearings conducted under this section shall be initiated by written motion and shall  
80 be on the record. Except for the initial declaration of a need for confidentiality *and a copy of the*  
81 *appointment order provided to the defendant or his attorney and to the appointed expert in accordance*  
82 *with subsection B*, the record of the hearings, together with all papers filed and orders entered in  
83 connection with ex parte requests for expert assistance, all payment requests submitted by experts  
84 appointed, and the identity of all experts appointed, shall be kept under seal as part of the record of the  
85 case and shall not be disclosed. Following a decision on the motion, whether it is granted or denied, the  
86 motion, order or orders, and all other papers or information related to the proceedings or expert  
87 assistance sought shall remain under seal. On motion of any party, and for good cause shown, the court  
88 may unseal the foregoing records after the trial is concluded.

89 D. All ex parte proceedings, communications, or requests shall be transcribed and made part of the  
90 record available for appellate review or any other post-conviction review.