

The Senate Judiciary Committee offered the following substitute to HB 869:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 of the Official Code of Georgia Annotated, relating to courts, and Title
2 42 of the Official Code of Georgia Annotated, relating to penal institutions, so as to change
3 the membership of the Georgia Superior Court Clerks' Cooperative Authority; to provide that
4 the Georgia Superior Court Clerks' Cooperative Authority shall act as the collecting and
5 remitting agent for the centralized collection and remittance of certain court costs and fees
6 and certain additional penalties and bonds in criminal cases; to prescribe certain new
7 additional court costs and fees and penalties and bond surcharges in criminal cases and
8 provide for the disposition thereof; to provide for application fees for persons applying for
9 indigent defense services and provide for the disposition thereof; to provide for intent with
10 respect to availability of certain funds for appropriation for indigent defense purposes; to
11 state legislative findings; to define terms; to provide for court clerks and other officials to
12 remit funds to the authority and provide measures for accountability therefor; to authorize
13 the authority to prescribe forms and procedures for reporting in connection with collections
14 by the authority; to provide for remittances by the authority and certain reporting with respect
15 thereto; to make numerous conforming amendments; to provide for other related matters; to
16 provide for an effective date and for applicability; to repeal conflicting laws; and for other
17 purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

19 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by striking
20 paragraph (1) of subsection (b) of Code Section 15-6-94, relating to the Georgia Superior
21 Court Clerks' Cooperative Authority, and inserting in its place a new paragraph to read as
22 follows:
23

24 "(b)(1) The authority shall consist of ~~seven~~ nine members as follows:

25 (A) The two members who are not required to be superior clerks appointed by the
26 executive board of The Council of Superior Court Clerks of Georgia ~~to serve for a term~~

1 ~~of one year each and until their respective successors are appointed as provided by prior~~
 2 ~~law shall continue to serve and their successors shall likewise be appointed by the~~
 3 ~~executive board of The Council of Superior Court Clerks of Georgia;~~

4 (B) The two members appointed by the executive board of The Council of Superior
 5 Court Clerks of Georgia; who are and shall ~~currently~~ be superior court clerks; to serve
 6 for a term of two years each and until their respective successors are appointed as
 7 provided by prior law shall continue to serve and their successors shall likewise be
 8 superior court clerks appointed by the executive board of The Council of Superior
 9 Court Clerks of Georgia;

10 (C) The one member appointed by the Governor; who is and shall ~~currently~~ be a county
 11 commissioner; to serve for a term of three years and until such member's respective
 12 successor is appointed as provided by prior law shall continue to serve and his or her
 13 successors shall likewise be county commissioners appointed by the Governor;

14 (D) ~~The and~~ two members appointed by the Governor to serve for a term of three years
 15 each and until their respective successors are appointed who are not required to be
 16 county commissioners appointed as provided by prior law shall serve out the terms for
 17 which they were appointed; and upon the expiration of such terms and thereafter a
 18 successor to one such member shall be a superior court clerk appointed by the Governor
 19 and a successor to the other such member shall be a superior court judge appointed by
 20 the Governor;

21 (E) One member appointed by the Senate Committee on Assignments; and

22 (F) One member appointed by the Speaker of the House.

23 All members ~~After the initial appointments, all members thereafter shall serve for terms~~
 24 ~~of three years each and until their successors are appointed and qualified. All acts~~
 25 ~~performed by the authority prior to April 1, 1994, shall have the same force and effect as~~
 26 ~~if this paragraph had been in effect since the creation of the authority."~~

27 SECTION 2.

28 Said Title 15 is further amended by adding a new Chapter 21A to read as follows:

29 "CHAPTER 21A

30 15-21A-1.

31 (a) The General Assembly finds that over the years, at various times, there have been
 32 enacted into the law and Constitution of this state numerous provisions relating to court
 33 costs, fees, and criminal penalty and bond surcharges for various stated purposes and that
 34 additional costs, fees, and surcharges may be added in the future. Because of the seriatim

1 nature of these enactments, little or no consideration has been given to the interaction of
2 the enacting provisions. There exists a lack of fiscal data concerning such fees. State law
3 has in some cases provided insufficient guidance for local officials with respect to the
4 priority and manner of distribution of such costs, fees, and surcharges. There exists a need
5 for a centralized agency to act as the collecting and remitting agent for such costs, fees, and
6 surcharges in order to provide for uniform practices and fiscal accountability with respect
7 to such collection and remittance.

8 (b) It is the intent of this chapter to meet the needs identified in subsection (a) of this Code
9 section and to provide for certain new fees and surcharges in order that funds may be made
10 available for appropriation and may be appropriated for purposes of indigent defense.

11 15-21A-2.

12 As used in this chapter, the term 'authority' means the Georgia Superior Court Clerks'
13 Cooperative Authority established pursuant to Code Section 15-6-94.

14 15-21A-3.

15 The authority shall act as collecting and remitting agent with respect to the costs, fees, and
16 surcharges specified in this Code section. The authority in performing this function shall
17 receive and disburse such funds only in the capacity of a custodial trustee, and such funds
18 shall not in the process of receipt and disbursement become funds of the authority or state
19 funds. The costs, fees, and surcharges subject to this Code section are:

- 20 (1) The additional divorce case filing fee under Code Section 15-6-77.4 and the
21 additional marriage license fee under Code Section 15-9-60.1;
- 22 (2) The surcharge on fines and bonds imposed for the training of law enforcement and
23 prosecutorial officers and for indigent defense purposes under Code Section 15-21-73;
- 24 (3) The additional penalties imposed in cases of driving under the influence for purposes
25 of state crime victims compensation under Code Section 15-21-112;
- 26 (4) The additional penalties imposed in cases of driving under the influence for purposes
27 of the Brain and Spinal Injury Trust Fund under Code Section 15-21-149; and
- 28 (5) Probation fees collected by the courts under Code Section 42-8-34.

29 15-21A-4.

- 30 (a)(1) Each clerk of any court or any other officer or agent of any court receiving any
31 funds subject to this chapter on or after July 1, 2004, shall remit all such funds to the
32 authority by the end of the month following the month in which such funds are received.
- 33 (2) The chief judge of superior court for each county shall have the authority to require
34 compliance with paragraph (1) of this subsection by any court within the county. If any

1 court is more than 60 days delinquent or is habitually delinquent in remitting any funds
2 or reports required under this Code section or Code Section 15-21A-6, the authority shall
3 notify the chief judge of superior court of the county in which the court is located.

4 (b) The authority shall prescribe uniform procedures and forms for the reporting and
5 remittance of all funds subject to Code Section 15-21A-3; and all clerks or other officers
6 or agents remitting such funds shall use the prescribed procedures and forms in reporting
7 and remitting funds to the authority.

8 (c) The authority shall prescribe uniform rules, procedures, and forms relative to the partial
9 or installment collection and remittance of funds subject to Code Section 15-21A-3 and the
10 manner of allocation of such partial or installment collections. Any funds held by any court
11 or unit of local government on July 1, 2004, consisting of previously collected partial or
12 installment payments shall be subject to the rules, procedures, and forms so prescribed and
13 shall be remitted to the authority to the extent provided for in such rules and procedures.

14 15-21A-5.

15 (a) The authority shall be entitled to retain from the funds received by the authority under
16 Code Section 15-21A-3 and 15-21A-6 an amount equal to 1 percent of such funds, but in
17 no event more than \$500,000.00 per fiscal year, to reimburse the authority for its costs in
18 administering this chapter. The net proceeds, after deduction of such administrative costs,
19 from the funds received by the authority under Code Section 15-21A-3 shall be remitted
20 by the authority as follows:

21 (1) The net proceeds received pursuant to paragraph (1) of Code Section 15-21A-3 shall
22 be remitted to the general fund of the state treasury;

23 (2) The net proceeds received pursuant to paragraph (2) of Code Section 15-21A-3 shall
24 be remitted to the general fund of the state treasury;

25 (3) The net proceeds received pursuant to paragraph (3) of Code Section 15-21A-3 shall
26 be remitted to the Georgia Crime Victims Compensation Board to be deposited into the
27 Georgia Crime Victims Emergency Fund;

28 (4) The net proceeds received pursuant to paragraph (4) of Code Section 15-21A-3 shall
29 be remitted to the Brain and Spinal Injury Trust Fund Commission for deposit into the
30 Brain and Spinal Injury Trust Fund; and

31 (5) The net proceeds received pursuant to paragraph (5) of Code Section 15-21A-3 shall
32 be remitted to the general fund of the state treasury.

33 (b) The net proceeds received pursuant to Code Section 15-21A-6 shall be remitted to the
34 general fund of the state treasury.

35 (c) Any interest earned on funds subject to this chapter while in the custody of the
36 authority shall be remitted to the general fund of the state treasury.

1 15-21A-6.

2 (a) In addition to all other legal costs there shall be charged and collected an additional
3 filing fee of \$15.00 in each civil action or case filed in the superior, state, probate,
4 recorders', mayors', municipal, and magistrate courts. Without limiting the generality of
5 the foregoing, such fee shall apply to all adoptions, certiorari, applications by personal
6 representatives for leave to sell or reinvest, trade name registrations, applications for
7 change of name, and all other proceedings of a civil nature. Any matter which is docketed
8 upon the official dockets of the enumerated courts and to which a number is assigned shall
9 be subject to such fee, whether such matter is contested or not.

10 (b) Any person who applies for or receives legal defense services under Chapter 12 of
11 Title 17 shall pay a single fee of \$50.00 for the application for, receipt of, or application
12 for and receipt of such services. The application fee may not be imposed if the payment of
13 the fee is waived by the court. The court shall waive the fee if it finds that the applicant is
14 unable to pay the fee or that hardship will result if the fee is charged.

15 (c) Each clerk of court, each indigent defense program, or any other officer or agent of any
16 court receiving any funds subject to this Code section shall collect the additional fees
17 provided in this Code section and shall pay such moneys over to the authority by the last
18 day of the month after the month of collection, to be deposited by the authority into the
19 general fund of the state treasury; and, not later than 30 days after the end of the last day
20 of each month, the clerk of each court or any other officer or agent of such court shall
21 report to the authority on a reporting system prescribed by the authority any data of that
22 court, in a format prescribed by the authority.

23 (d) It is the intent of the General Assembly that all funds derived under this Code section
24 shall be made available through the general appropriations process and may be
25 appropriated for purposes of funding indigent defense.

26 15-21A-7.

27 The authority shall, on a quarterly basis, make a detailed report and accounting of all funds
28 collected and remitted pursuant to this chapter and shall submit such report and accounting
29 to the Office of Planning and Budget, the Legislative Budget Office, and the General
30 Assembly no later than 30 days after the last day of the preceding quarter.

31 15-21A-8.

32 Any clerk of court or any other officer or agent receiving any funds subject to this Code
33 who willfully refuses or fails to pay over any such funds to the authority as required by this
34 Code section shall be guilty of a misdemeanor. The offense created by this Code section
35 shall not merge with any other offense."

1 ~~during which the money is continued to be delinquent, not to exceed a total of 25 percent~~
 2 ~~of the principal amount."~~

3 SECTION 5.

4 Said Title 15 is further amended by striking Article 4 of Chapter 21, the "Peace Officer and
 5 Prosecutor Training Fund Act of 1983," and inserting in its place a new article to read as
 6 follows:

7 "ARTICLE 4

8 15-21-70.

9 This article shall be known as and may be cited as the 'Peace Officer, and Prosecutor, and
 10 Indigent Defense Funding Training Fund Act of 1983.'

11 15-21-71.

12 This article is enacted in part pursuant to the authority of Article III, Section IX, Paragraph
 13 VI, subparagraph (d) of the Constitution of Georgia, which provision authorizes additional
 14 penalty assessments in criminal and traffic cases and provides that the proceeds derived
 15 therefrom may be used for the purpose of providing training to law enforcement officers
 16 and prosecuting officials.

17 15-21-72.

18 It is the intent of this article to provide funding for the training of law enforcement and
 19 prosecutorial officers and to make funds available for funding state indigent defense
 20 programs.

21 15-21-73.

22 (a)(1) In every case in which any state court, probate court, recorders', mayors',
 23 municipal court, magistrate court, or superior court in this state shall impose a fine, which
 24 shall be construed to include costs, for any offense against a criminal or traffic law of this
 25 state or political subdivision thereof, there shall be imposed as an additional penalty a
 26 sum equal to ~~the~~:

27 (A) The lesser of \$50.00 or 10 percent of the original fine; plus

28 (B) An additional 10 percent of the original fine.

29 (2) At the time of posting bail or bond in any case involving a violation of a criminal or
 30 traffic law of this state or political subdivision thereof, an additional sum equal to ~~the~~:

31 (A) The lesser of \$50.00 or 10 percent of the original amount of bail or bond; plus

1 (B) An additional 10 percent of the original amount of bail or bond

2 shall be posted. In every case in which any state court, probate court, municipal court,
3 magistrate court, or superior court shall order the forfeiture of bail or bond, the additional
4 sum equal to the lesser of \$50.00 or 10 percent of the original bail or bond amounts
5 provided for in this paragraph shall be paid over as provided in Code Section 15-21-74.

6 (b) Such sums shall be in addition to that amount required by Code Section 47-17-60 to
7 be paid into the Peace Officers' Annuity and Benefit Fund or Code Section 47-11-51
8 concerning the Judges of the Probate Courts Retirement Fund of Georgia and any other
9 amounts provided for by law.

10 15-21-74.

11 The sums provided for in Code Section 15-21-73 shall be assessed and collected by the
12 court officer charged with the duty of collecting moneys arising from fines and forfeited
13 bonds and shall be paid over to the ~~commissioner of revenue~~ Georgia Superior Court
14 Clerks' Cooperative Authority by the last day of the month there following, to be deposited
15 by ~~him~~ the authority into the general treasury. The ~~commissioner of revenue~~ authority shall,
16 on a quarterly basis, make a report and accounting of all funds collected pursuant to this
17 article and shall submit such report and accounting to the Office of Planning and Budget
18 and the Legislative Budget Office no later than 30 days after the last day of the preceding
19 quarter.

20 15-21-75.

21 ~~When any such person, agency, or unit of government whose duty it is to collect and pay~~
22 ~~over such moneys fails to remit the sums within 60 days of the date they are required to be~~
23 ~~paid over, the same shall be delinquent and there may be imposed, in addition to the~~
24 ~~principal amount due, a specific penalty in the amount of 5 percent of said principal~~
25 ~~amount per month for each month during which the money is continued to be delinquent,~~
26 ~~not to exceed a total of 25 percent of the principal amount. Reserved.~~

27 15-21-76.

28 ~~Any person whose duty it is to collect and remit the sum provided for in this article who~~
29 ~~fails or refuses to so remit shall be guilty of a misdemeanor. Reserved.~~

30 15-21-77.

31 (a) An amount equal to all funds remitted as provided in Code Section 15-21-74 the net
32 proceeds derived under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73
33 in the immediately preceding year shall be appropriated to fund law enforcement or

1 prosecutorial officers' training, or both, and activities incident thereto, including, but not
 2 limited to, payment or repayment to the state treasury for capital outlay, general obligation
 3 bond debt service, administrative expenses, and any other expense or fund application
 4 which the General Assembly may deem appropriate. This ~~Code section~~ subsection shall not
 5 preclude the appropriation of a greater amount for this purpose.

6 (b) It is the intent of the General Assembly that all funds derived under subparagraphs
 7 (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73 shall be made available through the
 8 general appropriations process and may be appropriated for purposes of funding indigent
 9 defense, except as provided in subsection (c) of this Code section.

10 (c) Where the Georgia Public Defender Standards Council has approved an alternative
 11 delivery system as set forth in Code Section 17-12-36, 34 percent of the funds derived
 12 under subparagraphs (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73 shall be made
 13 available through the general appropriations process and may be appropriated for purposes
 14 of funding indigent defense and 66 percent of the funds derived under subparagraphs
 15 (a)(1)(B) and (a)(2)(B) of Code Section 15-21-73 shall be remitted to the county providing
 16 the alternative delivery system."

17 SECTION 6.

18 Said Title 15 is further amended by striking Code Sections 15-21-113 and 15-21-114,
 19 relating to collection and remittance of additional penalties in driving under the influence
 20 cases for the Georgia Crime Victims Emergency Fund, and inserting in their place the
 21 following:

22 "15-21-113.

23 The sums provided for in Code Section 15-21-112 shall be assessed and collected by the
 24 court officer charged with the duty of collecting moneys arising from fines and shall be
 25 paid over by the last day of the following month to the Georgia Superior Court Clerks'
 26 Cooperative Authority for remittance to the Georgia Crime Victims Compensation Board
 27 ~~by the last day of the month there following~~, to be deposited into the Georgia Crime
 28 Victims Emergency Fund. ~~The Georgia Crime Victims Compensation Board~~ authority
 29 shall, on a quarterly basis, make a report and accounting of all funds collected pursuant to
 30 this article and shall submit such report and accounting to the Office of Planning and
 31 Budget and the Legislative Budget Office no later than 30 days after the last day of the
 32 preceding quarter.

1 15-21-114.

2 ~~When any such person, agency, or unit of government whose duty it is to collect and pay~~
 3 ~~over such moneys fails to remit the sums within 60 days of the date they are required to be~~
 4 ~~paid over, the same shall be delinquent and there may be imposed, in addition to the~~
 5 ~~principal amount due, a specific penalty in the amount of 5 percent of said principal~~
 6 ~~amount per month for each month during which the money is continued to be delinquent,~~
 7 ~~not to exceed a total of 25 percent of the principal amount. Reserved."~~

8 SECTION 7.

9 Said Title 15 is further amended by striking Code Sections 15-21-150 and 15-21-151,
 10 relating to collection and remittance of additional penalties in driving under the influence
 11 cases for the Brain and Spinal Injury Trust Fund, and inserting in their place the following:

12 "15-21-150.

13 The sums provided for in Code Section 15-21-149 shall be assessed and collected by the
 14 clerk or court officer charged with the duty of collecting moneys arising from fines and
 15 shall be paid over by the last day of the following month to the Georgia Superior Court
 16 Clerks' Cooperative Authority for remittance to the Brain and Spinal Injury Trust Fund
 17 Commission created in Code Section 15-21-143 ~~by the last day of the month there~~
 18 ~~following~~, to be deposited into the Brain and Spinal Injury Trust Fund.

19 15-21-151.

20 ~~Moneys collected as provided for in this article shall be paid over as provided for in this~~
 21 ~~article by the last day of the month following the month in which they are collected. When~~
 22 ~~any person, agency, or unit of government whose duty it is to collect and pay over such~~
 23 ~~moneys fails to remit the sums within 60 days of the date they are required to be paid over,~~
 24 ~~the same shall be delinquent and there may be imposed, in addition to the principal amount~~
 25 ~~due, a specific penalty in the amount of 10 percent of said principal amount per month for~~
 26 ~~each month during which the money is continued to be delinquent, not to exceed a total of~~
 27 ~~25 percent of the principal amount. Reserved."~~

28 SECTION 8.

29 Title 42 of the Official Code of Georgia Annotated, relating to penal institutions, is amended
 30 by striking subsection (d) of Code Section 42-8-34, relating to determination and disposition
 31 of probation, and inserting in its place a new subsection to read as follows:

32 "(d)(1) In every case that a court of this state or any other state sentences a defendant to
 33 probation or any pretrial release or diversion program under the supervision of the
 34 department, in addition to any fine or order of restitution imposed by the court, there shall

1 be imposed a probation fee as a condition of probation, release, or diversion in the
 2 amount equivalent to \$23.00 per each month under supervision, and in addition, a
 3 one-time fee of \$50.00 where such defendant was convicted of any felony. The probation
 4 fee may be waived or amended after administrative process by the department and
 5 approval of the court, or upon determination by the court, as to the undue hardship,
 6 inability to pay, or any other extenuating factors which prohibit collection of the fee;
 7 provided, however, that the imposition of sanctions for failure to pay fees shall be within
 8 the discretion of the court through judicial process or hearings. Probation fees shall be
 9 waived on probationers incarcerated or detained in a departmental or other confinement
 10 facility which prohibits employment for wages. All probation fees collected by the
 11 department shall be paid into the general fund of the state treasury, except as provided in
 12 subsection (f) of Code Section 17-15-13, relating to sums to be paid into the Georgia
 13 Crime Victims Emergency Fund. Any probation fees collected by the court shall be
 14 remitted not later than the last day of the month after such fee is collected to the Superior
 15 Court Clerks' Cooperative Authority for deposit into the general fund of the state
 16 treasury.

17 (2) In addition to any other provision of law, any person convicted of a violation of Code
 18 Section 40-6-391 or subsection (b) of Code Section 16-13-2 who is sentenced to
 19 probation or a suspended sentence by a municipal, magistrate, probate, state, or superior
 20 court shall also be required by the court to pay a one-time fee of \$25.00. The clerk of
 21 court, or if there is no clerk the person designated to collect fines, fees, and forfeitures for
 22 such court, shall collect such fee and remit the same ~~to the general fund of the state~~
 23 ~~treasury~~ not later than the ~~tenth~~ last day of the month after such fee is collected ~~and shall~~
 24 ~~be subject to rule and attachment in the same manner as clerks of superior court for~~
 25 ~~failure to so collect and remit~~ to the Georgia Superior Court Clerks' Cooperative
 26 Authority for deposit into the general fund of the state treasury."

27 SECTION 9.

28 This Act shall become effective on July 1, 2004. This Act shall apply with respect to funds
 29 collected by court clerks and other officers and agents collecting funds subject to this Act on
 30 or after that date, except that partial and installment payments held by clerks and other
 31 officers and agents on July 1, 2004, shall on and after that date be subject to this Act.

32 SECTION 10.

33 All laws and parts of laws in conflict with this Act are repealed.