

HOUSE SUBSTITUTE TO SB 203

A BILL TO BE ENTITLED

AN ACT

1 To amend Title 15 and Title 17 of the Official Code of Georgia Annotated, relating
2 respectively to courts and legal defense for indigents, so as to clarify and change provisions
3 relating to fees and collection of fees for indigent defense services; to provide that local
4 victim assistance funds collected by the courts shall be paid directly to the county governing
5 authority or the district attorney; to provide for certain reports; to provide that the Criminal
6 Justice Coordinating Council shall quarterly prepare and publish a report of all courts that
7 have not filed certain reports; to change certain provisions relating to the procedure for
8 reporting and remittance of certain funds collected by any clerk of court or other officer or
9 agent of any court; to provide for an exception to reporting and remitting requirements for
10 probation supervision fees collected by private providers of probation services; to change
11 certain provisions relating to the application fees for free legal services and remittance of
12 funds; to clarify remittance of the \$50.00 application fee to certain entities; to provide for an
13 additional filing fee for notary public applications; to provide that certain persons who do not
14 meet certain requirements for admission to the bar but are members in good standing of the
15 bar of any state of the United States shall be eligible to take the examination for admission
16 to the state bar and, upon successful completion, to be admitted to the practice of law in this
17 state; to remove the penalties for failure to remit funds; to change provisions relating to an
18 additional filing fee on civil actions in the probate courts; to change provisions relating to the
19 system of reporting and accounting relating to the Georgia Superior Court Clerks
20 Cooperative Authority; to authorize certain inquiries and audits; to authorize the recovery of
21 attorney's fees and costs under certain circumstances; to provide for definitions; to provide
22 for clarity regarding which entities may be entitled to collect attorney's fees and the
23 mechanism for such collection; to correct a cross-reference relating to circuit public defender
24 office's contracts with local governments; to provide for provisions relating to work release
25 programs in felony sentences; to provide for revocation of work release status; to provide for
26 related matters; to provide an effective date; to repeal conflicting laws; and for other
27 purposes.

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

1 received funds during such reporting period no later than the last day of the month
 2 following the reporting period in which the funds were collected in order to allow
 3 coordination of local, state, and federal funding sources for similar services. The Criminal
 4 Justice Coordinating Council shall report annually to the General Assembly the county
 5 governing authorities that failed to submit semiannual reports during the previous calendar
 6 year.

7 (d) All recipients of funds pursuant to this Code section, except county governing
 8 authorities, shall submit an annual report to the Criminal Justice Coordinating Council.
 9 Such report shall include, but not be limited to, the total amount of funds received ~~from~~
 10 ~~each county governing authority~~ pursuant to this Code section, the purposes for which the
 11 funds were expended, and the total number of victims served in each county for which the
 12 funds were received. A copy of each recipient's annual report shall also be submitted to
 13 each county governing authority from which funds were received pursuant to this Code
 14 section.

15 (e) The Criminal Justice Coordinating Council shall promulgate rules governing the
 16 certification of victim assistance programs. The rules shall provide for the certification of
 17 programs which are designed to provide substantial assistance to victims of crime in
 18 understanding and dealing with the criminal justice system as it relates to the crimes
 19 committed against them. It is the intention of the General Assembly that certification shall
 20 be liberally granted so as to encourage local innovations in the development of victim
 21 assistance programs.

22 (f) The Criminal Justice Coordinating Council shall promulgate rules governing the
 23 revocation of certification of victim assistance programs. Such rules shall provide for the
 24 decertification of programs previously certified by the Criminal Justice Coordinating
 25 Council that are no longer in compliance with the rules promulgated by the Criminal
 26 Justice Coordinating Council pursuant to this Code section.

27 (g) Moneys arising from fines imposed pursuant to Code Section 15-21-131 shall not be
 28 paid to any victim assistance program that has not been certified by the Criminal Justice
 29 Coordinating Council or to any program that has been decertified by such council.

30 (h) Each calendar quarter, the Criminal Justice Coordinating Council shall prepare and
 31 publish, by document and posting on its website, a report that shall list each court which
 32 has not filed the reports required by subsection (b) of this Code section."

33 SECTION 2.

34 Said title is further amended by striking Code Section 15-21A-4, relating to the procedure
 35 for reporting and remittance of certain funds collected by any clerk of court or other officer
 36 or agent of any court, and inserting in lieu thereof the following:

1 "15-21A-4.

2 (a)(1) Each clerk of any court or any other officer or agent of any court receiving any
3 funds ~~subject to~~ required to be remitted to the authority under this chapter on or after July
4 1, 2004, shall remit all such funds to the authority by the end of the month following the
5 month in which such funds are received. Each clerk of any court or other officer or agent
6 of any court receiving any funds required to be reported to the authority by this chapter
7 or the rules and regulations of the authority promulgated in accordance with Code Section
8 15-21A-7 shall report such funds to the authority no later than 60 days after the last day
9 of the month in which such funds are received.

10 (2) The chief judge of superior court for each county shall have the authority to require
11 compliance with ~~paragraph (1) of this subsection by~~ this chapter and with the rules and
12 regulations of the authority promulgated by the authority in accordance with Code
13 Section 15-21A-7 by any clerk, officer, or agent of any court within the county. If any
14 court is more than 60 days delinquent or is habitually delinquent in remitting any funds
15 or reports required under this ~~Code section or Code Section 15-21A-6,~~ chapter or by the
16 rules and regulations of the authority promulgated in accordance with Code Section
17 15-21A-7, the authority shall notify the chief judge of superior court of the county in
18 which the court is located.

19 (b) The authority shall prescribe uniform procedures and forms for the reporting and
20 remittance of all funds subject to ~~Code Section 15-21A-3~~ this chapter or the rules and
21 regulations of the authority promulgated in accordance with Code Section 15-21A-7; and
22 all clerks or other officers or agents remitting or reporting such funds shall use the
23 prescribed procedures and forms in reporting and remitting funds to the authority.

24 (c) The authority shall prescribe uniform rules, procedures, and forms relative to the partial
25 or installment collection and remittance of funds subject to ~~Code Section 15-21A-3~~
26 reporting or remittance to the authority under this chapter or rules and regulations
27 promulgated by the authority in accordance with Code Section 15-21A-7. Any funds held
28 by any court or unit of local government on July 1, 2004, consisting of previously collected
29 partial or installment payments shall be subject to the rules, procedures, and forms so
30 prescribed and shall be remitted to the authority to the extent provided for in such rules and
31 procedures. Funds collected that are partial or installment payments of costs, fees, and
32 surcharges that are required by this chapter to be remitted to the authority shall be remitted
33 to the authority by the end of the month following the month in which they were collected;
34 provided, however, that the authority is authorized to provide by rules and regulations for
35 a longer period of time for remitting such funds not to exceed six months.

1 (d) Probation supervision fees collected by private corporations, enterprises, or agencies
 2 contracting for probation services in accordance with Article 6 of Chapter 8 of Title 42
 3 shall not be subject to requirements for reporting or remittance to the authority.

4 (e) The authority shall remit all funds collected to the designated receiving entities or
 5 general fund of the state treasury within 60 days of receiving such funds."

6 SECTION 3.

7 Said title is further amended by striking in its entirety Code Section 15-21A-6, relating to
 8 additional filing fees, application fee for legal assistance, and remittance of funds, and
 9 inserting in lieu thereof the following:

10 "15-21A-6.

11 (a) In addition to all other legal costs there shall be charged to the filing party and
 12 collected by the clerk an additional filing fee of \$15.00 in each civil action or case filed in
 13 the superior, state, ~~probate~~, recorder's, mayor's, and magistrate courts except that
 14 municipalities, counties, and political subdivisions shall be exempt from such fee. Without
 15 limiting the generality of the foregoing, such fee shall apply to all adoptions, certiorari,
 16 ~~applications by personal representatives for leave to sell or reinvest~~, trade name
 17 registrations, notary public applications, applications for change of name, and all other
 18 proceedings of a civil nature. Any matter which is docketed upon the official dockets of the
 19 enumerated courts and to which a number is assigned shall be subject to such fee, whether
 20 such matter is contested or not.

21 (b)(1) As used in this subsection, the term 'civil action' means:

22 (A) With regard to decedents' estates, the following proceedings: petition for letters
 23 of administration; petition to probate a will in solemn form; petition for an order
 24 declaring no administration necessary; petition to probate a will in solemn form and for
 25 letters of administration with will annexed; and petition for year's support;

26 (B) With regard to a minor guardianship matter as set forth in paragraph (1) of
 27 subsection (f) of Code Section 15-9-60, the proceeding by which the jurisdiction of the
 28 probate court is first invoked;

29 (C) With regard to an adult guardianship matter as set forth in paragraph (1) of
 30 subsection (g) of Code Section 15-9-60, the proceeding by which the jurisdiction of the
 31 probate court is first invoked; and

32 (D) An application for writ of habeas corpus.

33 (2) In addition to all other legal costs there shall charged to the filing party and collected
 34 by the clerk an additional fee of \$15.00 in each civil action filed in the probate court. For
 35 the purposes of the imposition of the civil filing fee required by this subsection, the
 36 probate court shall collect the civil filing fee on each proceeding listed in subparagraph

1 (A) of paragraph (1) of this subsection involving a decedent but once only in a
 2 guardianship matter involving the same ward or an application for writ of habeas corpus
 3 involving the same applicant.

4 (c) Any person who applies for or receives legal defense services under Chapter 12 of Title
 5 17 shall pay the entity providing the services a single fee of \$50.00 for the application for,
 6 receipt of, or application for and receipt of such services. The application fee may not be
 7 imposed if the payment of the fee is waived by the court. The court shall waive the fee if
 8 it finds that the applicant is unable to pay the fee or that hardship will result if the fee is
 9 charged.

10 ~~(c)~~(d) Each clerk of court, each indigent defense program, or any other officer or agent of
 11 any court receiving any funds subject to this Code section shall collect the additional fees
 12 provided in this Code section and shall pay such moneys over to the authority by the last
 13 day of the month after the month of collection, to be deposited by the authority into the
 14 general fund of the state treasury.

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

18 ~~(e)~~(f) A public entity other than an entity providing legal defense services under Chapter
 19 12 of Title 17 may charge, in addition to any other fee or surcharge authorized by law, a
 20 \$50.00 application fee unless waived by the court for inability to pay or hardship. Any such
 21 fee shall be retained by the entity providing the services or used as otherwise provided by
 22 law and shall not be subject to payment to the authority or deposit into the state treasury.

23 (g) For the purposes of this Code section, a county or municipality that provides indigent
 24 defense services or that contracts with a circuit public defender office for the provision of
 25 indigent defense services in courts other than the superior and juvenile court is deemed to
 26 be the entity providing the legal defense services and is entitled to impose and collect the
 27 application fee authorized by subsection (f) of this Code section."

28 SECTION 4.

29 Said title is further amended by striking subsection (b) of Code Section 15-21A-7, relating
 30 to the definition of court and the system for reporting and accounting, and inserting in lieu
 31 thereof the following:

32 "(b) The authority shall develop promulgate rules and regulations for the administration
 33 of this chapter. Such rules and regulations shall include but not be limited to a reporting
 34 and accounting system for all court fines and fees and all surcharges on and deductions
 35 from any court fines and fees that are authorized to be collected or disbursed in any court.
 36 The authority shall develop a system that employs controls necessary to determine the

1 accuracy of the fine and fee collections and disbursement by each clerk of court or other
 2 officer or agent of any court receiving any fines and fees. No later than 60 days after the
 3 end of the last day of each month, each such clerk of court and, if there is no clerk of court,
 4 any court officer, judge, or other agent of the court shall report to the authority on a
 5 reporting system prescribed by the authority. Any entity doing business with ~~such clerk or~~
 6 ~~agents~~ any court and all agencies and instrumentalities of the state shall ~~cooperate in~~
 7 ~~providing on a timely basis~~ provide any information or data requested by the authority in
 8 a format prescribed by the authority by rule or regulation. The authority is authorized to
 9 make inquiries to clerks of court, court officers, judges, or agents of any court and agencies
 10 or instrumentalities of the state as well as any other parties for the purpose of determining
 11 the accuracy of any fines and fees collected or disbursed by a court and is authorized where
 12 it determines appropriate to conduct audits of any parties to assist in ensuring the accuracy
 13 of the system developed by the authority."

14 **SECTION 4.1.**

15 Chapter 21A of Title 15 of the Official Code of Georgia Annotated, relating to judicial
 16 accounting, is amended by repealing Code Section 15-21A-8, relating to penalties for failure
 17 to remit funds, which reads as follows:

18 "15-21A-8.

19 Any clerk of court or any other officer or agent receiving any funds subject to this chapter
 20 who knowingly fails to pay over any such funds to the authority as required by this chapter,
 21 after receiving notice from the authority that such funds are delinquent, shall be guilty of
 22 a misdemeanor, except that if the amount of funds knowingly not paid over is \$10,000.00
 23 or more then such person shall be guilty of a felony and punished by imprisonment for not
 24 less than one nor more than ten years. The offense created by this Code section shall not
 25 merge with any other offense."

26 **SECTION 5.**

27 Said title is further amended in Code Section 15-2-8, relating to the powers of the Georgia
 28 Supreme Court, by striking paragraph (5) and inserting in lieu thereof a new paragraph (5)
 29 to read as follows:

30 "(5) To establish, amend, and alter its own rules of practice and to regulate the admission
 31 of attorneys to the practice of law; provided, however, that any person shall be allowed
 32 to take the examination for admission to the State Bar of Georgia and, upon successful
 33 completion, shall be admitted to the practice of law in this state if such person:

34 (A) Is a member in good standing of the bar of any other state of the United States; and

1 (B) Meets all requirements other than educational requirements for eligibility to take
 2 such examination and be admitted to the State Bar of Georgia;"

3 **SECTION 6.**

4 Title 17 of the Official Code of Georgia Annotated, relating to legal defense for indigents,
 5 is amended by striking subsection (d) of Code Section 17-12-23, relating to contracts with
 6 local governments, and inserting in lieu thereof the following:

7 "(d) A city; or county; ~~or consolidated government~~ may contract with the circuit public
 8 defender office for the provision of criminal defense for indigent persons accused of
 9 violating city; or county; ~~or consolidated government~~ ordinances or state laws. If a city; or
 10 county; ~~or consolidated government~~ does not contract with the circuit public defender
 11 office, the city; or county; ~~or consolidated government~~ shall be subject to all applicable
 12 standards adopted by the council for representation of indigent persons in this state."

13 **SECTION 7.**

14 Said title is further amended by inserting a new Article 2A of Chapter 12 to read as
 15 follows:

16 "ARTICLE 2A

17 17-12-50.

18 As used in this article, the term:

19 (1) 'Paid in part' means payment by a county or municipality for a part of the cost of the
 20 provision of indigent defense services pursuant to a contract with a circuit public
 21 defender office as set forth in subsection (d) of Code Section 17-12-23. The term does not
 22 include payment by a county or municipality for office space and other supplies as set
 23 forth in Code Section 17-12-34.

24 (2) 'Public defender' means an attorney employed by a circuit public defender office, an
 25 attorney who is a conflict defender, or any other attorney who is paid from public funds
 26 to represent an indigent person in a criminal case.

27 17-12-51.

28 (a) When a defendant who is represented by a public defender, who is paid in part or in
 29 whole by a county, enters a plea of nolo contendere, first offender, or guilty or is otherwise
 30 convicted, the court may impose as a condition of probation repayment of all or a portion
 31 of the cost for providing legal representation and other expenses of the defense if the
 32 payment does not impose a financial hardship upon the defendant or the defendant's

1 dependent or dependents. The defendant shall make the payment through the probation
2 department to the county.

3 (b) When a defendant who is represented by a public defender, who is paid in part or in
4 whole by a municipality, enters a plea of nolo contendere, first offender, or guilty or is
5 otherwise convicted, the court may impose as a condition of probation repayment of all or
6 a portion of the cost for providing legal representation and other expenses of the defense
7 if the payment does not impose a financial hardship upon the defendant or the defendant's
8 dependents or dependents. The defendant shall make the payment through the probation
9 department to the municipality.

10 (c) If a defendant who is represented by a public defender, who is paid for entirely by the
11 state, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted,
12 the court may impose as a condition of probation repayment of all or a portion of the cost
13 for providing legal representation and other costs of the defense if the payment does not
14 impose a financial hardship upon defendant or the defendant's dependent or dependents.
15 The defendant shall make the payment through the probation department to Georgia Public
16 Defender Standards Council for payment to the general fund of the state treasury. It is the
17 intent of the General Assembly that all funds collected under this subsection shall be made
18 available through the general appropriations process and may be appropriated for purposes
19 of funding indigent defense.

20 (d) In determining whether or not a payment imposed under this Code section imposes a
21 financial hardship upon a defendant or defendant's dependent or dependents and in
22 determining the amount of the payment to impose, the court shall consider the factors set
23 forth in Code Section 17-14-10. The public defender may provide the court with an
24 estimate of the cost for providing to the defendant the legal representation and other
25 expenses of the defense. If requested by the defendant, the court shall hold a hearing to
26 determine the amount to be paid.

27 (e) This Code section shall not apply to a disposition involving a child pursuant to Chapter
28 11 of Title 15, relating to juvenile proceedings.

29 17-12-52.

30 (a) A county or municipality may recover payment or reimbursement from a person who
31 has received legal assistance from a public defender paid in part or in whole by the county
32 or municipality:

33 (1) If the person was not eligible to receive such legal assistance; or

34 (2) If the person has been ordered to pay for the legal representation and other expenses
35 of the defense pursuant to Code Section 17-12-51 and has not paid for the legal services.

1 (b) An action shall be brought within four years after the date on which the legal services
2 were received.

3 (c) In determining the amount of the payment imposed under this Code section, the court
4 shall consider the factors set forth in Code Section 17-14-10. The public defender may
5 provide the court with an estimate of the cost for providing to the defendant the legal
6 representation and other expenses of the defense.

7 (d) This Code section shall not apply to proceedings involving a child pursuant to Chapter
8 11 of Title 15, relating to juvenile proceedings."

9 SECTION 8.

10 Said title is further amended in Code Section 17-10-1, relating to fixing of sentence in
11 criminal cases, by adding at its end a new subsection (g) to read as follows:

12 "(g)(1)(A) In sentencing a defendant convicted of a felony to probated confinement,
13 the sentencing judge may make the defendant's participation in a work release program
14 operated by a county a condition of probation, provided that such program is available
15 and the administrator of such program accepts the inmate.

16 (B) Any defendant accepted into a county work release program shall thereby be
17 transferred into the legal custody of the administrator of said program; likewise, any
18 defendant not accepted shall remain in the legal custody of the Department of
19 Corrections.

20 (2) Work release status granted by the court may be revoked for cause by the sentencing
21 court in its discretion or may be revoked by the state or local authority operating the work
22 release program for any reason for which work release status would otherwise be
23 revoked.

24 (3) The provisions of this subsection shall not limit the authority of the commissioner to
25 authorize work release status pursuant to Code Section 42-5-59 or apply to or affect the
26 authority to authorize work release of county prisoners, which shall be as provided for
27 in Code Sections 42-1-4 and 42-1-9 or as otherwise provided by law.

28 (4) This subsection shall not apply with respect to any violent felony or any offense for
29 which the work release status is specifically prohibited by law, including but not limited
30 to serious violent felonies as specified in Code Section 17-10-6.1."

31 SECTION 9.

32 This Act shall become effective on July 1, 2005.

33 SECTION 10.

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