

House Bill 648

By: Representatives Golick of the 34th, Willard of the 49th, Lindsey of the 54th, Abrams of the 84th, Ramsey of the 72nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 15 and Chapter 12 of Title 17 of the Official Code of Georgia Annotated,
2 relating to courts and legal defense for indigents, respectively, so as to change certain
3 provisions so that certain fees and assessments are dedicated to funding legal services for
4 indigent persons accused of crimes and delinquent acts; to change provisions relating to the
5 budget of the council; to provide a contingent effective date; to provide for automatic repeal
6 under certain conditions; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by revising
10 subsection (g) of Code Section 15-6-76.1, relating to the election by superior court clerks as
11 to investing or depositing funds, as follows:

12 "(g) Any interest earned on funds subject to this Code section or Code Section 15-7-49,
13 15-9-18, or 15-10-240 while in the custody of the Georgia Superior Court Clerks'
14 Cooperative Authority shall be remitted to the Georgia Public Defender Standards Council
15 pursuant to Article III, Section IX, Paragraph VI, subparagraph (o) of the Constitution of
16 Georgia."

17 **SECTION 2.**

18 Said title is further amended by revising Code Section 15-7-49, relating to the state court
19 clerk's remittance of interest from interest-bearing trust accounts, as follows:

20 "15-7-49.

21 When funds are paid into the court registry, the clerk shall deposit such funds in
22 interest-bearing trust accounts, and the interest from those funds shall be remitted to the
23 Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions
24 of subsections (c) through (i) of Code Section 15-6-76.1 ~~for distribution~~, and the authority

25 shall distribute such moneys to the Georgia Public Defender Standards Council pursuant
 26 to Article III, Section IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia."

27 **SECTION 3.**

28 Said title is further amended by revising Code Section 15-9-18, relating to the probate court
 29 clerk's remittance of interest from cash bonds, as follows:

30 "15-9-18.

31 Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code
 32 Section 15-16-27, the clerk shall deposit such funds into interest-bearing trust accounts,
 33 and the interest from those funds shall be remitted to the Georgia Superior Court Clerks'
 34 Cooperative Authority in accordance with the provisions of subsections (c) through (i) of
 35 Code Section 15-6-76.1 ~~for distribution~~, and the authority shall distribute such moneys to
 36 the Georgia Public Defender Standards Council pursuant to Article III, Section IX,
 37 Paragraph VI, subparagraph (o) of the Constitution of Georgia."

38 **SECTION 4.**

39 Said title is further amended by revising Code Section 15-10-240, relating to the magistrate
 40 court clerk's remittance of interest from funds, as follows:

41 "15-10-240.

42 When funds are paid into the court registry, the clerk shall deposit such funds in
 43 interest-bearing trust accounts, and the interest from those funds shall be remitted to the
 44 Georgia Superior Court Clerks' Cooperative Authority in accordance with the provisions
 45 of subsections (c) through (i) of Code Section 15-6-76.1 ~~for distribution~~, and the authority
 46 shall distribute such moneys to the Georgia Public Defender Standards Council pursuant
 47 to Article III, Section IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia."

48 **SECTION 5.**

49 Said title is further amended by revising subsection (b) of Code Section 15-16-27, relating
 50 to deposit by the sheriff of cash bonds and reserves of professional bondspersons in
 51 interest-bearing accounts, as follows:

52 "(b) The financial institution in which the funds are deposited shall remit, after service
 53 charges or fees are deducted, the interest generated by such funds directly to the Georgia
 54 Superior Court Clerks' Cooperative Authority in accordance with the provisions of
 55 subsections (c) through (i) of Code Section 15-6-76.1 ~~for distribution~~, and the authority
 56 shall distribute such moneys to the Georgia Public Defender Standards Council pursuant
 57 to Article III, Section IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia.

58 With each remittance, the financial institution shall send a statement showing the name of

59 the county, deposits and withdrawals from the account or accounts, interest paid, service
60 charges or fees of the bank or other depository, and the net remittance."

61 **SECTION 6.**

62 Said title is further amended by revising Code Section 15-21-74, relating to assessment and
63 collection of penalties, as follows:

64 "15-21-74.

65 (a) The sums provided for under paragraph (1) of subsection (a) of Code Section 15-21-73
66 shall be assessed and collected by the court officer charged with the duty of collecting
67 moneys arising from fines and shall be paid over to the Georgia Superior Court Clerks'
68 Cooperative Authority by the last day of the month there following, to be deposited by the
69 authority into the general treasury; provided, however, that the sums collected pursuant to
70 subparagraph (a)(1)(B) of Code Section 15-21-73 shall be dedicated to the Georgia Public
71 Defender Standards Council for funding indigent defense pursuant to Article III, Section
72 IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia.

73 (b) The sums provided for under paragraph (2) of subsection (a) subparagraph (a)(2)(A)
74 of Code Section 15-21-73 shall be assessed and collected by the court officer charged with
75 the duty of collecting moneys arising from forfeited bonds and shall be paid over to the
76 Georgia Superior Court Clerks' Cooperative Authority by the last day of the month there
77 following for remittance to the Office of the State Treasurer; provided, however, that if the
78 local governing authority has an approved procedure to verify the applicant's income as set
79 forth in Code Section 17-12-80, the court officer shall remit 50 percent of such funds to the
80 Georgia Superior Court Clerks' Cooperative Authority, and the remaining 50 percent shall
81 be remitted to the local governing authority and reported to the Georgia Superior Court
82 Clerks' Cooperative Authority.

83 (c) The sums provided for under subparagraph (a)(2)(B) of Code Section 15-21-73 shall
84 be assessed and collected by the court officer charged with the duty of collecting moneys
85 arising from forfeited bonds and shall be paid over to the Georgia Superior Court Clerks'
86 Cooperative Authority by the last day of the month there following for remittance to the
87 Office of the State Treasurer and shall be dedicated to the Georgia Public Defender
88 Standards Council for funding indigent defense pursuant to Article III, Section IX,
89 Paragraph VI, subparagraph (o) of the Constitution of Georgia.

90 (d) The authority shall, on a quarterly basis, make a report and accounting of all funds
91 collected and disbursed pursuant to this article and shall submit such report and accounting
92 to the Office of Planning and Budget, the House Budget Office, and the Senate Budget
93 Office no later than 60 days after the last day of the preceding quarter."

94 **SECTION 7.**

95 Said title is further amended by revising Code Section 15-21-77, relating to collections to be
 96 appropriated for law enforcement or prosecutorial office training, as follows:

97 "15-21-77.

98 Except as provided in Code Section 15-21-74, an amount equal to the net proceeds
 99 derived under subparagraphs (a)(1)(A) and (a)(2)(A) of Code Section 15-21-73 in the
 100 immediately preceding year shall be appropriated to fund law enforcement or prosecutorial
 101 officers' training, or both, and activities incident thereto, including, but not limited to,
 102 payment or repayment to the state treasury for capital outlay, general obligation bond debt
 103 service, administrative expenses, and any other expense or fund application which the
 104 General Assembly may deem appropriate. This Code section shall not preclude the
 105 appropriation of a greater amount for this purpose."

106 **SECTION 8.**

107 Said title is further amended by revising paragraph (2) of subsection (a) and subsection (b)
 108 of Code Section 15-21A-5, relating to remittance of funds by the Georgia Superior Court
 109 Clerks' Cooperative Authority, as follows:

110 "(2) The net proceeds received pursuant to paragraph (2) of subsection (b) of Code
 111 Section 15-21A-3 shall be remitted to the general fund of the state treasury, except for
 112 proceeds dedicated to the Georgia Public Defender Standards Council for funding
 113 indigent defense pursuant to Article III, Section IX, Paragraph VI, subparagraph (o) of
 114 the Constitution of Georgia;"

115 "(b) The net proceeds received pursuant to Code Section 15-21A-6 shall be remitted to the
 116 general fund of the state treasury, except for proceeds dedicated to the Georgia Public
 117 Defender Standards Council for funding indigent defense pursuant to Article III, Section
 118 IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia."

119 **SECTION 9.**

120 Said title is further amended by revising subsections (a) through (d) of Code Section
 121 15-21A-6, relating to additional filing fees and application for free legal services, as follows:

122 "(a) In addition to all other legal costs, there shall be charged to the filing party and
 123 collected by the clerk an additional filing fee of \$15.00, which shall be dedicated to the
 124 Georgia Public Defender Standards Council pursuant to Article III, Section IX, Paragraph
 125 VI, subparagraph (o) of the Constitution of Georgia in each civil action or case filed in the
 126 superior, state, recorder's, mayor's, and magistrate courts except that municipalities,
 127 counties, and political subdivisions shall be exempt from such fee. Without limiting the
 128 generality of the foregoing, such fee shall apply to all adoptions, certiorari, trade name

129 registrations, applications for change of name, and all other proceedings of a civil nature.
130 Any matter which is docketed upon the official dockets of the enumerated courts and to
131 which a number is assigned shall be subject to such fee, whether such matter is contested
132 or not.

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

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

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

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

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

145 (2) In addition to all other legal costs, there shall be charged to the filing party and
146 collected by the clerk an additional fee of \$15.00, which shall be distributed to the
147 Georgia Public Defender Standards Council pursuant to Article III, Section IX, Paragraph
148 VI, subparagraph (o) of the Constitution of Georgia in each civil action filed in the
149 probate court. For the purposes of the imposition of the civil filing fee required by this
150 subsection, the probate court shall collect the civil filing fee on each proceeding listed in
151 subparagraph (A) of paragraph (1) of this subsection involving a decedent but once only
152 in a guardianship matter involving the same ward or an application for writ of habeas
153 corpus involving the same applicant.

154 (c) Any person who applies for or receives legal defense services under Chapter 12 of Title
155 17 shall pay the entity providing such services a single fee of \$50.00, which shall be
156 distributed to the Georgia Public Defender Standards Council pursuant to Article III,
157 Section IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia for the
158 application for, receipt of, or application for and receipt of such services. The application
159 fee shall not be imposed if the payment of the fee is waived by the court. The court shall
160 waive the fee if it finds that the applicant is unable to pay the fee or that measurable
161 hardship will result if the fee is charged. If the application fee required by this subsection
162 has not been paid prior to the time the defendant is sentenced, the court shall impose such
163 fee as a condition of probation.

164 (d) Each clerk of court, each indigent defense program, or any other officer or agent of any
165 court receiving any funds subject to this Code section shall collect the fees provided for in

166 subsection (c) of this Code section and, if the governing authority has a procedure to verify
 167 the applicant's income as set forth in Code Section 17-12-80, shall pay such moneys over
 168 to the entity providing legal defense services under Chapter 12 of Title 17 by the last day
 169 of the month after the month of collection, and such funds shall not be subject to payment
 170 to the authority. If the governing authority does not have such verification procedure, the
 171 moneys shall be paid over to the authority by the last day of the month after the month of
 172 collection, to be deposited by the authority into the general fund of the state treasury, and
 173 such fees shall be dedicated to the Georgia Public Defender Standards Council for funding
 174 indigent defense pursuant to Article III, Section IX, Paragraph VI, subparagraph (o) of the
 175 Constitution of Georgia."

176 **SECTION 10.**

177 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to legal defense
 178 for indigents, is amended by revising Code Section 17-12-26, relating to the budget of the
 179 council, as follows:

180 "17-12-26.

181 The council shall prepare and submit to the director of the Office of Planning and Budget
 182 its budget estimate necessary for fulfilling the purposes of this chapter in accordance with
 183 Code Section 45-12-78. The council's budget may exceed the amount of money collected
 184 pursuant to Article III, Section IX, Paragraph VI, subparagraph (o) of the Constitution of
 185 Georgia. Such constitutional provision shall not be the exclusive method of funding legal
 186 services for indigent defense, and the General Assembly may appropriate such other
 187 funding as it deems appropriate. The council shall be authorized to seek, solicit, apply for,
 188 and utilize funds from any public or private source to use in fulfilling the purposes of this
 189 chapter. "

190 **SECTION 11.**

191 Said chapter is further amended by revising subsection (c) of Code Section 17-12-51, relating
 192 to repayment of attorney's fees as a condition of probation, as follows:

193 "(c) If a defendant who is represented by a public defender, who is paid for entirely by the
 194 state, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted,
 195 the court may impose as a condition of probation repayment of all or a portion of the cost
 196 for providing legal representation and other costs of the defense if the payment does not
 197 impose a financial hardship upon such defendant or such defendant's dependent or
 198 dependents. Such defendant shall make such payment through the probation department
 199 to the Georgia Public Defender Standards Council ~~for payment to the general fund of the~~

200 ~~state treasury, and such payments shall be dedicated to funding indigent defense pursuant~~
201 ~~to Article III, Section IX, Paragraph VI, subparagraph (o) of the Constitution of Georgia."~~

202 **SECTION 12.**

203 This Act shall become effective only if a Constitutional amendment authorizing the General
204 Assembly to provide by law for the dedication of certain fees and assessments to fund legal
205 services for indigent persons accused of crimes and delinquent acts is ratified at the
206 November, 2012, general election. If such an amendment to the Constitution is not so
207 ratified, then this Act shall not become effective and shall stand repealed by operation of law
208 on January 1, 2013.

209 **SECTION 13.**

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