Senate Bill 203

By: Senator Wiles of the 37th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Title 15 and Title 17 of the Official Code of Georgia Annotated, relating respectively to courts and legal defense for indigents, so as to clarify and change provisions relating to fees and collection of fees for indigent defense services; to provide that local victim assistance funds collected by the courts shall be paid directly to the county governing authority or the district attorney; to provide for certain reports; to provide that the Criminal Justice Coordinating Council shall quarterly prepare and publish a report of all courts that have not filed certain reports; to change certain provisions relating to the procedure for reporting and remittance of certain funds collected by any clerk of court or other officer or agent of any court; to change certain provisions relating to the application fees for free legal services and remittance of funds; to clarify remittance of the $50.00 application fee to certain entities; to change provisions relating to an additional filing fee on civil actions in the probate courts; to change provisions relating to the system of reporting and accounting relating to the Georgia Superior Court Clerks Cooperative Authority; to authorize certain inquiries and audits; to authorize the recovery of attorney´s fees and costs under certain circumstances; to provide for definitions; to provide for clarity regarding which entities may be entitled to collect attorney´s fees and the mechanism for such collection; to correct a cross-reference relating to circuit public defender office´s contracts with local governments; to provide for provisions relating to work release programs in felony sentences; to provide for revocation of work release status; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by striking Code Section 15-21-132, relating to assessment and collection of local victim assistance funds, and inserting in lieu thereof the following:

″15-21-132.

(a) The sums provided for in Code Section 15-21-131 shall be assessed and collected by the court officer charged with the duty of collecting moneys arising from fines and shall be paid ~~over to the Georgia Superior Court Clerks´ Cooperative Authority by the end of the month after the collection. The net proceeds shall be distributed by such authority as follows~~ monthly:

(1) If the county where the fine was imposed operates or participates in any victim assistance program certified by the Criminal Justice Coordinating Council, ~~then the moneys shall be paid over~~ to the governing authority of the county for disbursement to those victim assistance programs; or

(2) If the county where the fine was imposed does not operate or participate in any victim assistance program certified by the Criminal Justice Coordinating Council, ~~then the moneys shall be paid over~~ to the district attorney of the judicial circuit in which the county is located for the purpose of defraying the costs of victim assistance activities carried out by the district attorney´s office. Such funds shall be paid over in the same manner as other county funds paid for operations of the district attorney´s office and shall be in addition to rather than in lieu of any other such funds.

All such funds shall be paid to the recipients by the last day of the month in which the funds are received; provided, however, that the governing authority of the county shall be authorized to hold as reserve funds an amount not to exceed 5 percent of the funds received by the governing authority in the preceding calendar year.

(b) ~~The Georgia Superior Court Clerks´ Cooperative Authority~~ The court officer charged with the duty of collecting moneys arising from fines as provided for in Code Section 15-21-131 shall receive and distribute the funds collected ~~pursuant to this Code section~~ to the county governing ~~authorities~~ authority or district attorney, as appropriate, and shall submit a monthly report of the collection and distribution of such funds to the Georgia Superior Court Clerks´ Cooperative Authority, and the Georgia Superior Court Clerks´ Cooperative Authority shall submit a financial report to the Criminal Justice Coordinating Council each month stating the amount collected and the amount disbursed ~~to each county governing authority~~ no later than the last day of the month following the month in which the funds were collected.

(c) The county governing authority receiving funds shall submit a financial report to the Criminal Justice Coordinating Council semiannually stating the recipients that directly received funds during such reporting period no later than the last day of the month following the reporting period in which the funds were collected in order to allow coordination of local, state, and federal funding sources for similar services. The Criminal Justice Coordinating Council shall report annually to the General Assembly the county

governing authorities that failed to submit semiannual reports during the previous calendar year.

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

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

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

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

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

SECTION 2.

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

″15-21A-4.

(a)(1) Each clerk of any court or any other officer or agent of any court receiving any funds ~~subject to~~ required to be remitted to the authority under this chapter on or after July 1, 2004, shall remit all such funds to the authority by the end of the month following the

month in which such funds are received. Each clerk of any court or other officer or agent of any court receiving any funds required to be reported to the authority by this chapter or the rules and regulations of the authority promulgated in accordance with Code Section 15-21A-7 shall report such funds to the authority no later than 60 days after the last day of the month in which such funds are received.

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

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

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

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

SECTION 3.

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

"15-21A-6.

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

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

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

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

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

(D) An application for writ of habeas corpus.

(2) In addition to all other legal costs there shall be charged to the filing party and collected by the clerk an additional fee of $15.00 in each civil action filed in the probate court. For the purposes of the imposition of the civil filing fee required by this subsection, the probate court shall collect the civil filing fee on each proceeding listed in subparagraph (A) of paragraph (1) of this subsection involving a decedent but once only in a guardianship matter involving the same ward or an application for writ of habeas corpus involving the same applicant.

(c) Any person who applies for or receives legal defense services under Chapter 12 of Title 17 shall pay the entity providing the services a single fee of $50.00 for the application for, receipt of, or application for and receipt of such services. The application fee may not be

imposed if the payment of the fee is waived by the court. The court shall waive the fee if it finds that the applicant is unable to pay the fee or that hardship will result if the fee is charged.

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

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

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

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

SECTION 4.

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

"(b) The authority shall ~~develop~~ promulgate rules and regulations for the administration of this chapter. Such rules and regulations shall include but not be limited to a reporting and accounting system for all court fines and fees and all surcharges on and deductions from any court fines and fees that are authorized to be collected or disbursed in any court. The authority shall develop a system that employs controls necessary to determine the accuracy of the fine and fee collections and disbursement by each clerk of court or other officer or agent of any court receiving any fines and fees. No later than 60 days after the end of the last day of each month, each such clerk of court and, if there is no clerk of court, any court officer, judge, or other agent of the court shall report to the authority on a reporting system prescribed by the authority. Any entity doing business with ~~such clerk or agents~~ any court and all agencies and instrumentalities of the state shall ~~cooperate in~~

~~providing on a timely basis~~ provide any information or data requested by the authority in a format prescribed by the authority by rule or regulation. The authority is authorized to make inquiries to clerks of court, court officers, judges, or agents of any court and agencies or instrumentalities of the state as well as any other parties for the purpose of determining the accuracy of any fines and fees collected or disbursed by a court and is authorized where it determines appropriate to conduct audits of any parties to assist in ensuring the accuracy of the system developed by the authority."

SECTION 5.

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

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

SECTION 6.

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

"ARTICLE 2A

17-12-50.

As used in this article, the term:

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

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

17-12-51.

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

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

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

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

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

17-12-52.

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

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

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

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

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

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

SECTION 7.

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

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

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

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

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

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

SECTION 8.

This Act shall become effective on July 1, 2006.

SECTION 9.

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