

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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**SENATE BILL 592
Finance Committee Substitute Adopted 5/25/05**

Short Title: Indigent Defense Technical Revisions.

(Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL REVISIONS TO THE LAW GOVERNING
INDIGENT DEFENSE AND ENTITLEMENT TO COUNSEL.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-304(d)(1) reads as rewritten:

"(d) (1) In any criminal case in which the liability for costs, fines, restitution, attorneys' fees, or any other lawful charge has been finally determined, the clerk of superior court shall, unless otherwise ordered by the presiding judge, disburse such funds when paid in accordance with the following priorities:

- a. Sums in restitution to the victim entitled thereto;
- b. Costs due the county;
- c. Costs due the city;
- d. Fines to the county school fund;
- e. Sums in restitution prorated among the persons other than the victim entitled thereto;
- f. Costs due the State;
- g. Attorney's fees, including appointment fees assessed pursuant to G.S. 7A-455.1.

(2) Sums in restitution received by the clerk of superior court shall be disbursed when:

- a. Complete restitution has been received; or
- b. When, in the opinion of the clerk, additional payments in restriction will not be collected; or
- c. Upon the request of the person or persons entitled thereto; and
- d. In any event, at least once each calendar year."

SECTION 2. G.S. 7A-451(a) reads as rewritten:

"(a) An indigent person is entitled to services of counsel in the following actions and proceedings:

- 1 (1) Any case in which imprisonment, or a fine of five hundred dollars
2 (\$500.00), or more, is likely to be adjudged;
- 3 (2) A hearing on a petition for a writ of habeas corpus under Chapter 17 of
4 the General Statutes;
- 5 (3) A motion for appropriate relief under Chapter 15A of the General
6 Statutes if the defendant has been convicted of a felony, has been fined
7 five hundred dollars (\$500.00) or more, or has been sentenced to a
8 term of imprisonment;
- 9 (4) A hearing for revocation of probation;
- 10 (5) A hearing in which extradition to another state is sought;
- 11 (6) A proceeding for an inpatient involuntary commitment to a facility
12 under Part 7 of Article 5 of Chapter 122C of the General Statutes, or a
13 proceeding for commitment under Part 8 of Article 5 of Chapter 122C
14 of the General Statutes.
- 15 (7) In any case of execution against the person under Chapter 1, Article 28
16 of the General Statutes, and in any civil arrest and bail proceeding
17 under Chapter 1, Article 34, of the General Statutes;
- 18 (8) In the case of a juvenile, a hearing as a result of which commitment to
19 an institution or transfer to the superior court for trial on a felony
20 charge is possible;
- 21 (9) A hearing for revocation of parole at which the right to counsel is
22 provided in accordance with the provisions of Chapter 148, Article 4,
23 of the General Statutes;
- 24 (10) Repealed by Session Laws 2003, c. 13, s. 2(a), effective April 17,
25 2003, and applicable to all petitions for sterilization pending and
26 orders authorizing sterilization that have not been executed as of April
27 17, 2003.
- 28 (11) A proceeding for the provision of protective services according to
29 Chapter 108A, Article 6 of the General Statutes;
- 30 (12) In the case of a juvenile alleged to be ~~neglected-abused, neglected, or~~
31 ~~dependent~~ under ~~Chapter 7A, Article 23~~ Subchapter I of Chapter 7B of
32 the General Statutes;
- 33 (13) A proceeding to find a person incompetent under Subchapter I of
34 Chapter 35A, of the General Statutes;
- 35 (14) A proceeding to terminate parental rights where a guardian ad litem is
36 appointed pursuant to G.S. 7B-1101;
- 37 (15) An action brought pursuant to ~~Article 24B of Chapter 7A~~ Article 11 of
38 Chapter 7B of the General Statutes to terminate an indigent person's
39 parental rights.
- 40 (16) A proceeding involving consent for an abortion on an unemancipated
41 minor pursuant to Article 1A, Part 2 of Chapter 90 of the General
42 Statutes. G.S. 7A-450.1, 7A-450.2, and 7A-450.3 shall not apply to
43 this proceeding.

1 (17) A proceeding involving limitation on freedom of movement or access
2 pursuant to G.S. 130A-475 or G.S. 130A-145."

3 **SECTION 3.** G.S. 7A-455.1 reads as rewritten:

4 "**§ 7A-455.1. Appointment fee in criminal cases.**

5 (a) Each person ~~who requests the appointment of~~ for whom counsel is appointed
6 in a criminal case at the trial level shall pay to the clerk of court ~~a nonrefundable~~ an
7 appointment fee of fifty dollars ~~(\$50.00) at the time of appointment. (\$50.00).~~ No fee
8 shall be due ~~if the court finds that the person is not entitled to the appointment of~~
9 counsel, unless the person is convicted.

10 (b) ~~The appointment fee in this section is due regardless of the outcome of the~~
11 ~~proceedings. If paid in full at the time of appointment, the fifty dollars (\$50.00) paid~~
12 ~~shall be credited against any amounts the court determines to be owed for the value of~~
13 ~~legal services rendered to the defendant. If not paid in full at the time of appointment,~~
14 ~~the~~ The fifty-dollar (\$50.00) fee shall be added to any amounts the court determines to
15 be owed for the value of legal services rendered to the defendant and shall be collected
16 in the same manner as attorneys' fees are collected for such representation. ~~If the fee is~~
17 ~~not paid in full at the time of appointment, and no attorneys' fees are found due when~~
18 ~~the action is finally determined at the trial level, a judgment shall be entered, docketed,~~
19 ~~and indexed pursuant to G.S. 1-233 in the amount of fifty dollars (\$50.00) and shall~~
20 ~~constitute a lien as prescribed by the general law of the State applicable to judgments.~~

21 (c) ~~The attorney representing the defendant when the action is finally determined~~
22 ~~at the trial level shall advise the court whether the appointment fee required by this~~
23 ~~section has been paid.~~

24 (d) Inability, failure, or refusal to pay the appointment fee shall not be grounds
25 for denying appointment of counsel, for withdrawal of counsel, or for contempt.

26 (e) The appointment fee required by this section shall be assessed only once for
27 each ~~affidavit of indigency submitted by a defendant or other determination of~~
28 ~~indigency by the court, attorney appointment,~~ regardless of the number of cases for to
29 which an the attorney is appointed. was assigned. ~~An additional appointment fee shall~~
30 ~~not be assessed for any additional cases thereafter assigned to an attorney if any cases~~
31 ~~for which a defendant was previously assessed an appointment fee are still pending. Nor~~
32 ~~shall an~~ An additional appointment fee shall not be assessed if the charges for which an
33 attorney was appointed are dismissed and subsequently refiled or if the defendant is
34 appointed an attorney on appeal on a matter for which the defendant was assessed an
35 appointment fee at the trial level if the charges for which an attorney was appointed
36 were reassigned to a different attorney.

37 (f) Of each appointment fee collected under this section, the sum of forty-five
38 dollars (\$45.00) shall be credited to the Indigent Persons' Attorney Fee Fund and the
39 sum of five dollars (\$5.00) shall be credited to the Court Information Technology Fund
40 under G.S. 7A-343.2. These fees shall not revert.

41 (g) The Office of Indigent Defense Services shall adopt rules and develop forms
42 to govern implementation of this section."

43 **SECTION 4.** G.S. 15A-1343(e) reads as rewritten:

1 "(e) Costs of Court and Appointed Counsel. – Unless the court finds there are
2 extenuating circumstances, any person placed upon supervised or unsupervised
3 probation under the terms set forth by the court shall, as a condition of probation, be
4 required to pay all court costs and all fees and costs for appointed ~~counsel or public~~
5 ~~defender~~ counsel, public defender, or counsel employed by or under contract with the
6 Office of Indigent Defense Services in the case in which ~~he~~ the person was convicted.
7 ~~The cost of fees and costs for appointed counsel or public defender counsel, public~~
8 ~~defender, or other counsel~~ services shall be determined in accordance with rules adopted
9 by the Office of Indigent Defense Services. The court shall determine the amount of
10 those costs and fees to be repaid and the method of payment."

11 **SECTION 5.** G.S. 35A-1245(c) reads as rewritten:

12 "(c) A copy of the petition shall be served on the ward personally. If the ward is
13 unable to comprehend the nature of the proposed procedure and its consequences and is
14 unable to provide an informed consent, the clerk shall appoint an attorney to represent
15 the ~~ward.~~ ward in accordance with rules adopted by the Office of Indigent Defense
16 Services."

17 **SECTION 6.** This act is effective when it becomes law.