

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 594
Judiciary II Committee Substitute Adopted 4/19/05
Finance Committee Substitute Adopted 5/25/05

Short Title: Recoupment by Court-Appointed Attorneys.

(Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING RECOUPMENT FOR LEGAL SERVICES PROVIDED TO INDIGENT PERSONS WHO ARE FINANCIALLY ABLE TO PAY A PORTION OF THE VALUE OF THOSE SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7A-455 reads as rewritten:

"§ 7A-455. Partial indigency; liens; acquittals.

(a) If, in the opinion of the court, an indigent person is financially able to pay a portion, but not all, of the value of the legal services rendered for ~~him~~that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, ~~hethe court~~ shall order the partially indigent person to pay such portion to the clerk of superior court for transmission to the State treasury.

(b) In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person, including any fees and expenses that may have been allowed prior to final determination of the action to assigned counsel pursuant to G.S. 7A-458, which shall constitute a lien as prescribed by the general law of the State applicable to judgments. Any reimbursement to the State as provided in subsection (a) of this section or any funds collected by reason of such judgment shall be deposited in the State treasury and credited against the judgment. The value of services shall be determined in accordance with rules adopted by the Office of Indigent Defense Services. The money value of services rendered by the public defender and the appellate defender shall be based upon the factors normally involved in fixing the fees of private attorneys, such as the nature of the case, the time, effort, and responsibility involved, and the fee usually charged in similar cases. A district court judge shall direct entry of judgment for actions or proceedings finally determined in the district court and a superior court judge shall direct entry of judgment for actions or

1 proceedings originating in, heard on appeal in, or appealed from the superior court.
2 Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor
3 is nevertheless compensable.

4 (b1) In every case in which the State is entitled to a lien pursuant to this section,
5 the public defender shall at the time of sentencing or other conclusion of the
6 proceedings petition the court to enter judgment for the value of the legal services
7 rendered by the public defender, and the appellate defender shall upon completion of the
8 appeal petition or request the trial court to enter judgment for the value of the legal
9 services rendered by the appellate defender.

10 (c) No order for partial payment under subsection (a) of this section and no
11 judgment under subsection (b) of this section shall be entered unless the indigent person
12 is convicted. If the indigent person is convicted, the order or judgment shall become
13 effective and the judgment shall be docketed and indexed pursuant to G.S. 1-233 et seq.,
14 in the amount then owing, upon the later of (i) the date upon which the conviction
15 becomes final if the indigent person is not ordered, as a condition of probation, to pay
16 the State of North Carolina for the costs of his representation in the case or (ii) the date
17 upon which the indigent person's probation is terminated or revoked if the indigent
18 person is so ordered. No order for partial payment under subsection (a) of this section
19 and no judgment under subsection (b) of this section shall be entered for the value of
20 legal services rendered to perfect an appeal to the Appellate Division or in
21 postconviction proceedings, if all of the matters that the person raised in the proceeding
22 are vacated, reversed, or remanded for a new trial or resentencing.

23 (d) In all cases in which the entry of a judgment is authorized under
24 G.S. 7A-450.1 through G.S. 7A-450.4 or under this section, the attorney, guardian ad
25 litem, public defender, or appellate defender who rendered the services or incurred the
26 expenses for which the judgment is to be entered shall obtain the social security
27 number, if any, of each person against whom judgment is to be entered. This number, or
28 a certificate that the person has no social security number, shall be included in each fee
29 application submitted by an assigned attorney, guardian ad litem, public defender, or
30 appellate defender, and no order for payment entered upon an application which does
31 not include the required social security number or certification shall be valid to
32 authorize payment to the applicant from the Indigent Persons' Attorney Fee Fund. Each
33 judgment docketed against any person under this section or under G.S. 7A-450.3 shall
34 include the social security number, if any, of the judgment debtor."

35 **SECTION 2.** G.S. 7B-603 reads as rewritten:

36 "**§ 7B-603. Payment of court-appointed attorney or guardian ad litem.**

37 (a) An attorney or guardian ad litem appointed pursuant to G.S. 7B-601 shall be
38 paid a reasonable fee fixed by the court or by direct engagement for specialized
39 guardian ad litem services through the Administrative Office of the Courts.

40 (a1) The court may require payment of the fee for an attorney or guardian ad litem
41 appointed pursuant to G.S. 7B-601 from a person other than the juvenile as provided in
42 G.S. 7A-450.1, 7A-450.2, and 7A-450.3. In no event shall the parent or guardian be
43 required to pay the fees for a court-appointed attorney or guardian ad litem in an abuse,
44 neglect, or dependency proceeding unless the juvenile has been adjudicated to be

1 abused, neglected, or dependent or, in a proceeding to terminate parental rights, unless
2 the parent's rights have been terminated. If the party is ordered to reimburse the State for
3 attorney or guardian ad litem fees and fails to comply with the order at the time of
4 disposition, the court shall file a judgment against the party for the amount due the
5 State.

6 (b) An attorney appointed pursuant to G.S. 7B-602 or pursuant to any other
7 provision of the Juvenile Code for which the Office of Indigent Defense Services is
8 responsible for providing counsel shall be paid a reasonable fee in accordance with rules
9 adopted by the Office of Indigent Defense Services.

10 (b1) The court may require payment of the fee for an attorney appointed pursuant
11 to G.S. 7B-602 or G.S. 7B-1101 from the respondent. In no event shall the respondent
12 be required to pay the fees for a court-appointed attorney in an abuse, neglect, or
13 dependency proceeding unless the juvenile has been adjudicated to be abused,
14 neglected, or dependent or, in a proceeding to terminate parental rights, unless the
15 respondent's rights have been terminated. At the dispositional hearing or other
16 appropriate hearing, the court shall make a determination whether the respondent should
17 be held responsible for reimbursing the State for the respondent's attorneys' fees. This
18 determination shall include the respondent's financial ability to pay.

19 If the court determines that the respondent is responsible for reimbursing the State
20 for the respondent's attorneys' fees, the court shall so order. If the respondent does not
21 comply with the order at the time of disposition, the court shall file a judgment against
22 the respondent for the amount due the State.

23 ~~(c) The court may require payment of the attorney or guardian ad litem fee from~~
24 ~~a person other than the juvenile as provided in G.S. 7A 450.1, 7A 450.2, and 7A 450.3.~~
25 ~~In no event shall the parent or guardian be required to pay the fees for a court appointed~~
26 ~~attorney or guardian ad litem in an abuse, neglect, or dependency proceeding unless the~~
27 ~~juvenile has been adjudicated to be abused, neglected, or dependent, or, in a proceeding~~
28 ~~to terminate parental rights, unless the parent's rights have been terminated. A person~~
29 ~~who does not comply with the court's order of payment may be punished for contempt~~
30 ~~as provided in G.S. 5A 21."~~

31 **SECTION 3.** G.S. 7A-450.3 reads as rewritten:

32 **"§ 7A-450.3. Determination of responsibility at hearing.**

33 At the dispositional, sentencing or other hearing of the person who is less than 18
34 years old or who is at least 18 years old but remains dependent on and domiciled with a
35 parent or guardian, the court shall make a determination whether the parent, guardian or
36 trustee should be held responsible for reimbursing the State for the person's attorney or
37 guardian ad litem fees. This determination shall include the financial situation of the
38 parent, guardian or trustee, the relationship of responsibility the parent, guardian or
39 trustee bears to the person and any showings by the parent, guardian or trustee that the
40 person is emancipated or not dependent. The test of the party's financial ability to pay is
41 the test applied to appointment of an attorney in cases of indigency. Any provision of
42 any deed, trust or other writing, which, if enforced, would defeat the intent or purpose
43 of this section is contrary to the public policy of this State and is void insofar as it may
44 apply to prohibit reimbursement to the State.

1 If the court determines that the parent, guardian or trustee is responsible for
2 reimbursing the State for the attorney or guardian ad litem fees, the court shall so order.
3 If the party does not comply with the order ~~within 90 days,~~ at the time of disposition,
4 the court shall file a judgment against him for the amount due the State."

5 **SECTION 4.** Sections 2 and 3 of this act become effective October 1, 2005,
6 and apply to the appointment of counsel on or after that date. The remainder of this act
7 is effective when it becomes law.