

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H.B. 388
Mar 20, 2013
HOUSE PRINCIPAL CLERK

H

D

HOUSE DRH30193-LL-104 (03/12)

Short Title: Assigned Counsel/Amend and Clarify.-AB (Public)

Sponsors: Representatives Jackson and Glazier (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING ASSIGNED COUNSEL IN CASES OF
PARTIAL INDIGENCY TO AUTHORIZE JUDGMENTS FOR ATTORNEYS' FEES TO
BE DOCKETED UPON THE EXPIRATION OF PROBATION AND TO CLARIFY THE
REQUIREMENT FOR A SOCIAL SECURITY NUMBER.

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 that person by assigned counsel, the public defender, or the appellate defender, and other necessary expenses of representation, the 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 proceedings originating in, heard on appeal in, or appealed from the superior court. Even if the trial, appeal, hearing, or other proceeding is never held, preparation therefor is nevertheless compensable.

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



* D R H 3 0 1 9 3 - L L - 1 0 4 *

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

13 (d) In all cases in which the entry of a judgment is authorized under G.S. 7A-450.1
14 through G.S. 7A-450.4 or under this section, the attorney, guardian ad litem, public defender,
15 or appellate defender who rendered the services or incurred the expenses for which the
16 judgment is to be entered shall make reasonable efforts to obtain the social security number, if
17 any, of each person against whom judgment is to be entered. This number, ~~or a certificate~~ a
18 certification that the person has no social security number, or a certification that the social
19 security number cannot be obtained with reasonable efforts shall be included in each fee
20 application submitted by an assigned attorney, guardian ad litem, public defender, or appellate
21 defender, and no order for payment entered upon an application which does not include the
22 required social security number or certification shall be valid to authorize payment to the
23 applicant from the Indigent Persons' Attorney Fee Fund. Each judgment docketed against any
24 person under this section or under G.S. 7A-450.3 shall include the social security number, if
25 any, of the judgment debtor."

26 **SECTION 2.** This act is effective when it becomes law.