



Ohio Legislative Service Commission

Bill Analysis

David M. Gold

H.B. 49

129th General Assembly
(As Introduced)

Reps. Combs, Grossman, Beck

BILL SUMMARY

- Provides that specified fees, costs, and fines that currently are deposited into the state treasury to the credit of funds that help pay for the defense of indigent criminal defendants be deposited instead into the municipal treasury to help compensate counsel appointed by the court to represent indigent defendants if the court that imposed the fees, costs, or fines is a municipal court that is not a county-operated municipal court and that appoints counsel for indigent defendants in a manner other than that provided for in a specified provision of the Revised Code.

CONTENT AND OPERATION

Background

An indigent criminal defendant who faces the possibility of incarceration has a constitutional right to counsel, including counsel provided at public expense. The Revised Code places on counties the responsibility for providing indigent defense for violations of state law. The counties provide for indigent defense in various ways. Some have their own public defender commissions or joint county public defender commissions. Others contract with the State Public Defender or with a nonprofit organization to provide representation for indigent defendants. Many counties rely on members of the local bar appointed by the court. Municipal corporations rather than counties are responsible for providing counsel for indigent defendants charged only with violations of municipal ordinances. A municipality may contract with the county commissioners or a public defender commission for the representation of indigent persons in such cases.¹

¹ R.C. 120.06, 120.16, 120.26, 120.33, and 2941.51--not in the bill.

Operation of the bill

With the exception of the additional court cost for juvenile traffic offenders (see "**Additional cost for moving violation**," below), the bill modifies the distribution of the fees, costs, and fines described below if the court that imposes the fees, costs, or fines or orders the driver's license suspended or forfeited is a municipal court that is not a county-operated municipal court and appoints counsel for indigent defendants in a manner other than that provided in R.C. 120.33.

The county-operated municipal courts are the Auglaize, Brown, Carroll, Clermont, Columbiana, Crawford, Darke, Erie, Hamilton, Hocking, Holmes, Jackson, Lawrence, Madison, Miami, Morrow, Ottawa, Portage, and Wayne County Municipal Courts.²

R.C. 120.33 authorizes alternative methods by which a county may provide for indigent defense. In lieu of using a county public defender or joint county public defender, the board of county commissioners may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court. The resolution must include those provisions the board considers necessary to provide effective representation of indigent persons in any proceeding for which counsel is provided. It must also include provisions for contracts with any municipal corporation under which the municipal corporation must reimburse the county for counsel appointed to represent indigent persons charged with violations of the ordinances of the municipal corporation. R.C. 120.33 also authorizes a county to provide for indigent defense by contracting with the State Public Defender for legal representation of indigent persons.³

Under the bill, if the court that imposes the fees, costs, or fines described below or that orders the driver's license suspended or forfeited is a municipal court that (1) is not a county-operated municipal court and (2) appoints counsel for indigent defendants in a manner other than that provided in R.C. 120.33, then the portion of the fees, costs, or fines that currently goes to either the Client Payment Fund or the Indigent Defense Support Fund is instead sent to the treasurer of the municipal corporation. The treasurer must deposit the money into a separate account to be used to compensate counsel appointed by the court for indigent defendants.⁴

² R.C. 1901.03(F).

³ R.C. 120.33(A) and (B)--not in the bill.

⁴ R.C. 120.36(D)(2), 2937.22(B), 2949.091(A)(1)(b), (A)(2)(b), and (B), 2949.094(A) and (C), 4507.45, 4510.22(A), and 4511.19(G)(5)(f).

The bill amends one section of the Revised Code to conform to the changes described in the preceding paragraph.⁵

The bill does not alter one Revised Code section under which a portion of fees is credited to the Indigent Defense Support Fund. This section prohibits the operation of a motor vehicle in Ohio unless proof of financial responsibility is maintained continuously throughout the registration period with respect to that vehicle, or, in the case of a driver who is not the owner, with respect to that driver's operation of that vehicle. If the Registrar of Motor Vehicles suspends a person's operating privileges or registration rights for a violation of the prohibition, the person must pay a fee for their reinstatement. The fee is \$100 for a first violation, \$300 for a second violation, and \$600 for a third or subsequent violation. The Registrar must deposit \$25 of each \$100 fee, \$50 of each \$300 fee, and \$100 of each \$600 fee into the state treasury to the credit of the Indigent Defense Support Fund.⁶

Fees, costs, and fines that help fund indigent defense under existing law

The Revised Code establishes various fees, costs, and fines that are used in whole or in part to help fund indigent defense. These charges include the following:

Fee upon application for indigent defense

If a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court must assess a nonrefundable application fee of \$25 unless it waives or reduces the fee. The fee also must be assessed when a person is charged with a violation of a community control sanction or post-release control sanction. The fees are deposited into the county treasury. The county keeps 80% of the application fees so collected to offset the costs of providing legal representation to indigent persons. The remaining 20% goes to the State Public Defender for deposit into the Client Payment Fund in the state treasury to help pay for state and local public defender systems.⁷

Bail surcharge

Whenever a person is charged with any offense other than a nonmoving traffic violation and posts bail, the person must pay a \$25 surcharge. The court clerk retains the money until the person is convicted, pleads guilty, forfeits bail, or is found not

⁵ R.C. 2949.111(A)(2).

⁶ R.C. 4509.101(E).

⁷ R.C. 120.36(A)(1) and (D).

guilty or the charges are dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk sends the \$25 to the Treasurer of State for deposit into the Indigent Defense Support Fund in the state treasury, which is used to reimburse counties for part of the cost of operating public defender and appointed counsel systems. If the person is found not guilty or the charges are dismissed, the clerk returns the money to the person.⁸

Costs upon conviction

The court in which a person is convicted of or pleads guilty to any offense or in which a child is found to be a delinquent child or a juvenile traffic offender for an act that, if committed by an adult, would be an offense, must impose one of the following sums as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender or child, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender or juvenile:

- (1) \$30 if the offense is a felony;
- (2) \$20 if the offense is a misdemeanor other than a traffic offense that is not a moving violation;
- (3) \$10 if the offense is a traffic offense that is not a moving violation, excluding parking violations.

The court clerk sends the money collected to the Treasurer of State for deposit into the Indigent Defense Support Fund.

The law provides a procedure for collecting the \$10, \$20, or \$30 costs as an add-on to the bail of a person charged with an offense. If the person is convicted, pleads guilty, or forfeits bail, the sum collected is sent to the Treasurer of State as described above, and if the person is found not guilty or the charges are dismissed, the sum is returned to the person.⁹

Additional cost for moving violation

The court in which a person is convicted of or pleads guilty to any moving violation must impose an additional court cost of \$10 upon the offender unless the court determines that the offender is indigent and waives the payment of all court costs. If the person posts bail, the \$10 charge is added to the amount of the bail. If the person

⁸ R.C. 2937.22(B).

⁹ R.C. 2949.091(A)(1)(b), (A)(2)(b), and (B).

posts bail and is found not guilty or the charges are dismissed, the money is returned. If the person is convicted, pleads guilty, or forfeits bail, the clerk sends half of the money collected to the state treasury for deposit into the Indigent Defense Support Fund.

Under existing law, the juvenile court in which a child is found to be a juvenile traffic offender for an act that is a moving violation must impose an additional court cost of \$10 upon the juvenile traffic offender unless the court determines that the juvenile is indigent and waives the payment of all court costs. The clerk sends half of the money collected to the state treasury for deposit into the Indigent Defense Support Fund.¹⁰

Reinstatement fee for suspended driver's license

A person whose driver's license, commercial driver's license, or nonresident operating privilege is suspended, disqualified, or canceled for an indefinite period of time or for a period of at least 90 days for a violation of the vehicle registration law must pay a \$40 reinstatement fee when requesting reinstatement of the license or operating privilege. The Registrar of Motor Vehicles must deposit \$10 of each fee into the state treasury to the credit of the Indigent Defense Support Fund.¹¹

Reinstatement fee for forfeited driver's license

If a person commits a misdemeanor of the first, second, third, or fourth degree that is related to the operation of a motor vehicle,¹² is an equipment violation,¹³ or is a motor vehicle crime¹⁴ or commits a violation of any substantially equivalent municipal ordinance and the person fails to appear in court to answer the charge or fails to make timely payment of a fine that has been imposed, the court will order the forfeiture of the person's driver's or commercial driver's license or permit. The court will terminate the forfeiture if the person appears to answer the charge and pays any fine imposed by the court or pays the fine originally imposed by the court. The person must also pay to the Bureau of Motor Vehicles a \$25 reinstatement fee. The Registrar deposits \$15 of the fee

¹⁰ R.C. 2949.094.

¹¹ R.C. 4507.45.

¹² R.C. 4511.01 to 4511.76 and 4511.84.

¹³ R.C. 4513.01 to 4513.65.

¹⁴ R.C. 4549.01 to 4549.65.

into the state treasury to the credit of the State Bureau of Motor Vehicles Fund and \$10 to the credit of the Indigent Defense Support Fund.¹⁵

Fine for DUI

The Revised Code establishes a scale of fines for operating a vehicle, streetcar, or trackless trolley under the influence of alcohol, a drug of abuse, or a combination of them or operating a vehicle, streetcar, or trackless trolley with a specified prohibited concentration of alcohol, a listed controlled substance, or a listed metabolite of a controlled substance in the person's system. A portion of each fine goes into the Indigent Defense Support Fund. The basic fine is from \$375 to \$1,075, with \$75 going to the fund. For an offender with one prior specified offense within six years, the fine is from \$525 to \$1,625, with \$125 going to the fund. For an offender with two prior specified offenses within six years, the fine is from \$850 to \$2,750, with \$250 going to the fund. For an offender with three or four prior specified offenses within six years or five prior specified offenses within 20 years or for a second felony under the statute, regardless of when the first felony was committed, the fine is from \$1,350 to \$10,500, with \$500 going to the fund.¹⁶

HISTORY

ACTION	DATE
Introduced	01-26-11

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¹⁵ R.C. 4510.22.

¹⁶ R.C. 4511.19(G)(5)(f).

