

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 969 - HB 1161

March 25, 2013

SUMMARY OF BILL: Requires the court to verify the accused's sources of income and property interests when the accused seeks to be declared indigent. Directs that if the accused has or expects an equity interest in personal or real property having a net value of at least \$2,500, excluding the value of the accused's homestead and one vehicle having a net value not exceeding \$5,000, or the accused has retained private counsel immediately before or after filing an affidavit of indigency, the accused must be presumed to not be indigent. Establishes a presumption of non-indigency if the accused has posted a cash bond of \$5,000 or more.

Removes the reasonable cause requirement, and requires, regardless of whether the court has reasonable cause to believe the accused is not indigent, the court to verify the accused's income with any state agency or political subdivision. Requires the Court Clerk to conduct a property record review for the county in which the accused resides or owns any assets or property and to search motor vehicle title and registrations. Authorizes the court or court clerk to contract with third parties to perform the verification of income and property ownership functions. Authorizes the court to contract with private attorneys for the collection and enforcement of liens and other judgments owed to the state for services rendered by a public defender's office.

Directs that any court ordered payments to defray a portion of the accused's representation be a lien against the accused in favor of the state. Requires the Administrative Office of the Courts (AOC) to create an affidavit of indigency reflecting these requirements. Establishes the procedure for attempting to recoup costs relative to the appointment of counsel in a criminal case. Establishes the manner in which the administrative fee is to be collected by the court.

Requires the Supreme Court to create a rule establishing the qualifications of appointed counsel in non-capital criminal cases, and the standards for appointing private counsel. Authorizes the Supreme Court to establish a peer review system for approval of non-routine fees and expenses incurred by appointed counsel. Authorizes the Supreme Court to adopt rules for contracting with expert witnesses. Requires such rules to allow contracts with out-of-state experts only if in-state experts are unavailable or are more expensive.

Requires the AOC to process payments quarterly for all compensation orders received out of money as appropriated in the Appropriations Act. Establishes procedures for payments if requested compensation is greater than the appropriation.

Increases, from \$400 to \$600, the privilege tax for attorneys. Requires the \$200 increase to be credited to the Indigent Defense Fund for providing legal services for persons accused of criminal offenses.

Removes a trial court's authority to set aside a guilty verdict or to grant a new trial in a criminal case because the court disagrees with the jury about the weight of the evidence.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – \$3,400,000/Recurring/Indigent Defense Fund
Increase State Expenditures – \$3,200/One-Time/General Fund
\$1,941,000/Recurring/General Fund
\$256,786,700/Incarceration*

Increase Local Expenditures – \$6,581,800/Recurring**

Assumptions:

- Based upon information provided by the AOC, any rule and form changes can be accomplished utilizing existing resources.
- Based upon information provided by the Clerks of Court Conference and AOC, the increased workload for the clerks' offices will require an average of two additional clerks' employees per county.
- The recurring increase in local expenditures is approximately \$6,581,790 [(\$25,000 salary + \$9,641 benefits) x 2 employees x 95 counties].
- According to the Department of Revenue, approximately 17,000 attorneys in Tennessee pay the professional privilege tax. Therefore, the recurring increase in state revenue is estimated to be \$3,400,000 (17,000 attorneys x \$200 increase). The bill would also result in an increase in state expenditures as some state departments and agencies pay the professional privilege tax on behalf of employee attorneys. According to the Department of Revenue, state departments and agencies pay the professional privilege tax for 1,191 attorneys. Raising the professional privilege tax will result in increased state expenditures of \$238,200 (1,191 attorneys x \$200).
- The AOC processes 25,000 attorney claims per quarter. This bill will result in each claim being processed twice. Because of the high volume, claims will continue to be processed as they are received. At the end of each quarter, the AOC will compare the payments sought to the available funds and apply the necessary reduction to each claim.
- The AOC will contract with at least one attorney in each of the 31 judicial districts to collect and enforce judgments owed to the state. The recurring increase in state expenditures is approximately \$1,550,000 (\$50,000 per attorney x 31).
- The AOC will hire four additional employees to handle the increased workload. The recurring increase in state expenditures is \$152,831 [(\$28,000 salary x 0.1503 benefits + \$5,999.28 insurance) x 4 employees].
- The total recurring increase in state expenditures is \$1,941,031 (\$238,200 + \$1,550,000 + \$152,831).
- The AOC will purchase computers for the new employees. The one-time increase in state expenditures is \$3,200 (\$800 computer x 4 employees).

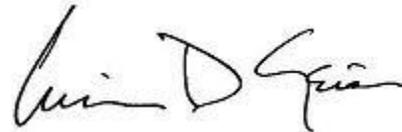
- Assuming the Department of Children’s Services will not be required to provide individual’s tax information in conflict with federal tax confidentiality laws, the Department’s federal funding will not be jeopardized.
- Rule 33(d) of the Tennessee Rules of Criminal Procedure provides that the trial court may grant a new trial following a verdict of guilty if the court disagrees with the jury about the weight of the evidence. Upon request of either party, the new trial will be conducted by a different judge.
- The AOC does not maintain statistics on the number of cases in which courts grant new trials pursuant to Rule 33; however, the AOC does not believe that trial courts exercise this rule a sufficient number of times to result in a significant fiscal impact.
- The bill allows the court to condition probation, suspension of a sentence, or withholding the imposition of a sentence upon payment of the fees and costs of the matter.
- According to the Department of Correction (DOC), there are currently 10,956 probationers who have fee exemptions as they are unable to pay the fees from their prosecution. It is assumed that these probationers would, under the bill, be granted probation conditioned upon payment of the fees and costs of prosecution. According to the DOC, none of these probationers would be able to pay the fees and costs, and, as a result, would violate their probation and return to DOC’s custody.
- Of the 10,956 probationers, 271 are Class A felons, 2,080 are Class B felons, 3,918 are Class C felons, 2,605 are Class D felons, and 2,082 are Class E felons. According to the DOC, it is assumed that all of these offenders would be revoked, held in contempt of court, and imprisoned up to one year.
- According to the DOC, the average operating cost per offender per day for calendar year 2013 is \$64.17.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 10,956 offenders serving one year (365.25 days) for a total of \$23,438 (\$64.17 x 365.25 days). The cost for 10,956 offenders is \$256,786,728 (\$23,438 x 10,956).

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

***Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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