

By Representative Roberts-Burke

1 A bill to be entitled
2 An act relating to legal assistance for accused
3 persons; amending s. 27.52, F.S., relating to
4 determination of indigency of accused person
5 and reenacting ss. 39.041(1) and 39.052(3)(d),
6 F.S., relating to child's right to counsel and
7 delinquency hearings, to incorporate said
8 amendment in references; specifying purposes
9 for such determination; providing for payment
10 to the clerk of court of an application fee of
11 up to \$40 in connection with the affidavit
12 asserting indigency; providing for monthly
13 transfer of fee moneys into the Indigent
14 Criminal Defense Trust Fund; amending s. 27.56,
15 F.S.; providing for mandatory assessment
16 against certain defendants of attorney's fees
17 and costs for public defender assistance or
18 other court-appointed attorney services;
19 removing an exception for indigent defendants;
20 providing that such costs shall be assessed in
21 addition to certain additional court costs;
22 amending s. 215.22, F.S.; providing that the
23 Indigent Criminal Defense Trust Fund is exempt
24 from certain service charge deductions for the
25 General Revenue Fund; providing an effective
26 date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Paragraphs (a), (c), (d), and (e) of
2 subsection (1) of section 27.52, Florida Statutes, 1996
3 Supplement, are amended to read:

4 27.52 Determination of indigency.--

5 (1)(a) The determination of indigency, for purposes of
6 appointing the public defender or special assistant public
7 defender or for the services of a private attorney appointed
8 pursuant to the Florida Statutes or the Florida Rules of
9 Criminal Procedure, for ~~of~~ any accused person shall be made by
10 the court, and may be made at any stage of the proceedings.

11 (c) An application ~~A~~ fee of up to \$40, as ordered by
12 the court, shall be paid to the clerk of court ~~into the county~~
13 ~~depository~~ at the time the affidavit is filed. However, the
14 affidavit shall be accepted without the application fee if the
15 court finds, after reviewing the financial information
16 contained in the affidavit, that the application fee should be
17 reduced, waived, or assessed at the disposition.

18 (d) If the court finds that the accused person
19 applying for representation appears to be indigent based on
20 the factual information provided, the court shall appoint the
21 public defender to provide representation. If the application
22 fee is not paid prior to the disposition of the case, the
23 sentencing judge shall be advised of this fact and may:

24 1. Assess the application fee as part of the sentence
25 or as a condition of probation; or

26 2. Assess the application fee pursuant to s. 27.56.

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28 Notwithstanding any provision of law or local order to the
29 contrary, the clerk of court ~~collecting entity~~ shall assign
30 the court-imposed application fee, up to the first \$40 paid by
31 the defendant, to the Indigent Criminal Defense Trust Fund, ~~if~~

1 ~~created by law; otherwise it shall be deposited in the General~~
2 ~~Revenue Fund.~~ In no event should a person who is found to be
3 indigent be refused counsel for failure to pay the application
4 fee.

5 (e) The application fee shall be ~~remitted into the~~
6 ~~county depository and transferred monthly by the clerk of~~
7 court to the Indigent Criminal Defense Trust Fund,
8 administered by the Justice Administrative Commission if
9 ~~created by law; otherwise it shall be deposited in the General~~
10 ~~Revenue Fund, to be used to supplement for the purpose of~~
11 ~~supplementing~~ the general revenue funds appropriated by the
12 Legislature to the public defenders. The clerk of court may
13 retain up to 2 percent of the application fee for
14 administrative costs prior to remitting the remainder to the
15 Justice Administrative Commission.

16 Section 2. For the purpose of incorporating the
17 amendment to section 27.52, Florida Statutes, 1996 Supplement,
18 in references thereto, the sections or subdivisions of Florida
19 Statutes set forth below are reenacted to read:

20 39.041 Right to counsel.--

21 (1) A child is entitled to representation by legal
22 counsel at all stages of any proceedings under this part. If
23 the child and the parents or other legal guardian are indigent
24 and unable to employ counsel for the child, the court shall
25 appoint counsel pursuant to s. 27.52. Determination of
26 indigency and costs of representation shall be as provided by
27 ss. 27.52 and 27.56. Legal counsel representing a child who
28 exercises the right to counsel shall be allowed to provide
29 advice and counsel to the child at any time subsequent to the
30 child's arrest, including prior to a detention hearing while
31 in secure detention care. A child shall be represented by

1 legal counsel at all stages of all court proceedings unless
2 the right to counsel is freely, knowingly, and intelligently
3 waived by the child. If the child appears without counsel,
4 the court shall advise the child of his or her rights with
5 respect to representation of court-appointed counsel.

6 39.052 Hearings.--

7 (3) TRANSFER OF A CHILD FOR PROSECUTION AS AN ADULT.--

8 (d) Notwithstanding any provision of this section or
9 any other law to the contrary, if a child is transferred for
10 criminal prosecution pursuant to this section, a nonindigent
11 or indigent but able to contribute parent or legal guardian of
12 the child pursuant to s. 27.52 is liable for necessary legal
13 fees and costs incident to the criminal prosecution of the
14 child as an adult.

15 Section 3. Subsection (1) and paragraph (a) of
16 subsection (2) of section 27.56, Florida Statutes, 1996
17 Supplement, are amended to read:

18 27.56 Assistance; lien for payment of attorney's fees
19 or costs.--

20 (1)(a) The court having jurisdiction over any
21 defendant who has been determined to be guilty of a criminal
22 act by a court or jury or through a plea of guilty or nolo
23 contendere and who has received the assistance of the public
24 defender's office or a special assistant public defender, or
25 the services of a private attorney appointed pursuant to the
26 Florida Statutes or the Florida Rules of Criminal Procedure,
27 shall ~~but is not indigent under s. 27.52(2), or has been~~
28 ~~determined indigent but able to contribute, may~~ assess
29 attorney's fees and costs against the defendant ~~at the~~
30 ~~sentencing hearing, the court shall assess attorney's fees and~~
31 ~~costs against the defendant~~ and shall determine the

1 appropriate amount and method of payment. Such costs may
2 include the cost of depositions; cost of transcripts of
3 depositions, including the cost of defendant's copy, which
4 transcripts are certified by the defendant's attorney as
5 having served a useful purpose in the disposition of the case;
6 investigative costs; witness fees; the cost of psychiatric
7 examinations; or other reasonable costs specially incurred by
8 the county for the defense of the defendant in criminal
9 prosecutions within the county. Costs shall not include
10 expenses inherent in providing a constitutionally guaranteed
11 jury trial or expenditures in connection with the maintenance
12 and operation of government agencies that must be made by the
13 public irrespective of specific violations of law. Any cost
14 assessed pursuant to this paragraph shall be in addition to
15 ~~reduced by~~ any amount assessed against a defendant pursuant to
16 s. 27.3455.

17 (b) Upon entering a judgment of conviction, the trial
18 court shall ~~may~~ order the defendant to pay the costs assessed
19 by the court in full, or within a time certain as set by the
20 court, after the judgment of conviction becomes final.

21 (c) After assessment of the attorney's fees and costs,
22 the court shall ~~may~~ order the defendant to pay the attorney's
23 fees in full or in installments, at the time or times
24 specified. The court may order payment of the assessed
25 attorney's fees as a condition of probation, of suspension of
26 sentence, or of withholding the imposition of sentence.

27 (2)(a) After ~~when~~ payment of attorney's fees or costs
28 has been ordered by the court, there is hereby created in the
29 name of the county in which such assistance was rendered a
30 lien, enforceable as hereinafter provided, upon all the
31 property, both real and personal, of any person who:

1 1. Has received any assistance from any public
2 defender of the state, from any special assistant public
3 defender, or from any appointed private legal counsel; or

4 2. Is a parent of an accused minor or an accused adult
5 tax-dependent person who is being, or has been, represented by
6 any public defender of the state, by any special assistant
7 public defender, or by any appointed private legal counsel.

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9 Such lien shall constitute a claim against the
10 defendant-recipient or parent and his or her estate,
11 enforceable according to law, in an amount to be determined by
12 the court in which such assistance was rendered.

13 Section 4. Paragraph (s) is added to subsection (1) of
14 section 215.22, Florida Statutes, 1996 Supplement, to read:

15 215.22 Certain income and certain trust funds
16 exempt.--

17 (1) The following income of a revenue nature or the
18 following trust funds shall be exempt from the deduction
19 required by s. 215.20(1):

20 (s) The Indigent Criminal Defense Trust Fund.

21 Section 5. This act shall take effect October 1, 1997.

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HOUSE SUMMARY

Revises provisions relating to determination of indigency of accused person. Specifies purposes for such determination. Provides for payment to the clerk of court of an application fee of up to \$40 in connection with the affidavit asserting indigency. Provides for monthly transfer of fee moneys into the Indigent Criminal Defense Trust Fund.

Provides for mandatory assessment against certain defendants of attorney's fees and costs for public defender assistance or other court-appointed attorney services. Removes an exception for indigent defendants. Provides that such costs shall be assessed in addition to certain additional court costs. Provides that the Indigent Criminal Defense Trust Fund is exempt from certain service charge deductions for the General Revenue Fund.