

Department of Finance and Administration

Legislative Impact Statement

Bill: SB921

Bill Subtitle: CONCERNING THE REPAYMENT OF FEES THAT ARE OWED RELATED TO COURT-ORDERED REPRESENTATION BY THE PUBLIC DEFENDER.

Basic Change :

Senator E. Williams

A person must complete a certificate of indigence to be represented by a public defender for certain offenses. The certificate is a legally binding contract and shall contain a notice that the person's state income tax refund, legal settlements or favorable verdicts, lottery winnings, or any moneys or property forfeited by the state shall be intercepted to satisfy the debt ordered by the court for the cost of the public defender.

The Bill also allows recovery of fees from those who claim to be indigent and are later found not to be indigent. A lien will be attached to the person's state income tax refund, wages, legal settlements or favorable verdicts, lottery winnings or any moneys or property forfeited by the state.

Revenue Impact :

None

Taxpayer Impact :

A taxpayer who is found to be indigent and requires a public defender must forfeit their state tax refund to pay the debt ordered by the court for the cost of the public defender.

Resources Required :

Forms, instructions and computer system updated - \$10,000

Time Required :

Six months after bill is passed.

Procedural Changes :

DFA would be required to design and implement a new system to handle and track the liens and the refunds that are intercepted. A new process will be required to remit the intercepted refund to the court.

A coordinated effort between DFA, the Arkansas Lottery, settlement attorneys, the court system among others would be needed to track the disbursement of funds and to make sure excess funds are not withheld from the taxpayer.

Other Comments :

Tracking the amount of funds intercepted by all parties involved would be difficult and may result in excess funds paid to the court on behalf of the taxpayer.

DFA already has a system in place to handle an issue like this under ACA 26-36-301 et seq. The debt could be loaded as a setoff against the taxpayer's refund. Arkansas circuit, county, district, or city

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courts are already designated as a claimant agency. The court would be required to certify the balance once a year to DFA.

Legal Analysis :

SB921 amends Arkansas law concerning fees and costs related to providing public defender legal representation to indigent criminal defendants. Ark. Code Ann. § 16-87-213 currently requires criminal defendants who wish to be represented by a public defender to file a written certificate of indigency certifying that the defendant is without sufficient funds to employ a private attorney. A new statutory provision added by this bill states that the certificate of indigency shall function as a binding contractual agreement requiring the defendant to repay fees and costs related to this representation. The bill also sets costs for specific types of representation such as negotiated pleas and trial work.

The bill also authorizes the "State of Arkansas" to file civil actions against the defendant to recover the legal fees and costs and to attach liens to the defendant's state income tax refund, wages, legal settlements or verdicts, lottery winnings or money or property forfeited to the defendant to the state. In order to perfect the lien, a public defender must file a notice with the circuit court detailing the services rendered and a claim for the reasonable value of said services. The circuit court is required to determine whether all or part of the lien shall be allowed. A copy of the lien and the court order allowing the lien must be provided to the defendant and filed with DFA.

The part of the bill's lien provision that is relevant to DFA is the attachment of liens to a defendant's state income tax refund. This provision is inconsistent with the current method by which a state agency may obtain repayment of a debt from the debtor's state income tax refund, which is a setoff of the refund pursuant to Ark. Code Ann. § 26-36-301 et seq. and Specifically, Ark. Code Ann. § 26-36-301(b) provides the legislative intent of the setoff statutes, which is to collect "any debt owed to the state." Rather than the filing of a lien, the collection method more consistent with the setoff statutes would be to include the agency wishing to obtain part of the state income tax refund as a "claimant agency" as defined in Ark. Code Ann. § 26-36-303. While the Public Defender Commission is not designated as a claimant agency under current law, Arkansas circuit, county, district, or city courts and county collectors and county treasurers are currently designated as claimant agencies [Ark. Code Ann. § 26-36-303(1)(A)(viii) and (xii), respectively].

The bill states that the act is effective for tax years beginning on or after January 1, 2013.