

1 State of Arkansas
2 91st General Assembly
3 Regular Session, 2017
4

A Bill

SENATE BILL 269

5 By: Senator J. Hutchinson
6

For An Act To Be Entitled

8 AN ACT CONCERNING THE COLLECTION OF PROBATION OR
9 PAROLE SUPERVISION FEES AND RESTITUTION BY AN
10 EMPLOYEE OF THE DEPARTMENT OF COMMUNITY CORRECTION;
11 TO PROHIBIT PAYMENT OF FEES, FINES, OR RESTITUTION
12 FOR A PERSON ON PROBATION OR PAROLE THROUGH AN
13 EMPLOYEE OF THE DEPARTMENT OF COMMUNITY CORRECTION;
14 TO ESTABLISH THE DEPARTMENT OF FINANCE AND
15 ADMINISTRATION AS THE DESIGNATED AGENCY FOR
16 COLLECTION OF PROBATION OR PAROLE SUPERVISION FEES;
17 TO PERMIT THE DEPARTMENT OF FINANCE AND
18 ADMINISTRATION TO USE ALL LEGAL MEANS TO COLLECT
19 PROBATION OR PAROLE SUPERVISION FEES IF THE PERSON ON
20 PROBATION OR PAROLE IS IN ARREARS; AND FOR OTHER
21 PURPOSES.
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Subtitle

24 CONCERNING THE COLLECTION OF PROBATION OR
25 PAROLE SUPERVISION FEES; CONCERNING THE
26 DUTIES OF AN EMPLOYEE OF THE DEPARTMENT
27 OF COMMUNITY CORRECTION; AND CONCERNING
28 THE DEPARTMENT OF FINANCE AND
29 ADMINISTRATION.
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33 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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35 SECTION 1. Arkansas Code § 5-4-205(g), concerning a judgment of
36 restitution by a court against a person convicted of an offense, is amended



1 to read as follows:

2 (g)(1) The court shall enter a judgment against the defendant for the
3 amount determined under subdivision (b)(4) of this section.

4 (2) The judgment may be enforced by the state or a beneficiary
5 of the judgment in the same manner as a judgment for money in a civil action.

6 (3) A judgment under this section may be discharged by a
7 settlement between the defendant and the beneficiary of the judgment.

8 (4) The court shall determine priority among multiple
9 beneficiaries on the basis of:

- 10 (A) The seriousness of the harm each beneficiary suffered;
- 11 (B) The other resources of the beneficiaries; and
- 12 (C) Other equitable factors.

13 (5) If more than one (1) defendant is convicted of the crime for
14 which there is a judgment under this section, the defendants are jointly and
15 severally liable for the judgment unless the court determines otherwise.

16 ~~(6)(A) A judgment shall require payment to the Department of
17 Community Correction.~~

18 ~~(B) The department shall provide for supervision and
19 disbursement of funds under subdivision (g)(6)(A) of this section by the
20 department's authorized economic sanction officers.~~

21

22 SECTION 2. Arkansas Code § 5-4-907 is amended to read as follows:
23 5-4-907. Cost, fees, and restitution.

24 (a) The pre-adjudication probation program judge may order the
25 offender to pay:

- 26 (1) Court costs as provided in § 16-10-305;
- 27 (2) Any substance abuse treatment costs;
- 28 (3) Drug testing costs;
- 29 (4) Costs associated with mental health treatment;
- 30 (5) A pre-adjudication probation program user fee;
- 31 (6) Any restitution owed the victim of the charged criminal
32 offense;
- 33 (7) Necessary supervision fees;
- 34 (8) Any applicable residential treatment fees;
- 35 (9) Tuition and other educational fees for vocational schools,
36 technical schools, community colleges, or two-year and four-year public

1 universities that are part of the pre-adjudication probation program for
2 which the offender is participating; and

3 (10) Any fees determined or authorized under § 12-27-
4 125(b)(17)(B) or § 16-93-104(a)(1), ~~which are to be paid to the Department of~~
5 ~~Community Correction.~~

6 (b)(1) The pre-adjudication probation program judge shall establish a
7 schedule for the payment of costs, fees, and restitution.

8 (2) The cost for substance abuse treatment, mental health
9 treatment, drug testing, and supervision shall be set by the treatment and
10 supervision providers respectively and made part of the order of the pre-
11 adjudication probation program judge for payment.

12 (3) Pre-adjudication probation program user fees shall be set by
13 the pre-adjudication probation program judge.

14 (4) Treatment, drug testing, and supervision costs or fees shall
15 be paid to the respective providers.

16 (5) Fees determined or authorized under § 12-27-125(b)(17)(B) or
17 § 16-93-104(a)(1) shall be paid ~~to the Department of Community Correction~~ as
18 determined by law.

19 (6) Restitution to the victim shall be paid directly to the
20 victim.

21 (c) Court orders for costs, fees, and restitution shall remain an
22 obligation of the participant in the pre-adjudication probation program with
23 court monitoring until fully paid.

24
25 SECTION 3. Arkansas Code § 12-27-125(b)(17), concerning the functions,
26 powers, and duties of the Department of Community Correction, is amended to
27 read as follows:

28 (17)(A) It may not receive and disburse moneys ordered to be
29 paid by ~~offenders pursuant to~~ persons under statutory economic sanctions that
30 are part of a person's sentence for a conviction for which the person is
31 being supervised.

32 ~~(B) It may receive fees to be levied by the courts or~~
33 ~~authorized by the Board of Corrections for participation in specified~~
34 ~~programs and to be paid by offenders on community correction.~~

35 ~~(C)(B)~~ The payment of ~~such~~ statutory economic sanctions
36 and fees may be a condition of probation, parole, or post prison transfer or

1 attached to admission and participation in a community correction program and
2 the nonpayment of statutory economic sanctions may be used as the basis to
3 allege that the person has violated the terms and conditions of his or her
4 supervision-

5 ~~(D) The moneys collected shall be deposited into an~~
6 ~~earmarked account at the state level to be used solely for the continuation~~
7 ~~and expansion of community correction in this state.~~

8 ~~(E) Economic sanction officers are to be authorized by the~~
9 ~~Department of Community Correction to perform these duties pursuant to~~
10 ~~policies and procedures adopted by the Board of Corrections and in accord~~
11 ~~with any state statutory accounting requirements;~~

12
13 SECTION 4. Arkansas Code § 16-93-104 is amended to read as follows:

14 16-93-104. Supervision fee – Direct payment by offender – Failure to
15 pay.

16 (a)(1) ~~Any offender~~ A person on probation, parole, or transfer under
17 supervision of the Department of Community Correction shall pay ~~to the~~
18 ~~department~~ a monthly supervision fee of thirty-five dollars (\$35.00).

19 (2) ~~The Director of the Department of Community Correction~~ The
20 monthly supervision fee required under this subsection shall be paid to the
21 Department of Finance and Administration and the Director of the Department
22 of Finance and Administration or his or her designee shall deposit:

23 (A) Twenty-five dollars (\$25.00) of each payment received
24 into the State Treasury as special revenues credited to the Community
25 Correction Revolving Fund; and

26 (B)(i) Ten dollars (\$10.00) of each payment received into
27 the Best Practices Fund, § 19-5-1139, to ensure evidence-based programs and
28 supervision practices are available to ~~offenders~~ persons supervised on either
29 probation or parole.

30 (ii) The Board of Corrections shall promulgate
31 ~~regulations~~ rules for the accounting and distribution of the Best Practices
32 Fund to ensure that:

33 (a) No less than seventy-five percent (75%) of
34 the funds are used by the Department of Community Correction for direct
35 services to the ~~offender~~ population of persons it supervises that have been
36 proven, through research, to reduce recidivism among the ~~offender~~ population

1 of supervised persons served;

2 (b) The direct services may be provided by the
3 Department of Community Correction, the Department of Human Services, and
4 community-based vendors meeting ~~these~~ the criteria under subdivision
5 (a)(2)(B)(ii)(a) of this section and serving ~~offenders~~ persons being
6 supervised by the Department of Community Correction; and

7 (c) No more than ten percent (10%) of the
8 funds are used to train staff managing the ~~offender~~ population of supervised
9 persons in evidence-based practices.

10 (3) Expenditures from the Community Correction Revolving Fund
11 shall be used for continuation and expansion of community correction programs
12 as established and approved by the Board of Corrections.

13 (b)(1) When ~~an offender~~ a person on probation defaults in the payment
14 of monthly supervision fees or any installment ~~thereof~~ payment of the monthly
15 supervision fees, the court may require the ~~offender~~ person to show cause why
16 he or she would not be imprisoned for nonpayment.

17 (2) The ~~offender~~ person shall not be imprisoned if ~~the offender~~
18 he or she is financially unable to make the payments and states so to the
19 court in writing, under oath, and the court ~~so~~ finds the person is
20 financially unable to make the payments.

21 (3) Unless the ~~offender~~ person shows that his or her default was
22 not attributable to a purposeful refusal to obey the sentence of the court or
23 to a failure on his or her part to make a good faith effort to obtain the
24 funds required for payment, the court may order the ~~defendant~~ person
25 imprisoned until the payments are made.

26 (4) If the court determines that the default in payment is not
27 attributable to the causes specified in subdivision (b)(3) of this section,
28 the court may enter an order:

29 (A) allowing the person ~~allowing the offender~~ additional
30 time for payment;

31 (B) reducing ~~reducing~~ the amount of each installment;

32 (C) revoking ~~revoking~~ the monthly supervision fees or the
33 unpaid portion ~~thereof~~ of the monthly supervision fees in whole or in part.

34 (c)(1) ~~The offender~~ Subject to the limitations set out in this
35 subsection, a person on parole may be imprisoned for violation of parole if
36 ~~the offender~~ he or she is financially able to make the payments and if the

1 ~~payments are not made and the Parole Board so finds, subject to the~~
2 ~~limitations set out in this subsection that the person on parole has not made~~
3 ~~the required payments.~~

4 (2) ~~The offender~~ A person on parole shall not be imprisoned if
5 ~~the offender~~ he or she is financially unable to make the payments and states
6 so under oath to the Parole Board in writing, and the ~~Parole Board so finds~~
7 Parole Board finds that the person is financially unable to make the
8 payments.

9 (d) Court costs under § 16-10-305 shall be collected in full before
10 any monthly supervision fees are collected under this section.

11
12 SECTION 5. Arkansas Code Title 16, Chapter 93, Subchapter 1, is
13 amended to add an additional section to read as follows:

14 16-93-111. Collection of supervision fees – Interception of funds by
15 the Department of Finance and Administration.

16 (a) The Department of Finance and Administration shall collect the
17 monthly supervision fees required under § 16-93-104 and any restitution that
18 a circuit court may order a person on probation or parole to pay to the
19 department as a condition of his or her sentence.

20 (b) The department may use any legal means to collect any unpaid
21 supervision fees that are more than three (3) months in arrears, including an
22 interception of the defendant’s state income tax return or lottery winnings.

23 (c)(1) The department shall make available to a prosecuting attorney,
24 circuit court, or law enforcement agency upon request an accounting of a
25 person’s payments of his or her monthly supervision fees or restitution.

26 (2) An accounting provided under subdivision (c)(1) of this
27 section shall comply with evidentiary standards and be submitted in a manner
28 that would be considered a business record under Rules 801 through 804 of the
29 Arkansas Rules of Evidence.

30 (3) The department shall make available upon request of a
31 prosecuting attorney or defense attorney a person to testify in court as to
32 the nature of and data included in an accounting of a person’s payments.

33
34 SECTION 6. Arkansas Code Title 16, Chapter 93, Subchapter 3, is
35 amended to add an additional section to read as follows:

36 16-93-315. Collection of fees, fines, or restitution by Department of

1 Community Correction prohibited.

2 A fee, fine, or restitution ordered by a circuit court to be paid by a
3 person on probation that is part of the person's sentence for a conviction
4 for which the person is being supervised shall not be collected by an
5 employee of the Department of Community Correction.

6
7 SECTION 7. Arkansas Code § 16-93-1205(a)(6), concerning the scope of
8 rules promulgated by the Board of Correction relating to the operation of
9 community correction facilities and programs, is amended to read as follows:

10 (6)(A) Collection Payment by a person under supervision of
11 economic sanctions imposed by the court, including, ~~but not limited to,~~
12 without limitation restitution, fines, fees, or other monetary penalties
13 attached to ~~an offender's~~ the person's sentence.

14 (B) However, an economic sanction ordered by a circuit
15 court to be paid by a person that is part of the person's sentence for a
16 conviction for which the person is being supervised shall not be collected by
17 an employee of the Department of Community Correction.