



SPONSOR: Rep. Hudson
Reps. Wagner, DiPinto, Keeley,
Buckworth, Lee; Sens. Marshall,
Winslow, Vaughn

HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 426

AN ACT TO CREATE AN INDIGENT PARTY EXPENSE FUND.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend §4101 of Title 11, Delaware Code, by adding a new subsection (e) thereto that shall read as
2 follows:

3 "(e) In addition to, and at the same time as, any fine, penalty or forfeiture is assessed to any criminal
4 defendant or any child adjudicated delinquent, there shall be levied an additional assessment of \$10.00 imposed
5 and collected by the courts for crimes or offenses as defined in §233 of this title. When a fine, penalty or
6 forfeiture is suspended, in whole or in part, this assessment shall not be suspended.

7 (1) Upon collection of this assessment, the same shall be paid over to the Prothonotary or
8 clerk of courts, as the case may be, who shall collect the same and transmit it to the State
9 Treasury to be deposited in a separate account for the administration of this subsection,
10 which account shall be designated the "Indigent Party Expense Fund," which is hereby
11 created. This fund is to be administered by the Administrative Office of the Courts.
12 Funds shall be used exclusively to compensate court-appointed attorneys, contract
13 counsel, interpreters, and experts, as well as other expenses related to trials of matters
14 involving indigents and the State or State agencies.

15 (2) For each fiscal year, if the balance in the Indigent Party Expense Fund exceeds
16 \$2,500,000, said funds shall be transferred to the General Fund of the State of Delaware on
17 June 30. The Administrative Office of the Courts shall submit a detailed spending plan for
18 the use of these funds to the State Budget Director and Controller General no later than

19 September 30 of each fiscal year. No funds shall be expended until the plan is approved
20 by the State Budget Director and the Controller General.

21 (3) The courts may expunge the record of any assessment hereunder which remains
22 uncollected for a period in excess of 3 years."

23 Section 2. Amend §4106(c) of Title 11, Delaware Code, as follows: After the word "restitution" insert the
24 words "next to pay the \$10 assessment for the Indigent Party Expense Fund..."

25 Section 3. This Act shall take effect upon signature of the Governor. This year's collections may be expended
26 for services for the indigent in criminal cases with approval of the State Budget Director and the Controller
27 General.

SYNOPSIS

The purpose of the legislation is to raise sufficient funds to be placed in an indigent service account for the purpose of defraying the cost of defending the indigent accused in criminal cases in our courts consistent with mandatory federal constitutional law.

The main points of the legislation amending Title 11 Sections 4101 and 4106(c) are as follows:

1. To assess a \$10 surcharge after conviction of every person convicted of a criminal or motor vehicle offense in the Justice of the Peace Courts, the Court of Common Pleas, the Family Court and the Superior Court of this State.
2. The assessment would be collected in priority in third position after the victim's compensation assessment and restitution. The \$10 surcharge/assessment would not be subject to suspension.
3. Monies collected would be placed directly in a "Indigent Party Expense Fund" to be administered by the Administrative Office of the Courts and would not pass directly into the General Fund. This separate account, although somewhat unusual admittedly, would allow for greater accountability and flexibility in defraying costs for indigent services in a manner which would not adversely affect the administration of justice.
4. In the event in any given year that the fund has collected more than \$2.5 million the overage would be paid directly into the General Fund. This is consistent with the projected collected funds to be \$1.5 million per year. This would insure that no deficit would occur in the fund given current projections and other steps being taken to deal more efficiently with indigent services for a period of two years.
5. The fund based upon certified need for the expense would defray the cost for court-appointed counsel, contract and conflicts counsel, interpreters and ancillary expenses which include forensic, mental health and other expert witnesses at the request of counsel and the discretion of the Court. No funds would be paid without judicial scrutiny, authorization by order and certification by the AOC that the funds existed in the "Indigent Party Expense Fund".

In the meantime, the Committee on Ethics 2000 is currently in process of advising the Chief Justice on appropriate ways to address the issue of conflicts in public defender representation and the Chief Justice's appointed Committee on Indigent Services in Criminal Cases continues to explore the role of the private bar in assisting the poor and the court system in providing adequate non-compensated legal services.