

SENATE BILL 806

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40; Title 55 and Title 69, Chapter 9, relative to
funds for services to indigent persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-419(a)(1)(A), is amended by deleting the subdivision and substituting instead the following:

(i) There is created in the state treasury a fund known as the electronic monitoring indigency fund. The fund shall be composed of two (2) accounts, each of which shall be used for one (1) of the following purposes:

(a) The eligible costs associated with the lease, purchase, installation, removal, and maintenance of ignition interlock devices or with any other cost or fee associated with a functioning ignition interlock device required by this part for persons determined by the court to be indigent; and

(b) The eligible costs associated with the use of a transdermal monitoring device, other alternative alcohol or drug monitoring device, or global positioning monitoring device, if required by the court pursuant to § 40-11-152, § 55-10-402(d)(2)(A)(iii) or (h)(7), or any other statute specifically authorizing payment under this section, for persons determined by the court to be indigent.

(ii) The money in the two (2) accounts created by subdivision (a)(1)(A)(i) may be commingled for investment purposes, but will be accounted for separately with separate accounting for each account's principal and income. The account for ignition interlock devices shall contain state-appropriated monies as well as a portion of the fees assessed in accordance with this section and as provided in other applicable law. The

account for other monitoring devices, as provided in subdivision (a)(1)(A)(i)(b), shall contain excess funds from the ignition interlock account as well as money from each local government that chooses to utilize this fund, and may contain state-appropriated monies. The treasurer is authorized to transfer money from one (1) account to the other to pay for eligible devices.

SECTION 2. Tennessee Code Annotated, Section 55-10-419(a)(1)(B), is amended by deleting the subdivision and substituting instead the following:

(B) Notwithstanding subdivision (a)(1)(A), no more than two hundred dollars (\$200) per month shall be expended from the fund to pay the costs associated with an indigent person's interlock ignition device, pursuant to subdivision (a)(1)(A)(i)(a), or other monitoring device pursuant to subdivision (a)(1)(A)(i)(b).

SECTION 3. Tennessee Code Annotated, Section 55-10-419(f), is amended by deleting the subsection and substituting instead the following:

(f) In the event that the treasurer determines or anticipates that the electronic monitoring indigency fund has or will have insufficient funds to pay for eligible claims or invoices as they are received, the treasurer is authorized to stop accepting, determining eligibility for, or paying claims or invoices submitted by providers of ignition interlock devices, transdermal monitoring devices, other alternative alcohol or drug monitoring devices, or global positioning monitoring devices for a period of time to be determined by the treasurer. The treasurer may begin accepting or paying claims or invoices submitted by providers of ignition interlock devices, transdermal monitoring devices, other alternative alcohol or drug monitoring devices, or global positioning monitoring devices with service dates on or after the date on which the treasurer determines that there is a sufficient amount of money in the fund to pay at least six (6) months of projected expenditures from the date that the fund reopens. The six (6) months of projected expenditures must include the cost of paying provider claims or invoices and the department's administrative fee. The treasurer will determine the period of time necessary to accumulate this minimum six-month reserve for projected expenditures and

notify providers and the courts of the anticipated date that provider claims and invoices will be accepted and paid from the fund again. The treasurer may establish an order of priority for paying claims and invoices from the fund after the period of insolvency and the minimum six-month reserve for projected expenditures has been met.

SECTION 4. Tennessee Code Annotated, Section 55-10-419(g)(2)(A)(ii), is amended by deleting the subdivision and substituting instead the following:

(ii) All the costs associated with the use of a transdermal monitoring device, other alternative alcohol or drug monitoring device, or global positioning monitoring device, if required by the court pursuant to § 40-11-152 or § 55-10-402(d)(2)(A)(iii) or (h)(7); and

SECTION 5. Tennessee Code Annotated, Section 55-10-419(g)(3)(A), is amended by deleting subdivisions (g)(3)(A)(i) - (iii) and substituting instead the following:

(i) Fifty percent (50%) of such surplus shall be transmitted to the department of mental health and substance abuse services and placed in the alcohol and drug addiction treatment fund; and

(ii) Fifty percent (50%) of such surplus shall be used by the department of safety, Tennessee highway safety office, to provide grants to local law enforcement agencies for purposes of obtaining and maintaining equipment or personnel needed in the enforcement of alcohol-related traffic offenses.

SECTION 6. Tennessee Code Annotated, Section 55-10-419, is amended by adding the following as new, appropriately designated subsections:

() The money in the electronic monitoring indigency fund's ignition interlock account shall be used to pay for eligible costs associated with ignition interlock devices, and the money in the account for transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices shall pay for

eligible costs associated with such devices, subject to the treasurer's ability to transfer funds between the two (2) accounts. Periodically, the treasurer shall determine whether there is excess money in the fund's ignition interlock account that may be transferred to the account for transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices to pay for costs associated with such devices. If there is no excess money, the treasurer shall not pay eligible claims or invoices for transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices until there is excess money in the ignition interlock account to be transferred to the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account, or until the state appropriates monies in the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account.

() No later than a date certain established by the treasurer, each local government shall have the option to participate in the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account by having the costs for eligible devices paid from the fund for each local government's indigent defendants. The local government shall demonstrate participation through a resolution legally adopted and approved by the local government's legislative body providing acceptance of the liability associated with participation and containing the maximum liability that the local government commits to its participation in the fund. For each subsequent year of participation and no later than a date certain established by the treasurer, the local government shall notify the treasurer of the budgeted amount that is approved for participation in the fund within thirty (30) days from when a budget is approved by the local legislative body and shall provide a copy of the approved budget

to the treasurer. The state will provide funds matching each local government's maximum liability or budgeted amount for participation in the fund, subject to an appropriation by the state. Each participating local government will pay fifty percent (50%) of the costs associated with transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices for indigent defendants within the local government's jurisdiction, and the state will match the local government's cost by providing the other fifty percent (50%) of funding.

() In obtaining money from participating local governments, the state may either bill the local governments for costs associated with eligible devices or draw revenue from the local government's state-shared taxes.

() In paying claims or invoices for indigent defendants in a participating city or county, the state shall only pay for the costs associated with transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices when the local government has remitted fifty percent (50%) of the total eligible costs to the state.

() A local government may withdraw from participation in the transdermal monitoring device, other alternative drug and alcohol monitoring device, and global positioning monitoring device account at any time and reenter as a participant within the time frame established by the treasurer. After a local government's withdrawal from participation, the local government shall continue to pay all outstanding liabilities for eligible devices.

() The electronic monitoring indigency fund shall be administered by the treasurer. Through the administration of the fund, the treasurer shall have the authority to:

(1) Determine that the money is paid out of the fund for eligible devices and offenses pursuant to applicable laws and rules; and

(2) Promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the administration of the fund.

() For the efficient administration of the fund, providers of ignition interlock devices, transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices shall:

(1) Submit a claim to the treasurer electronically on a form prescribed by the treasurer no later than ninety (90) calendar days after the device has been ordered by the court accompanied by:

(A) The court order requiring the device;

(B) The affidavit of indigency; and

(C) An attestation from the provider for each claim indicating that the charges contained in the claim are true and accurate and do not contain duplicate claims or charges previously submitted to the treasurer for reimbursement;

(2) Submit invoices to the treasurer no later than one hundred eighty (180) calendar days from the date of service;

(3) Submit amendments to documents previously submitted or new documentation in support of a claim or invoice to the treasurer no later than ninety (90) calendar days after the provider's receipt of the amended or new documentation; and

(4) Submit any additional information or complete any additional forms requested by the treasurer.

() The provider shall ensure that the court orders submitted to the treasurer do not contain handwritten changes and are submitted on a uniform court order prescribed by the treasurer.

() If a provider filing a claim or invoice for reimbursement from the fund knowingly makes a false, fictitious, or fraudulent statement or representation, or knowingly submits false, fictitious, or fraudulent documentation or information to the treasurer for reimbursement, the provider may be liable under the False Claim Act compiled in title 4, chapter 18.

() If a provider is overpaid from the fund for any reason, the treasurer is authorized to exercise a right of set-off against any amount due to the provider from the fund.

SECTION 7. Tennessee Code Annotated, Section 55-10-402(d)(2)(A)(iii), is amended by deleting the subdivision and substituting instead the following:

(iii) Global positioning monitoring system, as defined in § 40-11-152. If the court determines that the person is indigent, the court shall order the person to pay any portion of the costs of such a system for which the person has the ability to pay, as determined by the court. Any portion of the costs of such a system that the person is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds; or

SECTION 8. Tennessee Code Annotated, Section 55-10-402(h)(7)(C), is amended by deleting the subdivision in its entirety and substituting instead the following:

(C) The use of a global positioning monitoring system, as defined in § 40-11-152. If the court determines that the person is indigent, the court shall order the person to pay any portion of the costs of such a system for which the person has the ability to pay, as determined by the court. Any portion of the costs of such a system that the

person is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds; or

SECTION 9. Tennessee Code Annotated, Section 40-11-152(h), is amended by deleting the subsection and substituting instead the following:

(h) If the magistrate determines that the defendant is indigent, the magistrate shall order the defendant to pay any portion of the costs required by subsection (b) for which the defendant has the ability to pay, as determined by the magistrate. Any portion of the costs required by subsection (b) that the defendant is unable to pay shall come from the electronic monitoring indigency fund established pursuant to § 55-10-419, subject to the availability of funds.

SECTION 10. Notwithstanding any law to the contrary, the treasurer may use any funds in the electronic monitoring indigency fund on or after the effective date of this act to pay for the use of global positioning monitoring devices by indigent persons as a condition of bail or sentencing between July 1, 2016, and July 1, 2019.

SECTION 11. This act shall take effect July 1, 2019, the public welfare requiring it.