

SENATE BILL 887

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 39;  
Title 40; Title 55 and Title 69, relative to indigency  
funds.

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

SECTION 1. Tennessee Code Annotated, Section 55-10-419, is amended by deleting the section and substituting instead the following:

(a)

(1)

(A)

(i) There is created in the state treasury a fund known as the DUI monitoring indigency fund. The fund must be used for 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.

(ii) There is created in the department of finance and administration, office of criminal justice programs, a fund known as the electronic monitoring indigency fund. The fund must be used for eligible costs associated with the use of a transdermal monitoring device, other alternative alcohol or drug monitoring device excluding an ignition interlock 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.

(B) Notwithstanding subdivision (a)(1)(A), no more than two hundred dollars (\$200) per person per month may be expended from the appropriate fund to pay the costs associated with an indigent person's interlock ignition device, pursuant to subdivision (a)(1)(A)(i), or other monitoring device pursuant to subdivision (a)(1)(A)(ii). The state treasurer or the director of the office of criminal justice programs shall notify the local entity when a person has expended two hundred dollars (\$200) for the month.

(2) Moneys in the funds must not revert to the general fund of the state, but must remain available to be used as provided for in subdivision (a)(1).

(3) Interest accruing on investments and deposits of the DUI monitoring indigency fund and electronic monitoring indigency fund must be credited to such fund, must not revert to the general fund, and must be carried forward into each subsequent fiscal year.

(4) Moneys in the DUI monitoring indigency fund must be invested by the state treasurer in accordance with § 9-4-603.

(b) Except as otherwise provided in § 55-10-409(b)(2)(D), the costs incurred in order to comply with the ignition interlock requirements must be paid by the person ordered to install a functioning ignition interlock device, unless the court finds such person to be indigent. If a court determines that a person is indigent, the court must order the person to pay any portion of the costs which the person has the ability to pay, as determined by the court. Any portion of the costs the person is unable to pay must come from the DUI monitoring indigency fund established in subsection (a).

(c) Whenever a person ordered to install a device pursuant to § 55-10-409(b)(2), § 55-10-409(d)(2), § 55-10-417(a)(1), or § 55-10-417(k) asserts to the court that the person is indigent and financially unable to pay for a functioning ignition interlock device, it is the duty of the court to conduct a full and complete hearing as to the financial ability of the person to pay for the device and, thereafter, make a finding as to the indigency of the person.

(d) A person is indigent and financially unable to pay for a functioning ignition interlock device if the person is receiving an annual income, after taxes, of one hundred eighty-five percent (185%) or less of the poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. § 9902(2).

(e) Every person who informs the court that the person is financially unable to pay for a functioning ignition interlock device is required to complete an affidavit of indigency that is designed by the administrative office of the courts for purposes of assisting the court in making its determination pursuant to subsection (c). If the person intentionally misrepresents, falsifies, or withholds any information required by the affidavit of indigency, such person commits perjury as set out in § 39-16-702.

(f)

(1) In the event that the state treasurer determines or anticipates that the DUI monitoring indigency fund has or will have insufficient funds to pay for eligible claims or invoices as they are received, the state treasurer is authorized to stop accepting, determining eligibility for, or paying claims or invoices submitted by providers of ignition interlock devices for a period of time determined by the state treasurer. The state treasurer may begin accepting or paying claims or invoices submitted by providers of ignition interlock devices with service dates on or after the date on which the state treasurer determines that there is a sufficient amount of money in the fund. The state

treasurer shall notify providers and the administrative office of the courts of the anticipated date that provider claims and invoices will be accepted and paid from the fund again. The state treasurer may establish an order of priority for paying claims and invoices from the fund after the period of insolvency.

(2) In the event that the director of the office of criminal justice programs 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 director of the office of criminal justice programs is authorized to stop accepting, determining eligibility for, or paying claims or invoices submitted by providers of transdermal monitoring devices, other alternative alcohol or drug monitoring devices, or global positioning monitoring devices for a period of time determined by the director of the office of criminal justice programs. The director of the office of criminal justice programs may begin accepting or paying claims or invoices submitted by providers of 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 director of the office of criminal justice programs determines that there is a sufficient amount of money in the fund. The director of the office of criminal justice programs shall notify providers and the administrative office of the courts of the anticipated date that provider claims and invoices will be accepted and paid from the fund again. The director of the office of criminal justice programs may establish an order of priority for paying claims and invoices from the fund after the period of insolvency.

(g)

(1) All proceeds collected pursuant to §§ 55-10-413(a) and 69-9-219(c)(9) must be transmitted to the treasurer for deposit in the DUI monitoring indigency fund.

(2) The fees assessed pursuant to §§ 55-10-413(a) and 69-9-219(c)(9) must be allocated as follows:

(A) Thirty dollars and fifty cents (\$30.50) to the DUI monitoring indigency fund for the purpose of paying for the following for persons found to be indigent by the court:

(i) All the costs associated with the lease, purchase, installation, removal, and maintenance of a functioning ignition interlock device or with any other cost or fee associated with a functioning ignition interlock device required by this part; and

(ii) All the administrative costs incurred by the department of treasury in administering the DUI monitoring indigency fund;

(B) Four dollars and fifty cents (\$4.50) to the Tennessee Hospital Association for the sole purposes of making grants to hospitals that have been designated as critical access hospitals under the Medicare rural flexibility program for the purposes of purchasing medical equipment, enhancing high technology efforts, and expanding healthcare services in underserved areas;

(C) One dollar and twenty-five cents (\$1.25) to the department of mental health and substance abuse services to be placed in the alcohol and drug addiction treatment fund;

(D) One dollar and twenty-five cents (\$1.25) to the department of safety, Tennessee highway safety office, for the sole purpose of funding grant awards to local law enforcement agencies for purposes of obtaining and maintaining equipment and personnel needed in the enforcement of alcohol-related traffic offenses;

(E) One dollar and twenty-five cents (\$1.25) to the department of safety to be used to defray the expenses of administering this part; and

(F) One dollar and twenty-five cents (\$1.25) to the department of finance and administration, office of criminal justice programs, for the sole purpose of funding grant awards to halfway houses whose primary focus is to assist drug and alcohol offenders. In order for a halfway house to qualify for such grant awards it must provide:

(i) No less than sixty (60) residential beds monthly with occupancy at no less than ninety-seven percent (97%) per month, or if a halfway house with nonresidential day reporting services, it must serve no less than two hundred (200) adults monthly;

(ii) Safe and secure treatment facilities, and treatment to include moral recognition therapy, GED course work, anger management therapy, and domestic and family counseling; and

(iii) Transportation to and from work and mental health or medical appointments for each of its residents.

(3)

(A) Beginning in fiscal year 2013-2014, any surplus in the DUI monitoring indigency fund must be allocated as follows:

(i) Fifty percent (50%) of such surplus must 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 must 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.

(B)

(i) Beginning on July 1, 2013, and annually thereafter, the treasurer shall conduct an analysis to determine the solvency of the DUI monitoring indigency fund. The treasurer may declare a surplus if the analysis determines that there is a balance in excess of the amount necessary to maintain the solvency of the fund, and shall report the amount of any surplus to the commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51.

(ii) Beginning on July 1, 2022, and annually thereafter, the director of the office of criminal justice programs shall conduct an analysis to determine the solvency of the electronic monitoring indigency fund. The director of the office of criminal justice programs may declare a surplus if the analysis determines that there is a balance in excess of the amount necessary to maintain the solvency of the fund, and shall report the amount of any surplus to the commissioner of finance and administration for inclusion in the annual budget document prepared pursuant to title 9, chapter 4, part 51.

(h) No later than a date certain established by the director of the office of criminal justice programs, each local government has the option to participate in the electronic monitoring indigency fund by having the costs for eligible devices paid from the fund for each local government's indigent defendants. The local government must 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 director of the office of criminal justice programs, the local government must notify the director of the office of criminal justice programs 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 director of the office of criminal justice programs. The director of the office of criminal justice programs shall develop a formula, based in part on each participating city or county's total population versus the respective city or county's pretrial detention population, to determine the maximum amount of money each city or county is entitled to access from the electronic monitoring indigency fund. The state shall provide funds matching each local government's maximum liability or budgeted amount for participation in the fund, up to the maximum amount of money the local government is entitled to access from the fund and subject to an appropriation by the state. Each participating local government shall 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 as long as the electronic monitoring fund is solvent the state shall match the local government's cost by providing the other fifty percent (50%) of funding, up to the maximum amount of money the local government is entitled to access from the fund.

(i) 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.

(j) 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.

(k) A local government may withdraw from participation in the electronic monitoring indigency fund at any time and reenter as a participant within the time frame established by the director of the office of criminal justice programs. After a local government's withdrawal from participation, the local government shall continue to pay all outstanding liabilities for eligible devices.

(l)

(1) The director of the office of criminal justice programs shall develop a model request for proposals (RFP) for use by a participating city or county in determining with which providers of transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices to contract.

(2) Each provider of transdermal monitoring devices, other alternative drug and alcohol monitoring devices, and global positioning monitoring devices must contract with a participating city or county through an RFP process in order to submit a claim for payment from the electronic monitoring fund to the director of the office of criminal justice programs.

(3) If a participating city or county chooses to deviate from the RFP process or the model RFP developed by the director of the office of criminal justice programs, then the participating city or county must complete a waiver request form created by the office of criminal justice programs and submit the waiver to the director of the office of criminal justice programs for approval or denial. An RFP process used by a participating city or county must meet the minimum standards developed by the director of the office of criminal justice programs pursuant to subdivision (m)(1).

(m) The DUI monitoring indigency fund is administered by the treasurer. Through the administration of the fund, the treasurer has 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.

(n) For the efficient administration of the DUI monitoring indigency fund, providers of ignition interlock 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.

(o) The electronic monitoring indigency fund is administered by the director of the office of criminal justice programs. Through the administration of the fund, the director of the office of criminal justice programs has 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.

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

(1) Submit a claim to the director of the office of criminal justice programs electronically on a form prescribed by the director of the office of criminal justice programs 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 director of the office of criminal justice programs for reimbursement;

(2) Submit invoices to the director of the office of criminal justice programs 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 director of the office of criminal

justice programs 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 director of the office of criminal justice programs.

(q) The provider shall ensure that the court orders submitted to the treasurer pursuant to subsection (n) or the director of the office of criminal justice programs pursuant to subsection (p) do not contain handwritten changes and are submitted on a uniform court order prescribed by the treasurer pursuant to subsection (n) or the director of the office of criminal justice programs pursuant to subsection (p).

(r) If a provider filing a claim or invoice for reimbursement from either of the funds knowingly makes a false, fictitious, or fraudulent statement or representation, or knowingly submits false, fictitious, or fraudulent documentation or information to the treasurer pursuant to subsection (n) or the director of the office of criminal justice programs pursuant to subsection (p) for reimbursement, then the provider may be liable under the False Claims Act compiled in title 4, chapter 18.

(s) If a provider is overpaid from either of the funds for any reason, the treasurer is authorized to exercise a right of set-off against any amount due to the provider from the DUI monitoring indigency fund and the director of the office of criminal justice programs is authorized to exercise a right of set-off against any amount due to the provider from the electronic monitoring indigency fund.

SECTION 2. Tennessee Code Annotated, Section 69-9-219(c)(9), is amended by deleting the language "electronic monitoring" and substituting instead "DUI monitoring".

SECTION 3. Tennessee Code Annotated, Section 39-13-102(e)(4), is amended by deleting "treasurer" and substituting instead "department of finance and administration, office of criminal justice programs".

SECTION 4. Tennessee Code Annotated, Section 40-28-201(a)(5), is amended by deleting the language "the electronic monitoring indigency fund," and substituting instead "the DUI monitoring indigency fund".

SECTION 5. Tennessee Code Annotated, Section 40-33-211(c)(3)(A), is amended by deleting the language "electronic monitoring" and substituting instead "DUI monitoring".

SECTION 6. Tennessee Code Annotated, Section 40-33-211(f)(3)(A), is amended by deleting the language "electronic monitoring" and substituting instead "DUI monitoring".

SECTION 7. Tennessee Code Annotated, Section 55-10-409(b)(2)(C), is amended by deleting the language "electronic monitoring" and substituting instead "DUI monitoring".

SECTION 8. Tennessee Code Annotated, Section 55-10-417(m), is amended by deleting the language "electronic monitoring indigency fund" and substituting instead "DUI monitoring indigency fund".

SECTION 9. Tennessee Code Annotated, Section 55-10-425(g), is amended by deleting the language "electronic monitoring" and substituting instead "DUI monitoring".

SECTION 10. Tennessee Code Annotated, Section 39-13-111(c)(7), is amended by deleting "treasurer" and substituting instead "department of finance and administration, office of criminal justice programs".

SECTION 11. Tennessee Code Annotated, Section 55-10-417(a)(2), is amended by deleting the last sentence of the subdivision and substituting instead the following:

A person so requesting shall pay all costs associated with the ignition interlock device, and the DUI monitoring indigency fund shall not be used to pay any cost associated with the device, regardless of whether or not the person is indigent.

SECTION 12. For purposes of promulgating rules, this act shall take effect upon becoming a law. For all other purposes, this act shall take effect July 1, 2022, the public welfare requiring it.