

ENROLLED SENATE
BILL NO. 546

By: Henry of the Senate

and

Toure of the House

An Act relating to courts; amending Section 1 of Enrolled Senate Bill No. 632 of the 1st Session of the 48th Oklahoma Legislature, which relates to fees; providing exceptions to certain provisions; amending 20 O.S. 1991, Section 1313.3, as last amended by Section 2, Chapter 386, O.S.L. 1999 (20 O.S. Supp. 2000, Section 1313.3), which relates to fees; modifying amount to be deposited; amending 20 O.S. 1991, Section 1315, as last amended by Section 5, Chapter 359, O.S.L. 1999 (20 O.S. Supp. 2000, Section 1315), which relates to Oklahoma Court Information System; describing when the Oklahoma Court Information System may be utilized; amending 22 O.S. 1991, Section 1224.2, which relates to criminal procedure; adding certain document to be filed; requiring district attorney to make certain application under certain circumstances; amending 28 O.S. 1991, Sections 152, as last amended by Section 4, Chapter 38, O.S.L. 2000, 152.1, as last amended by Section 5, Chapter 38, O.S.L. 2000, and 153, as last amended by Section 8, Chapter 6, O.S.L. 2000 (28 O.S. Supp. 2000, Sections 152, 152.1 and 153), which relate to fees; assessing fees to be credited to law library fund; modifying when certain fees are required; assessing fees to be credited to law library fund; amending 59 O.S. 1991, Section 1332, as last amended by Section 1, Chapter 182, O.S.L. 1998 (59 O.S. Supp. 2000, Section 1332), which relates to forfeiture procedure; providing for exoneration of bond under certain circumstances; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1 of Enrolled Senate Bill No. 632 of the 1st Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 1. A. A Notwithstanding any other provision of law, a municipal court which collects a penalty assessment or other state fee from a defendant pursuant to state law may retain eight cents (\$0.08) of such monies and may also retain all interest accrued

thereon prior to the due date for deposits as provided in state law. The fee shall be deposited as determined by the municipal governing body.

B. A municipal court in a municipality having a basic law enforcement academy approved by the Council on Law Enforcement Education and Training pursuant to the criteria developed by the Council for training law enforcement officers may retain as an administrative fee two percent (2%) of any penalty assessment or other state fee imposed by state statute. The two percent (2%) administrative fee shall be deducted from the portion of the penalty assessment or other state fee retained by such municipality.

SECTION 2. AMENDATORY 20 O.S. 1991, Section 1313.3, as last amended by Section 2, Chapter 386, O.S.L. 1999 (20 O.S. Supp. 2000, Section 1313.3), is amended to read as follows:

Section 1313.3 A. In addition to the penalty assessment imposed by Section 1313.2 of this title, any person convicted of any offense, including traffic offenses but excluding parking and standing violations, punishable by a fine of Ten Dollars (\$10.00) or more or by incarceration or any person forfeiting bond when charged with such offense, shall be ordered by the court to pay a fingerprinting fee in the amount of Three Dollars (\$3.00) for each offense for the A.F.I.S. Fund in the State Treasury. The fee shall be in addition to and not in substitution for any and all fines and penalties otherwise provided for by law for such offense. The fee shall be collected at the same time and in the same manner as the penalty assessment provided for in Section 1313.2 of ~~Title 20 of the Oklahoma Statutes~~ this title. Each court clerk shall be authorized to retain six cents (\$0.06) of each fee collected. The court clerk shall deposit the fee collected pursuant to this section in the account provided for in subsection D of Section 1313.2 of this title and shall forward the amounts imposed by this section and Section 1313.2 of this title as a lump sum in one check or draft. The deposits required by this section shall be included in the total amount of money disclosed in the report required by Section 1313.2 of this title, but it shall not be required that the fee be listed as a separate item. Two Dollars and seventy cents (\$2.70) of each penalty assessment received pursuant to this section by the State Treasurer shall be deposited in the A.F.I.S. Fund and ~~twenty-four cents (\$0.24)~~ the balance shall be deposited in the General Revenue Fund.

B. As used in this section:

1. "Convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence; and

2. "Court" means any state or municipal court having jurisdiction to impose a criminal fine or penalty.

SECTION 3. AMENDATORY 20 O.S. 1991, Section 1315, as last amended by Section 5, Chapter 359, O.S.L. 1999 (20 O.S. Supp. 2000, Section 1315), is amended to read as follows:

Section 1315. A. 1. The Supreme Court, by and through the office of the Administrative Director of the Courts, shall establish a court information system to be designated the "Oklahoma Court Information System" for the purpose of providing data processing services to state agencies, boards, and commissions and other entities pursuant to contract. The Administrative Director of the Courts may assess a reasonable fee for such services.

2. Court clerks and judges of the district courts of this state shall utilize the case tracking, accounting, legal research, and other services of the "Oklahoma Court Information System" at the direction of the Chief Justice of the Supreme Court. The development and implementation of the system's accounting, auditing, and financial reporting functions shall be subject to the approval of the State Auditor and Inspector.

B. There is hereby created in the State Treasury a revolving fund for the Supreme Court to be designated the "Oklahoma Court Information System Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received in payment of data processing services furnished pursuant to contract. The Administrative Director of the Courts, at the end of each month, shall issue a statement of charges to each entity for which data processing services were furnished. The cost for data processing services shall be recovered directly from the entity for which such services were furnished and shall not be prorated to or payable by those not receiving the services. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Supreme Court for the acquisition, operation, maintenance, repair, and replacement of data processing equipment and software. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 4. AMENDATORY 22 O.S. 1991, Section 1224.2, is amended to read as follows:

Section 1224.2 In the event the search warrant is executed, then the search warrant, affidavit for search warrant, return of search warrant, if separate, and transcript of oral testimony, if any, shall be filed with the clerk of the district court, and shall be indexed by the clerk in alphabetical order. Upon a criminal prosecution being filed, ~~said documents shall~~ the district attorney shall make application for a court order that the documents be transferred and filed in said the case.

SECTION 5. AMENDATORY 28 O.S. 1991, Section 152, as last amended by Section 4, Chapter 38, O.S.L. 2000 (28 O.S. Supp. 2000, Section 152), is amended to read as follows:

Section 152. A. In any civil case filed in a district court, the court clerk shall collect, at the time of filing, the following flat fees, none of which shall ever be refundable, and which shall be the only charge for court costs, except as is otherwise specifically provided for by law:

1. Actions for divorce, alimony without divorce, separate maintenance, custody or support \$82.00
2. Any ancillary proceeding to modify or vacate a divorce decree providing for custody or support \$40.00
3. Probate and guardianship \$82.00
4. Annual guardianship report \$30.00
5. Any proceeding for sale or lease of real or personal property or mineral interest in probate or guardianship \$40.00
6. Any proceeding to revoke the probate of a will \$40.00
7. Judicial determination of death..... \$55.00
8. Adoption..... \$102.00
9. Civil actions and condemnation \$82.00
10. Garnishment..... \$20.00
11. Continuing wage garnishment \$60.00
12. Any other proceeding after judgment..... \$30.00
13. All others, including but not limited to actions for forcible entry and detainer, judgments from all other courts, including the Workers' Compensation Court \$82.00
14. Notice of renewal of judgment \$20.00

B. ~~Of~~ In addition to the amounts collected pursuant to subsection A of this section, the sum of ~~Three Dollars (\$3.00)~~ Six Dollars (\$6.00) shall be deposited to the credit of assessed and credited to the Law Library Fund.

C. Of the amounts collected pursuant to paragraph 8 of subsection A of this section, the sum of Twenty Dollars (\$20.00) shall be deposited to the credit of the Voluntary Registry and Confidential Intermediary program and the Mutual Consent Voluntary Registry established pursuant to the Oklahoma Adoption Code.

D. Of the amounts collected pursuant to subsection A of this section, the sum of Ten Dollars (\$10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account.

E. In any case in which a litigant claims to have a just cause of action and that, by reason of poverty, the litigant is unable to pay the fees and costs provided for in this section and is financially unable to employ counsel, upon the filing of an affidavit in forma pauperis executed before any officer authorized by law to administer oaths to that effect and upon satisfactory

showing to the court that the litigant has no means and is, therefore, unable to pay the applicable fees and costs and to employ counsel, no fees or costs shall be required. The opposing party or parties may file with the court clerk of the court having jurisdiction of the cause an affidavit similarly executed contradicting the allegation of poverty. In all such cases, the court shall promptly set for hearing the determination of eligibility to litigate without payment of fees or costs. Until a final order is entered determining that the affiant is ineligible, the clerk shall permit the affiant to litigate without payment of fees or costs. Any litigant executing a false affidavit or counter affidavit pursuant to the provisions of this section shall be guilty of perjury.

SECTION 6. AMENDATORY 28 O.S. 1991, Section 152.1, as last amended by Section 5, Chapter 38, O.S.L. 2000 (28 O.S. Supp. 2000, Section 152.1), is amended to read as follows:

Section 152.1 A. In civil cases, the court clerk shall collect and deposit in the court fund the following charges in addition to the flat fee:

1. For posting notices and filing certificates required by statute \$30.00
2. For the filing of any counterclaim or setoff pursuant to Section 1758 of Title 12 of the Oklahoma Statutes \$20.00
3. For mailing by any type of mail writs, warrants, orders, process, command, or notice for each person..... \$ 7.00
4. For the actual cost of all postage in each case in excess of \$ 7.00
5. For serving or endeavoring to serve each writ, warrant, order, process, command, or notice for each person in one or more counties..... \$35.00
 provided that if more than one person is served at the same address, one flat fee of Thirty-five Dollars (\$35.00) may be charged
6. For sheriff's fees on court-ordered sales of real or personal property \$75.00
7. When a jury is requested \$60.00
8. For issuing each summons for each person..... \$ 5.00
9. For services of a court reporter at each trial held in the case..... \$20.00

The fees prescribed in paragraphs 5 and 6 of subsection A of this section shall be paid by the court clerk into the Sheriff's Service Fee Account, created pursuant to the provisions of Section

514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county where service is made or attempted or where the sheriff's sale occurs. All other fees shall be deposited into the local court fund in the county where collected.

B. Of the amounts collected pursuant to the provisions of paragraphs 1, 2 and 7 of subsection A of this section, the sum of Ten Dollars (\$10.00) shall be deposited to the credit of the Child Abuse Multidisciplinary Account.

SECTION 7. AMENDATORY 28 O.S. 1991, Section 153, as last amended by Section 8, Chapter 6, O.S.L. 2000 (28 O.S. Supp. 2000, Section 153), is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for standing and parking violations and for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to the date of judgment:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or jointly with others \$57.00
2. For each defendant convicted of a misdemeanor traffic violation other than an offense provided for in paragraph 1 or 5 of this subsection, whether charged individually or jointly with others \$73.00
3. For each defendant convicted of a misdemeanor, other than for driving under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 or 2 of this subsection, whether charged individually or jointly with others \$83.00
4. For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or jointly with others \$103.00
5. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or jointly with others \$183.00
6. For each defendant convicted of the felony of driving under the influence of alcohol

or other intoxicating substance, whether charged individually or conjointly with others..... \$183.00

7. For the services of a court reporter at each preliminary hearing and trial held in the case..... \$20.00

8. For each time a jury is requested..... \$30.00

9. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice

a. within the county \$30.00, or

mileage as established by the Oklahoma Statutes, whichever is greater, or

b. outside of the county \$30.00, or

actual, necessary expenses, whichever is greater

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

B. ~~Of~~ In addition to the amount collected pursuant to paragraphs 2 through 5 of subsection A of this section, the sum of ~~Three Dollars (\$3.00)~~ Six Dollars (\$6.00) shall be ~~deposited to the credit of~~ assessed and credited to the Law Library Fund pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the services of a language interpreter or for the issuance or service of process to obtain compulsory attendance of witnesses.

D. The fees collected pursuant to this section shall be deposited into the court fund, except the following:

1. The sheriff's fee provided for in paragraph 9 of subsection A of this section which, when collected, shall be deposited in the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted;

2. The sheriff's fee provided for in Section 153.2 of this title; and

3. The witness fees paid by the district attorney pursuant to the provisions of Section 82 of this title which, if collected by the court clerk, shall be transferred to the district attorney's office in the county where witness attendance was required. Fees transferred pursuant to this paragraph shall be deposited in the district attorney's maintenance and operating expense account.

E. Costs required to be collected pursuant to this section shall not be dismissed or waived; provided, if the court determines that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

F. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

G. A court clerk may accept in payment for any fee, fine, or cost for violation of any traffic law a nationally recognized credit card issued to the applicant. The court clerk may add an amount equal to the amount of the service charge incurred, not to exceed four percent (4%) of the amount of the payment as a service charge for the acceptance of the credit card. For purposes of this paragraph, "nationally recognized credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate, or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining goods, services, or anything else of value and which is accepted by over one thousand (1,000) merchants in this state. The court clerk shall determine which nationally recognized credit cards will be accepted as payment for fees; provided, the court clerk must ensure that no loss of state revenue will occur by the use of such cards.

H. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars (\$13.00) per conviction to the court fund.

SECTION 8. AMENDATORY 59 O.S. 1991, Section 1332, as last amended by Section 1, Chapter 182, O.S.L. 1998 (59 O.S. Supp. 2000, Section 1332), is amended to read as follows:

Section 1332. A. If there is a breach of an undertaking, the court before which the cause is pending shall declare the undertaking and any money, property, or securities that have been deposited as bail, forfeited on the day the defendant failed to appear. In the event of the forfeiture of a bail bond the clerk of the trial court shall, within thirty (30) days after the forfeiture, by mail with return receipt requested, mail a true and correct copy of the order and judgment of forfeiture to the bondsman, and if applicable, the insurer, whose risk it is, and keep at least one copy of the order and judgment of forfeiture on file; provided, the clerk shall not be required to mail the order and judgment of forfeiture to the bondsman or insurer if, within fifteen (15) days from the date of forfeiture, the defendant is returned to custody, the bond is reinstated by the court with the bondsman's approval, or the order of forfeiture is vacated or set aside by the court.

Failure of the clerk of the trial court to comply with the thirty-day notice provision in this subsection shall exonerate the bond by operation of law. The court clerk shall record the exoneration in the file.

B. The order and judgment of forfeiture shall be on forms prescribed by the Administrative Director of the Courts.

C. 1. The bail bondsman shall have ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk or mailing of the notice if no receipt is made, to return the defendant to custody.

2. When the court record indicates that the defendant is returned to custody in the jurisdiction where forfeiture occurred, within the ninety-day period, the court clerk shall enter minutes vacating the forfeiture and exonerating the bond. If the defendant has been timely returned to custody, but this fact is not reflected by the court record, the court shall vacate the forfeiture and exonerate the bond.

3. For the purposes of this section, return to custody shall mean:

- a. the return of the defendant to the appropriate Oklahoma law enforcement agency by the bondsman,
- b. an appearance of the defendant in open court in the court where charged,
- c. arrest or incarceration within this state of the defendant by law enforcement personnel, or
- d. arrest or incarceration of the defendant in any other jurisdiction provided, the bondsman has requested that a hold be placed on the defendant in the jurisdiction wherein the forfeiture lies, and has guaranteed reasonable travel expenses for the return of the defendant.

4. In addition to the provisions set forth in paragraphs 2 and 3 of this subsection, the court may vacate the forfeiture and exonerate the bond in any felony case in which:

- a. the bondsman has requested in writing of the sheriff's department in the county where the forfeiture occurred that the defendant be entered into the computerized records of the National Crime Information Center, and
- b. the request has not been honored within thirty (30) business days of the receipt of the written request by the department.

5. The court may, in its discretion, vacate the order of forfeiture and exonerate the bond where good cause has been shown for:

- a. the defendant's failure to appear, or
- b. the bondsman's failure to return the defendant to custody within ninety (90) days.

D. 1. If, within ninety (90) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, the defendant is not returned to custody, or the forfeiture has not been stayed, the bondsman and if applicable, the insurer whose risk it is, shall deposit cash or other valuable securities in the face amount of the bond with the court clerk ninety-one (91) days from receipt of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made; provided, this provision shall not apply if the defendant has been returned to custody within the ninety-day period and the court has failed to vacate the forfeiture pursuant to paragraphs 2 through 5 of subsection C of this section.

2. After the order and judgment has been paid, the bondsman and if applicable, the insurer, whose risk it is, may file a motion for remitter within one hundred eighty (180) days from receipt of the order and judgment of forfeiture, or mailing of the notice if no receipt is made, and upon the event the defendant is returned to custody within ninety (90) days after payment is due, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

3. If the additional cash or securities are not deposited with the court clerk on or before the ninety-first day after the date of service of the order and judgment of forfeiture from the court clerk, or mailing of the notice if no receipt is made, then the court clerk shall notify the Insurance Commissioner by sending a certified copy of the order and judgment of forfeiture and proof that the bondsman and, if applicable, the insurer have been notified by mail with return receipt requested.

4. The Insurance Commissioner shall:

- a. in the case of a surety bondsman, immediately cancel the license privilege and authorization of the insurer to do business within the State of Oklahoma and cancel the appointment of all surety bondsman agents of the insurer who are licensed by Section 1301 et seq. of this title, and
- b. in the case of a professional bondsman, withdraw the face amount of the said forfeiture from the deposit provided in Section 1306 of this title. The Commissioner shall then immediately direct the professional bondsman, by mail with return receipt requested, to make additional deposits to bring the original deposit to the required level. Should the professional bondsman, after being notified, fail to make an additional deposit within ten (10) days from the receipt of notice, or mailing of notice if no receipt is made, the license shall be revoked and all sums presently on deposit shall be held by the

Commissioner to secure the face amounts of bonds outstanding. Upon release of the bonds, any amount of deposit in excess of the bonds shall be returned to the bondsman; provided, the bail bondsman shall have had notice as required by the court, at the place of the bondsman's business, of the trial or hearing of the defendant named in the bond. The notice shall have been at least ten (10) days before the required appearance of the defendant, unless the appearance is scheduled at the time of execution of the bond. Notwithstanding the foregoing, the bondsman shall be deemed to have had notice of the trial or hearing if the defendant named in the bond shall have been recognized back in open court to appear at a date certain for the trial or hearing.

5. If the actions of any bail bondsman force the Insurance Commissioner to withdraw monies, deposited pursuant to Section 1306 of this title, to pay past due executions more than two (2) times in a consecutive twelve-month period, then the license of the professional bondsman shall, in addition to other penalties, be suspended automatically for one (1) year or until a deposit equal to all outstanding forfeitures due is made. The deposit shall be maintained until the Commissioner deems it feasible to reduce the deposit. In no case shall an increased deposit exceed two (2) years unless there is a recurrence of withdrawals as stated herein.

E. 1. If the defendant's failure to appear was the result of being in the custody of a court other than the court in which the appearance was scheduled, forfeiture shall not lie. Upon proof to the court that the bondsman paid the order and judgment of forfeiture without knowledge that the defendant was in custody of another court on the day the defendant was due to appear, and all expenses for the defendant's return have been paid by the bondsman, the bondsman's property shall be returned.

2. Where the defendant is in the custody of another court, the district attorney or municipal attorney shall direct a hold order to the official, judge, court or law enforcement agent wherein the defendant is in custody; provided, that all expenses accrued as a result of returning the custody of the defendant shall be borne by the bondsman.

F. The district attorney or municipal attorney shall not receive any bonuses or other monies or property for or by reason of services or actions in connection with or collection of bond forfeitures under the provisions of Section 1301 et seq. of this title, except that the court may award a reasonable attorney fee in favor of the prevailing party for legal services in any civil action or proceeding to collect upon a judgment of forfeiture.

G. The above procedures shall be subject to the bondsman's rights of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture pursuant to the procedures for appeal set forth in Section 951 et seq. of Title 12 of the Oklahoma Statutes. To stay the execution of the order and judgment of forfeiture, the

bondsman or insurer shall comply with the provisions set forth in Section 990.4 of Title 12 of the Oklahoma Statutes.

H. For municipal courts of record, the above procedures are criminal in nature and ancillary to the criminal procedures before the trial court and shall be subject to the bondsman's right of appeal. The bondsman or insurer may appeal an order and judgment of forfeiture by the municipal courts of record to the Court of Criminal Appeals.

SECTION 9. This act shall become effective November 1, 2001.

Passed the Senate the 21st of May, 2001.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2001.

Presiding Officer of the House
of Representatives