

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Representative Watts**

A BILL ACT 1150 OF 1991
HOUSE BILL 1504

For An Act To Be Entitled

8 "AN ACT TO ESTABLISH IN BOONE COUNTY OF THE FOURTEENTH
9 JUDICIAL CIRCUIT OF ARKANSAS, A PUBLIC DEFENDER SYSTEM TO
10 PROVIDE COUNSEL FOR INDIGENT PERSONS CONSTITUTIONALLY
11 ENTITLED THERETO; AND FOR OTHER PURPOSES."

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13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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15 SECTION 1. Definitions. As used in this Act, unless the context
16 otherwise requires:

17 (a) "Counsel" shall mean any attorney used to serve as counsel pursuant
18 to the provisions of this Act.

19 (b) "Public Defender" shall mean any person appointed within the public
20 defender system which may be created by this Act.

21 (c) "Expenses" shall include the cost of the operation of the office,
22 investigation, other preparation and trial.

23 (d) "Indigent person" shall mean a person detained for or accused of a
24 serious crime who is unable to employ an attorney or afford other necessary
25 expenses incidental thereto as required by the Constitution of the State of
26 Arkansas and the United States of America.

27 (e) "Serious crime" shall include any felony, misdemeanor or offense,
28 the penalty for which includes the possibility of confinement or the
29 prolongation of confinement.

30 (f) "Circuit Court" shall mean the circuit judge of the Fourteenth
31 Judicial Circuit of Arkansas having criminal jurisdiction.

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33 SECTION 2. Creation of public defender system. If the Circuit Court
34 shall determine that the number of indigent persons accused of serious crimes
35 in Boone County creates a need for the assistance of a public defender system
36 for the proper administration of justice in said county, the Circuit Court may

1 certify said fact to the Boone County Quorum Court and request the Quorum
2 Court to establish a public defender system as authorized and provided for in
3 this Act. Upon receipt of such request, the Quorum Court is authorized to
4 create a public defender system for indigent persons accused of serious crimes
5 in Boone County, in the manner authorized and provided for in this Act, and to
6 provide for the compensation of attorneys and investigators as the Quorum
7 Court deems necessary, and for the reasonable expenses of the operation of the
8 public defender system.

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10 SECTION 3. Appointment of Public Defender, duties, and qualifications
11 of same.

12 (a) The Public Defender, and any Deputy Public Defender, must be
13 competent attorneys licensed to practice law in the State of Arkansas.

14 (b) The Public Defender and Deputy Public Defenders shall represent
15 those persons charged with serious crimes and found to be indigent by the
16 Circuit Court, Municipal Court, or Juvenile Court in Boone County. The Public
17 Defender and any Deputy Public Defenders shall be entitled to maintain a
18 private civil law practice.

19 (c) The Public Defender shall be nominated by a majority vote of a
20 five-member Boone County Public Defender Committee composed of the County
21 Judge, the Circuit Judge, the Municipal Judge and two regular practicing
22 attorneys in Boone County, Arkansas to be selected by the Boone County Bar
23 Association. The appointment of the Public Defender shall be made by the
24 Circuit Court upon such nomination of said Committee.

25 (d) Each Public Defender may appoint Deputy Defenders if authorized by
26 the Boone County Public Defender Committee.

27 (e) The Public Defender, or Deputy Defender, shall serve at the
28 pleasure of the Boone County Public Defender Committee.

29 (f) The Public Defender shall maintain records regarding the conduct of
30 his office in the performance of his duties pursuant to procedures which may
31 be established by the Judicial Department of the State of Arkansas.

32 (g) If the judge of any court determines that a person subject to the
33 jurisdiction of the court is entitled to representation and a Public Defender
34 has been created under the provisions of this Act to represent persons before
35 the court, the court may appoint the Public Defender, or Deputy Public

1 Defender, as the case may be, to represent the person.

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3 SECTION 4. Budget of Public Defender system. The general budget of the
4 Public Defender's Office, including salaries and expenses, shall be set by the
5 Boone County Quorum Court, after considering the recommendations of the Boone
6 County Public Defender Committee.

7 The Quorum Court may provide funds for the purpose of financing the
8 operation of the Public Defender's Office, taking into consideration all
9 available funds, including grants.

10 Nothing contained in this Act shall be construed to require that the
11 Public Defender, or Deputy Public Defender, shall be an "employee" of the
12 county or State of Arkansas, it being expressly understood that the Quorum
13 Court may desire the Public Defender or Deputy Public Defender to be an
14 independent contractor. The determination of the method of payment of
15 salaries, expenses, and any other benefits, shall be made by the Quorum Court
16 of Boone County, Arkansas, after considering the recommendations of the Boone
17 County Public Defender Committee.

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19 SECTION 5. Application by indigent person for services - criminal
20 penalty. Any person desiring to obtain the services of the Public Defender
21 shall affirm in writing that he is without funds or assets with which to
22 employ private counsel; the affirmation shall further provide in bold print
23 that a false statement as to financial status shall be punishable by sentence
24 in the State Penitentiary of not less than one (1) year, nor more than five
25 (5) years; and a fine of not less than five hundred dollars (\$500.00) nor more
26 than five thousand dollars (\$5,000.00). The affirmation certificate shall be
27 provided by the court or the Public Defender to the indigent person and upon
28 execution of the affirmation certificate, it shall become a permanent part of
29 the indigent person's record.

30 The Circuit Court, Municipal Court or Juvenile Court, as the case may
31 be, may determine, with respect to each defendant and proceeding, whether the
32 person is indigent.

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34 SECTION 6. Recovery from defendant. (a) The Public Defender on behalf
35 of the county may recover payment or reimbursement, as the case may be, from

1 each person who has received legal assistance, or any benefit under this Act
2 to which he was not entitled and for which he refused to pay or reimburse.
3 Suit must be brought within three (3) years after the date the aid was
4 received.

5 (b) The Public Defender on behalf of the county may recover payment or
6 reimbursement, as the case may be, from each person who has received legal
7 assistance and who, on the date on which suit is brought, is financially able
8 to pay or reimburse the county. Suit must be brought within three (3) years
9 after the date on which the benefit was received.

10 (c) The Circuit Court, Municipal Court and Juvenile Court in Boone
11 County, Arkansas are hereby authorized to assess an amount up to the sum of
12 three hundred fifty dollars (\$350.00) against each defendant as a condition of
13 their probation, if said defendant received legal assistance or benefits under
14 this Act, or if said defendant had a court-appointed attorney, whether or not
15 pursuant to this Act. Before assessing any amounts, the Circuit Court,
16 Municipal Court, or Juvenile Court shall first determine that the defendant
17 has the ability to pay said court-ordered amount in the time and manner set by
18 the court.

19 (d) Amounts recovered under this section may be paid into the general
20 fund of the county wherein the charge was placed and the service rendered, or
21 into a separate fund established by the Quorum Court.

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23 SECTION 7. Cumulative Act. This act is cumulative to all other acts
24 heretofore enacted to provide for legal services of indigent persons and does
25 not repeal any existing statutes.

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27 SECTION 8. All provisions of this act of a general and permanent nature
28 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
29 Revision Commission shall incorporate the same in the Code.

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31 SECTION 9. If any provision of this act or the application thereof to
32 any person or circumstance is held invalid, such invalidity shall not affect
33 other provisions or applications of the act which can be given effect without
34 the invalid provision or application, and to this end the provisions of this
35 act are declared to be severable.

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SECTION 10. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 11. EMERGENCY. It is hereby found and determined by the General Assembly that it is essential to the administration of justice in conformity with the constitutional guarantee and right to effective assistance of counsel that persons who are financially unable to employ counsel be provided the same at public expense; that the Fourteenth Judicial Circuit has not, pursuant to statute, petitioned to create a Public Defender Committee for said Judicial Circuit; that the system of the circuit court assigning attorneys to represent indigent defendants for little or no compensation is a severe burden on the lawyers of the district; that many lawyers have not developed or maintained adequate expertise in the highly specialized field of criminal law to effectively represent indigent defendants pursuant to the assigned counsel system; and that this act is immediately necessary to provide a system for making effective assistance of counsel available to indigent defendants in Boone County in order to assure the proper administration of justice and to relieve attorneys of the undue burden, and the indigent defendants of the potential handicap, which each must bear under the assigned counsel system. Additionally, that it is felt that the adoption of a public defender system would expedite the removal of prisoners from the county jail at a considerable savings to the county. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: 4/9/91

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