

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

A Bill

HOUSE BILL

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

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

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

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

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

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

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

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

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

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

1 the court, the court may appoint the Public Defender, or Deputy Public
2 Defender, as the case may be, to represent the person.

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

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

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

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

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

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35 SECTION 6. Recovery from defendant. (a) The Public Defender on behalf

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

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

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

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

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

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

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

1 act are declared to be severable.

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

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

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