

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**

A Bill

SENATE BILL 740

4 **By: Senator Pagan, Harriman, Malone, Lewellen, Hardin and Beebe**

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For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §16-92-108 TO
9 RESTRUCTURE COSTS AND FEES PAID TO COUNSEL APPOINTED TO
10 REPRESENT INDIGENT PERSONS; AND FOR OTHER PURPOSES."

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

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14 SECTION 1. Arkansas Code Annotated §16-92-108 is amended to read as
15 follows:

16 "16-92-108. Costs and fees - Counsel appointed to represent indigent
17 persons.

18 (a) Whenever legal counsel is appointed by any court of this state to
19 represent indigent persons accused of crimes, whether misdemeanors or
20 felonies, the court shall determine the amount of the fee to be paid the
21 attorney and an amount for a reasonable and adequate investigation of the
22 charges made against the indigent. The court may also require payment of
23 reasonable and adequate fees for a *reasonable number of* expert witnesses upon
24 a showing to the court that the expert witness is able to offer exculpatory or
25 mitigating testimony.

26 (b) (1) The circuit court shall appoint two (2) attorneys to represent
27 indigents in all capital murder trials in which the death penalty is sought.
28 Unless the prosecuting attorney informs the circuit court at the arraignment
29 of the defendant that the death penalty will not be sought, it shall be
30 presumed for purposes of this section that the death penalty will be sought.
31 The Supreme Court is authorized to promulgate more stringent standards for
32 appointment of counsel. For capital cases, however, no attorney shall be
33 appointed as lead counsel in a case in which the death penalty is sought
34 unless he or she:

35 (A) has previously been an attorney on at least five (5)

1 felony trials over the three (3) years preceding the date of appointment; or
2 (B) has been certified in writing by the appointing court
3 to have requisite professional knowledge and experience to serve as lead
4 counsel.

5 (2) Attorneys appointed to defend indigents accused of capital
6 murder in which the death penalty is sought shall be paid a reasonable hourly
7 rate for their services at a rate *not to exceed* that paid to lawyers appointed
8 in criminal cases in the federal courts under the *Criminal Justice Act*.

9 (3) Attorneys appointed to defend indigents convicted of capital
10 murder and sentenced to death shall be paid a reasonable hourly rate for
11 services on appeal to the Supreme Court of Arkansas at a rate equal to that
12 paid to lawyers appointed in criminal cases in the federal courts under the
13 Criminal Justice Act. Attorneys shall also be so compensated for fees and
14 expenses on petitions for writ of certiorari to *the United States Supreme*
15 *Court*.

16 (4) The circuit court and Supreme Court shall also appoint an
17 attorney in all post-conviction actions authorized by law in the circuit court
18 and the Supreme Court in which the defendant is sentenced to death and the
19 conviction has been affirmed on appeal. The appointment of a second attorney
20 is authorized. The attorney shall be paid a reasonable hourly amount for his
21 or her services at a rate *not to exceed* that paid to lawyers appointed in
22 criminal cases in the federal courts under the Criminal Justice Act.
23 Attorneys shall also be so compensated for fees and expenses on petitions for
24 writ of certiorari to the United States Supreme Court. The courts are also
25 authorized to appoint counsel for persons convicted of non-capital offenses in
26 post-conviction proceedings. Counsel so appointed shall be compensated under
27 the same rules as trial counsel in non-capital cases.

28 (5) The state, the defendant and the attorney may appeal a fee
29 award to the appellate courts, which shall employ the standard of review of
30 whether the circuit court has abused its discretion.

31 (c) Neither the courts nor the State of Arkansas shall condition any
32 action on the merits of a case upon an attorney's waiver or consent to
33 diminution of attorney's fees.

34 (d) (1) Upon being furnished an order of the court fixing the fees, the
35 quorum court of the county in which the indigent was charged shall appropriate

1 from the county general fund adequate funds to pay the fees, and the county
2 treasurer shall disburse the fees to the appropriate attorneys, expert
3 witnesses and investigators.

4 (2) The courts are authorized to order interim payments to
5 attorneys before completion of the case, upon a showing of hardship.

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7 SECTION 2. *The provisions of this act shall apply to all cases pending*
8 *on the effective date hereof in all the courts of this state.*

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10 SECTION 3. All provisions of this act of a general and permanent nature
11 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
12 Revision Commission shall incorporate the same in the Code.

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14 SECTION 4. If any provision of this act or the application thereof to
15 any person or circumstance is held invalid, such invalidity shall not affect
16 other provisions or applications of the act which can be given effect without
17 the invalid provision or application, and to this end the provisions of this
18 act are declared to be severable.

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20 SECTION 5. All laws and parts of laws in conflict with this act are
21 hereby repealed.

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23 SECTION 6. *EMERGENCY CLAUSE. It is hereby found and determined by the*
24 *Seventy-Eighth General Assembly that the constitutionality of current laws*
25 *under which attorneys are appointed to represent indigent criminal defendants*
26 *has been challenged and may be struck down by the Arkansas Supreme Court; that*
27 *this legislation offers an interim remedy to provide time for study, drafting*
28 *and proper consideration of a solution to this statewide problem; that this*
29 *act is necessary to preserve representation of indigent defendants in the*
30 *criminal justice system until such time as further changes can be enacted by*
31 *the Arkansas General Assembly during a special session of the legislature to*
32 *be called by the Governor following a thorough study by the proper interim*
33 *legislative committee. Therefore, an emergency is hereby declared to exist*
34 *and this act being necessary for the immediate preservation of the public*
35 *peace, health and safety shall be in full force and effect from and after its*

As Amended 3/25/07

1 *passage and approval.*

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/s/Pagan, et al

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