

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Representative J. Wilson**

# A Bill

**HOUSE BILL**

## **For An Act To Be Entitled**

8 "AN ACT TO ESTABLISH AN ELECTIVE OFFICE OF PUBLIC DEFENDER  
9 IN EACH JUDICIAL DISTRICT OF THE STATE OF ARKANSAS; TO  
10 PRESCRIBE SALARIES AND EXPENSES OF THE PUBLIC DEFENDER AS  
11 EQUIVALENT AND COMPARABLE TO THE SALARIES AND EXPENSES OF  
12 THE PROSECUTING ATTORNEYS; TO PROVIDE FOR THE APPOINTMENT  
13 OF DEPUTY PUBLIC DEFENDERS AND OTHER EMPLOYEES; TO  
14 PRESCRIBE THE CONDITIONS FOR APPOINTMENT OF INDIGENT  
15 COUNSEL; AND FOR OTHER PURPOSES."

## **Subtitle**

17  
18 "AN ACT TO ESTABLISH AN ELECTIVE OFFICE OF PUBLIC DEFENDER  
19 IN EACH JUDICIAL DISTRICT OF THE STATE AND TO PRESCRIBE  
20 SALARIES AND DUTIES OF THE OFFICE."

21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23  
24 SECTION 1. This act may be known and shall be cited as the "Public  
25 Defender Act of 1993."

26  
27 SECTION 2. It is declared by the Seventy-Ninth General Assembly of the  
28 State of Arkansas to be the policy of this state to provide for the  
29 realization of the constitutional guarantees of counsel for indigent persons  
30 accused of serious crimes by means of a program established by this act to the  
31 end that no innocent person shall be convicted, that the guilty shall be  
32 convicted, and, when convicted and if imprisonment is warranted, shall be  
33 incarcerated only after a fair trial and in compliance with the Arkansas  
34 Constitution and the United States Constitution. And that in order to comply  
35 with those constitutional guarantees, the state of Arkansas and its political

1 subdivisions shall devote comparable and adequate resources to the defense of  
2 indigent persons accused of serious crimes as are devoted to the prosecution  
3 of criminal acts.

4

5 SECTION 3. As used in this act, unless the context otherwise requires:

6 (1) "Counsel" means any attorney used to serve as legal counsel  
7 pursuant to the provisions of this act;

8 (2) "Detain" means to have in custody or otherwise deprive of freedom  
9 of action;

10 (3) "Expenses" include the cost of investigation, other preparation,  
11 and trial;

12 (4) "Indigent person" means a person who, at the time his need is  
13 determined, is unable to employ an attorney or afford other necessary expenses  
14 incidental to his or her legal defense of criminal charges;

15 (5) "Serious crime" includes any felony, misdemeanor, or offense, the  
16 penalty for which includes the possibility of confinement or the prolongation  
17 of confinement.

18

19 SECTION 4. (a) There is hereby created, effective January 1, 1995, the  
20 Office of Public Defender in each Judicial District of the State of Arkansas.

21 One public defender shall be elected from the qualified electors of each  
22 judicial district of the state in accordance with this act. The public  
23 defenders shall be elected at the biennial general election beginning with the  
24 1994 General Election.

25 (b) Public defenders shall be elected to two (2) year terms. The terms  
26 shall commence January 1 of the year following the general election in which  
27 they are elected.

28 (c) If a vacancy in the Office of Public Defender should occur, the  
29 vacancy shall be filled by appointment by the Governor, subject to the  
30 approval of the Senate. Any person appointed shall hold office for the  
31 balance of the unexpired term and until his successor is elected and  
32 qualified.

33 (d) No person shall be eligible to serve as a Public Defender who is  
34 not a citizen of the United States, learned in the law, and a resident of the  
35 judicial district for which he or she is elected.

1 (e) Any candidate for the Office of Public Defender shall be subject to  
2 the Arkansas election laws, laws on financial disclosure for candidates, and  
3 laws regulating fund raising for candidates.

4

5 SECTION 5. (a) The Public Defenders of the several judicial districts  
6 of this state shall appoint a deputy public defender in each of the several  
7 counties composing the districts to assist him in the performance of his  
8 duties. The person or persons appointed shall serve as deputies and serve at  
9 the pleasure of the Public Defender.

10 (b) Whether the deputy public defenders shall be allowed to engage in  
11 the private practice of law shall be determined by the Public Defender.

12 (c) (1) The Public Defender and his deputies must be competent attorneys  
13 licensed to practice law in the State of Arkansas.

14 (2) The Public Defender and any deputy public defenders may not  
15 be related within the third degree of consanguinity or affinity to the  
16 prosecuting attorney, deputy prosecuting attorney, sheriff, chief of police of  
17 any town in the county served, judge or magistrate having criminal  
18 jurisdiction, or member of the commission, nor may either be a partner or  
19 associate or otherwise have any business relationships with the prosecuting  
20 attorney, deputy prosecuting attorney, or judge or magistrate having criminal  
21 jurisdiction.

22

23 SECTION 6. (a) It shall be the duty of the Public Defender of each  
24 Judicial District to defend all criminal actions in the judicial district  
25 where an indigent person is accused of serious crimes.

26 (b) If the judge of any court determines that a person subject to the  
27 jurisdiction of the court is entitled to representation under the provisions  
28 of this act, the court shall appoint the Public Defender to represent the  
29 person, except in those cases where the Public Defender or his deputy has a  
30 conflict of interest, or is unable to provide indigent defense to a particular  
31 court at that time.

32 (c) Each county of the judicial district shall provide a procedure and  
33 a compensation schedule for court-appointed attorneys where the Public  
34 Defender is not available. The court shall make an alternative appointment  
35 under the procedure where the Public Defender has a conflict of interest.

1 (d) The Public Defender shall maintain records regarding the conduct of  
2 his office and the performance of his duties pursuant to procedures to be  
3 established by the Administrative Office of the Courts of the State of  
4 Arkansas. The records shall be available to the public, except for records  
5 concerning matters that are privileged under existing law.

6  
7 SECTION 7. (a) (1) The salaries of Public Defenders in Division A  
8 Judicial Districts shall be seventy-three thousand three hundred seventy-two  
9 dollars (\$73,372) for 1994-95 fiscal year and the salaries of Public Defenders  
10 in Division B Judicial Districts shall be sixty-one thousand sixty-three  
11 dollars (\$61,063) for 1994-95 fiscal year. Thereafter, the salaries and  
12 expenses shall be equivalent and comparable to the salary of the Prosecuting  
13 Attorney for the respective Judicial District as established by law.

14 (2) The salary and expenses of the Office of Public Defender in  
15 each district shall be paid by the State of Arkansas from funds appropriated  
16 for that purpose.

17 (b) The number of deputy public defenders and their salaries and  
18 expenses of each deputy shall be equivalent and comparable to the numbers,  
19 salaries, and expenses paid to the deputy prosecuting attorneys in each county  
20 of the judicial district. The salaries and expenses of the deputy public  
21 defenders shall be paid by the counties in the district in such amounts as  
22 shall be approved and appropriated by the respective quorum courts of the  
23 counties.

24 (c) The number of other employees in the Public Defender\_s office and  
25 their salaries and expenses shall be equivalent and comparable to the numbers,  
26 salaries, and expenses paid by the county for the salaries and operating  
27 expenses of the Prosecuting Attorney\_s office in each county of the judicial  
28 district. The salaries and expenses of the other employees of the Public  
29 Defender\_s office shall be paid by the counties in the district in such  
30 amounts as shall be approved and appropriated by the respective quorum courts  
31 of the counties.

32 (d) In any multi-county judicial district, the Public Defender with the  
33 consent of the county quorum court for that county, may designate one (1)  
34 county in the district as the "host" county for the Public Defender\_s office.  
35 The county treasurer of any such designated host county shall act as the

1 fiscal officer for the indigent defense fund and shall receive from the  
2 treasurers of all counties in the judicial district funds collected from any  
3 case fee assessed under Arkansas Code § 14-20-102 and any other funds  
4 appropriated by counties from the county general funds or other sources for  
5 the salaries of the deputy public defenders and for operation expenses of  
6 their offices. The quorum court of any such host county shall by ordinance  
7 appropriate funds for the annual budget of the district deputy public  
8 defender\_s office.

9

10 SECTION 8. (a) The Public Defender may employ an investigator to help  
11 him in carrying out his duties.

12 (b) The quorum court in each county of the judicial district where the  
13 Public Defender appoints an investigator shall adopt an ordinance assessing  
14 additional court costs in order to provide funds for the payment of the Public  
15 Defender's investigator, and the quorum court shall set the salary or the rate  
16 of pay for the investigator at the rate which is equivalent and comparable to  
17 the salary paid to an investigator working in the Prosecuting Attorney\_s  
18 office of that county.

19 (1) The court cost shall be assessed upon each judgment of  
20 conviction, upon each plea of guilty, and upon each plea of nolo contendere or  
21 bond forfeiture in felony, misdemeanor, and traffic violation cases for  
22 violation of state law or local ordinance, in circuit courts, justice of the  
23 peace courts, municipal courts, police courts, or city courts.

24 (2) The court cost shall not exceed the sum of four dollars  
25 (\$4.00).

26 (3) The costs set forth in subdivision (b)(1) of this section may  
27 be imposed at the conclusion of any criminal case that does not end in an  
28 acquittal, dismissal, or, with the consent of the prosecution, a nolle  
29 prosequi, including, but not limited to, cases involving a suspended or  
30 probated sentence that at any time may be expunged or otherwise removed from  
31 the defendant's record.

32 (4) The quorum court may appropriate any funds collected from the  
33 court cost provided for in this section in excess of those needed for the  
34 investigator to pay the salaries of the deputy public defender and his or her  
35 office expenses.

1 (c) The investigator may be employed as an independent contractor or  
2 may be employed as an employee of the county at the discretion of the quorum  
3 court.

4 (d) Any and all other court costs authorized by law for the support of  
5 a public defender program in a county shall continue to be authorized and may  
6 be levied to provide financial support by the respective counties for the  
7 deputies and other employees of the office of Public Defender created by this  
8 act.

9

10 SECTION 9.(a)(1) Any person desiring to obtain the services of the  
11 Public Defender shall affirm in writing that he is without funds or assets  
12 with which to employ private counsel. The affirmation shall further provide in  
13 bold print that a false statement as to financial status shall be punishable  
14 by a sentence in the state penitentiary of not less than one (1) year nor more  
15 than five (5) years and a fine of not less than five hundred dollars (\$500)  
16 nor more than five thousand dollars (\$5,000).

17 (2) The affirmation certificate shall be provided by the Public  
18 Defender to the indigent person. Upon execution of the affirmation  
19 certificate, the affirmation shall be a permanent part of the indigent  
20 person's records.

21 (b)(1) The determination of whether a person is an indigent person and is  
22 charged with a serious crime shall be deferred until his first appearance in  
23 court or in a suit for payment or reimbursement under Section 10 of this act,  
24 whichever occurs earlier.

25 (2) Thereafter, the court concerned may review and redetermine,  
26 with respect to each proceeding, whether he is an indigent person.

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28 SECTION 10. (a)(1) In addition to prosecution as provided in this act,  
29 the Public Defender on behalf of the state or county may recover payment or  
30 reimbursement, as the case may be, from each person who has received legal  
31 assistance or any benefit under this act to which he was not entitled and for  
32 which he or she refused to pay or reimburse. Suit shall be brought within  
33 three (3) years after the case on which the aid was received.

34 (2) The Public Defender on behalf of the state or county may  
35 recover payment or reimbursement, as the case may be, from each person, other

1 than a person covered by subsection (a) of this section who has received legal  
2 assistance under this act and who, on the date on which suit is brought, is  
3 financially able to pay or reimburse the state or county for it according to  
4 standards of ability to pay applicable under the terms of this act, but  
5 refuses to do so. Suit shall be brought within three (3) years after the date  
6 on which the benefit was received.

7 (b) Amounts recovered under this section shall be paid into the general  
8 fund of the county of the judicial district wherein the charge was placed and  
9 the service rendered.

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

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15 SECTION 12. If any provisions of this act or the application thereof to  
16 any person or circumstance is held invalid, the invalidity shall not affect  
17 other provisions or applications of the act which can be given effect without  
18 the invalid provisions or application, and to this end the provisions of this  
19 act are declared to be severable.

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21 SECTION 13. (a) Chapter 87 of Title 16 of the Arkansas Code of 1987,  
22 Annotated, the Public Defender Act, is hereby repealed.

23 (b) All other laws and parts of laws in conflict with this act are  
24 hereby repealed.

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