

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Committee on Judiciary**

A Bill

SENATE BILL 536

For An Act To Be Entitled

8 "AN ACT TO AUTHORIZE CIRCUIT JUDGES WITH THE APPROVAL OF
9 QUORUM COURTS TO CREATE TRIAL PUBLIC DEFENDER OFFICES;
10 AND FOR OTHER PURPOSES."

Subtitle

13 "TO AUTHORIZE CIRCUIT JUDGES WITH THE APPROVAL OF THE
14 QUORUM COURTS TO CREATE TRIAL PUBLIC DEFENDER OFFICES."

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

18 SECTION 1. The circuit judges within one or more judicial districts
19 may, with the approval of the quorum courts of the respective counties to be
20 served, create an office of trial public defender within any county or
21 combination of counties within their judicial districts. Trial public
22 defenders shall defend *indigent persons* as determined by the circuit,
23 municipal, juvenile, probate or chancery courts in the counties they serve in
24 all felony, misdemeanor, juvenile, guardianship, mental health cases, traffic
25 cases punishable by incarceration, and all contempt proceedings punishable by
26 incarceration.

28 SECTION 2. Trial public defenders appointed under this act shall be
29 appointed from a list of qualified nominees submitted by the circuit,
30 chancery, probate, and juvenile court judges of the county or counties to be
31 served by them. Each judge may nominate up to three attorneys to serve as
32 trial public defender. Each circuit, chancery, probate, juvenile court judge
33 and county judge of the county or counties to be served by the trial public
34 defender may then vote on whom to appoint as trial public defender from that
35 list of *nominees*, and the person receiving the most votes shall become the

1 trial public defender. In the event of a tie vote, the commission shall
2 select the trial public defender.

3

4 SECTION 3. Trial public defenders shall be appointed for a term of two
5 years, and may be removed before the expiration of the term only for just
6 cause which includes permanent physical or mental disability seriously
7 interfering with the performance of duties, willful misconduct in office,
8 willful and persistent failure to perform public defender duties, habitual
9 intemperance, conduct prejudicial to the administration of justice, and
10 violation of Section 14 of this act.

11

12 SECTION 4. Trial public defenders may employ assistants, investigators
13 and other staff within the budget prescribed by the quorum courts of the
14 counties they serve. The counties served by the trial public defenders shall
15 bear the costs of facilities, equipment, supplies, and other expenses of the
16 trial public defender's office and the compensation of the trial public
17 defender and his staff.

18

19 SECTION 5. Trial public defenders and deputy public defenders may be
20 employed on a full time or a part time basis. Trial public defenders and
21 deputies employed on a part time basis may engage in the private practice of
22 law. No person may serve as a part time trial public defender or deputy
23 public defender who also serves as a part time municipal court judge, police
24 court judge, prosecuting attorney, city attorney or county attorney.

25

26 SECTION 6. (a) If the court determines that a conflict of interest
27 exists between an indigent person and the office of trial public defender, the
28 case shall be reassigned by the court to another trial public defender in an
29 adjacent area. As a last resort a private attorney who is included in a list
30 of volunteers who have agreed to accept such appointments may be appointed.

31 (b) All licensed attorneys residing in Arkansas shall be notified in
32 writing by the Commission that a list is being prepared of attorneys willing
33 to represent indigent persons.

34 (c) Attorneys notified under this section shall have a reasonable time
35 to submit the information requested by the Commission.

1 (d) A list for each judicial district shall be prepared, certified and
2 updated annually by the Commission. A separate list of attorneys throughout
3 the state qualified and willing to accept appointment in capital cases shall
4 be prepared, certified and updated annually by the Commission. Attorneys may
5 not be excluded from any list unless the Office states in writing the reasons
6 for such action. Any attorney thus excluded may appeal the decision to the
7 Arkansas Supreme Court. The Commission may not exclude attorneys from the
8 list solely as a result of inexperience. The Office may create a second list
9 of attorneys who may be appointed to assist lead counsel, and the appointing
10 courts may appoint attorneys to assist lead counsel.

11 (e) The appointing court shall attempt to equalize the appointments
12 for all attorneys on the list but this act does not deprive a court of the
13 power to appoint particularly qualified and willing attorneys in capital or
14 other complex litigation.

15 (f) Appointed private attorneys shall be paid reasonable fees and
16 compensation for expenses by the county where the crime was committed.

17 (g) The Arkansas Supreme Court may establish presumptive maximum fees
18 that may be exceeded upon a determination by the trial court or the Arkansas
19 Supreme Court that the case required an extraordinary amount of time to
20 prepare or litigate and that the request for extraordinary fees is reasonable
21 under the circumstances.

22 (h) In no event shall an attorney who has not voluntarily agreed to
23 accept appointments be appointed to represent an indigent person.

24

25 SECTION 7. (a) There is hereby created the Capital, Conflicts and
26 Appellate Office.

27 (b) *The Capital, Conflicts and Appellate Office shall operate under the*
28 *supervision of the Executive Director.*

29 (c) The Capital, Conflicts and Appellate Office shall be appointed by
30 the trial court in the following situations:

31 (1) In capital murder cases in which the death penalty is
32 sought, if a conflict of interest is determined by the court to exist between
33 the trial public defender office and the indigent person, or if for any other
34 reason the court determines that the trial public defender can not or should
35 not represent the indigent person. *Such representation may be in conjunction*

1 with appointed private attorneys. In capital murder cases, unless the
2 prosecuting attorney informs the circuit court at the arraignment of the
3 defendant that the death penalty will not be sought, it shall be presumed for
4 purposes of this section that the death penalty will be sought. Should the
5 Capital, Conflicts and Appellate Office also have a conflict, or for any other
6 reason cannot or should not serve, the indigent person shall be represented by
7 trial public defenders from another area, or as a last resort by private
8 attorneys whose names appear on the list of attorneys maintained by the
9 Commission, or by both a trial public defender from another area and a private
10 attorney whose name appears on the list maintained by the Commission. Subject
11 to caseload restrictions and subject to conflict of interest considerations,
12 the circuit courts shall give preference to the appointment of the Capital,
13 Conflicts and Appellate Office in the appointment of counsel in capital cases
14 if the trial public defender cannot represent the indigent person and shall
15 appoint private attorneys only as a last resort.

16 (2) In non-capital cases, if a conflict of interest is
17 determined by the court to exist between the trial public defender office and
18 the indigent person, or if for any other reason the court determines that the
19 trial public defender can not or should not represent the indigent person, the
20 indigent person shall be represented by trial public defenders from another
21 area. Subject to caseload restrictions and conflict of interest
22 considerations, the court may notify the Capital, Conflicts and Appellate
23 Office to represent the indigent. As a last resort, the court may appoint a
24 private attorney to represent an indigent.

25 (3) The Capital, Conflicts and Appellate Office may perfect
26 direct appeals and petitions for writs of certiorari for cases assigned to it
27 by the Arkansas courts.

28 (d) To the extent money is appropriated therefor, the Executive
29 Director of the Commission may hire attorneys, investigators, research
30 assistants, and other staff as necessary to properly represent indigent
31 persons.

32

33 SECTION 8. When private attorneys or trial public defenders from another
34 area are appointed to represent an indigent person, the attorneys or trial
35 public defenders shall be paid by the county wherein the crime was committed.

1 The courts may authorize the disbursement of interim fees in complex cases.
2 The attorneys or *trial public defenders* shall also be reimbursed for
3 reasonable expenses.

4

5 SECTION 9. At the conclusion of each case, the appointed attorney shall
6 submit his bill to the appointing court which shall issue an order for
7 appropriate compensation. An application for compensation shall be
8 accompanied by the affidavit of the appointed attorney, detailing the hours
9 spent on the case and the services rendered and whether compensation was
10 received or has been applied for from any other source. There shall be no
11 maximum amount of compensation in capital cases. Any attorney dissatisfied
12 with the decision of the appointing court may appeal to the Arkansas Supreme
13 Court. The county or counties also have the right of appeal.

14

15 SECTION 10. (a) *The Commission is authorized to pay expenses regarding*
16 *the defense of indigents, other than salaries, attorneys fees and regular*
17 *office expenses. The expenses shall include, but shall not necessarily be*
18 *limited to, fees for expert witnesses, testing, and travel. Whenever in a*
19 *case involving an indigent person, a judge orders the payment of funds for the*
20 *aforementioned expenses, the judge shall transmit a copy of the order to the*
21 *Commission, which is authorized in its discretion to pay the funds. If the*
22 *Commission declines to pay the funds, the funds shall be paid by the county*
23 *wherein the crime was committed, provided that the Arkansas Supreme Court may*
24 *promulgate rules for the stay of such orders in the event that they are*
25 *contested.*

26 (b) *With the approval of the Executive Director, trial public*
27 *defenders, appointed private attorneys and the Capital, Conflicts and*
28 *Appellate Office are hereby authorized to utilize services of the State Crime*
29 *Laboratory for pathology and biology, toxicology, criminalistics, raw drug*
30 *analysis, latent fingerprint identification, questioned documents examination,*
31 *firearms and toolmarks identification and in other such areas as the trial*
32 *judge may deem necessary and appropriate. If approved by the Executive*
33 *Director, the State Crime Laboratory shall provide the requested services.*

34

35 SECTION 11. *Public Defender Commission.*

1 (a) There is hereby created the Arkansas Public Defender Commission.

2 (b) The Commission shall be composed of seven (7) members appointed by
3 the Governor for five (5) year terms, except that one (1) of the initial
4 appointees shall serve a term of one (1) year, one (1) shall serve a term of
5 two (2) years, one (1) shall serve a term of three (3) years, two (2) shall
6 serve a term of four (4) years, and two (2) shall serve a full five (5) year
7 term. At least four (4) members of the Commission shall be attorneys who are
8 licensed to practice law in the State of Arkansas and experienced in the
9 defense of persons accused of crimes. At least one (1) member of the
10 Commission shall be a county judge, and at least one (1) member shall be a
11 trial judge who hears criminal cases. The Governor shall designate one (1)
12 Commission member to serve as chair. No more than two (2) members of the
13 Commission shall be residents of the same congressional district, and no two
14 (2) members of the Commission shall be residents of the same county. A
15 Commission member shall be eligible for reappointment and shall continue in
16 office until a successor is appointed and qualified.

17 (c) The Commission shall meet at least once each quarter upon the call
18 of the chair. Commission members shall serve without compensation but shall
19 be reimbursed for reasonable and necessary expenses.

20 (d) The Commission shall have the following powers and duties:

21 (1) To establish policies and standards for the public defender
22 system throughout the state including standards for determining who qualifies
23 as an indigent person;

24 (2) To establish policies and standards for the organization and
25 operation of trial public defender offices throughout the state including
26 funding, compensation, staffing, and standards of experience for attorneys
27 assigned to particular cases;

28 (3) To approve the annual budget for each trial public defender
29 office throughout the state;

30 (4) To require annual reports regarding expenditures, caseloads,
31 and status of cases from each trial public defender;

32 (5) To evaluate the performance of the executive director; the
33 Capital, Conflicts, and Appellate Office; each trial public defender; and
34 private attorneys assigned to represent indigent persons;

35 (6) To approve the reassignment of cases from one trial public

1 defender to another trial public defender in an adjacent area for the purpose
2 of avoiding conflicts or adjusting caseloads;

3 (7) To approve the purchase, rental and sharing of office space,
4 equipment, or personnel among trial public defenders;

5 (8) To establish employee personnel policies for the Commission
6 and the trial public defenders;

7 (9) To accept and to authorize a trial public defender to accept
8 monies, gifts, grants, or services from any public or private source;

9 (10) To enter and authorize a trial public defender to enter into
10 contracts with individuals, educational institutions, nonprofit associations,
11 or state or federal agencies, including contracts for the provision of legal
12 services related to the defense of indigent persons;

13 (11) To maintain for each judicial district a current list of
14 private attorneys who are willing to accept court appointments and who meet
15 any other qualifications established by the Commission;

16 (12) To maintain a separate list of private attorneys who are
17 willing to accept court appointments in capital cases and who meet any other
18 qualifications established by the Commission.

19 (e) The Commission shall operate the trial public defender system in
20 such a manner that the respective trial public defenders shall not be deemed
21 to be a part of the same office for purposes of appointment in conflict of
22 interest situations and in such a manner that the Capital, Conflicts and
23 Appellate Office shall not be deemed a part of the same office as any trial
24 public defender for purposes of appointment in conflict of interest
25 situations.

26 (f) The Commission shall make an annual report to the Governor, the
27 President Pro Tempore of the Senate, the Speaker of the House of
28 Representatives, the Chief Justice of the Arkansas Supreme Court, and the
29 Presiding Judge of the Arkansas Court of Appeals regarding the efforts of the
30 Commission to implement this act.

31 (g) There is hereby created on the books of the State Treasurer, State
32 Auditor, and Chief Fiscal Officer of the State a fund to be known as the
33 'Public Defender Fund' to be used exclusively by the Commission, as
34 appropriated by the General Assembly.

35

1 SECTION 12. Executive Director.

2 (a) The Commission shall appoint an executive director, who shall be
3 licensed to practice law in the State of Arkansas, licensed to practice law
4 for at least four (4) years prior to the effective date of the appointment,
5 and experienced in the practice of criminal law including the defense of
6 capital cases. The Commission may remove the executive director only for just
7 cause which includes permanent physical or mental disability which seriously
8 interferes with the performance of duties, willful misconduct in office,
9 willful and persistent failure to perform the duties of public defender,
10 habitual intemperance, or conduct prejudicial to the administration of
11 justice.

12 (b) The executive director shall have the following powers and duties:

13 (1) To supervise the operations of the Capital, Conflicts, and
14 Appellate Office;

15 (2) To maintain records of the operation of the public defender
16 system including, but not limited to the following:

17 (A) detailed descriptions of the organization of each trial
18 public defender office;

19 (B) caseloads of each trial public defender office,
20 including cases assigned to private attorneys;

21 (C) budgets and actual expenditures of the Commission and
22 each trial public defender office;

23 (D) reassignment of cases from one trial public defender to
24 another trial public defender in an adjacent area; and

25 (E) assignment of cases to private attorneys.

26 (3) To present to the Commission within ninety (90) days after
27 the end of the fiscal year an annual report on the operation of the public
28 defender system, which shall include an accounting of all funds received and
29 disbursed, an evaluation of the cost-effectiveness of the public defender
30 system, and recommendations for improvement;

31 (4) To prepare a budget for the operations of the Commission;

32 (5) To allocate and disburse funds appropriated for the
33 operations of the Commission and the public defender system pursuant to
34 guidelines established by the Commission;

35 (6) To establish procedures for evaluating the performance of

1 trial public defenders and private attorneys participating in the public
2 defender system, pursuant to policies and standards developed by the
3 Commission;

4 (7) To appear before and provide assistance to the General
5 Assembly and other relevant bodies regarding matters related to the public
6 defender system;

7 (8) To convene conferences and training seminars related to the
8 public defender system;

9 (9) To compile and disseminate statutes, court opinions, and
10 other information to trial public defenders and private attorneys
11 participating in the public defender system;

12 (10) To maintain a brief bank for use in connection with appeals;
13 and

14 (11) To perform other duties related to the administration of the
15 public defender system as the Commission may direct.

16

17 SECTION 13. (a) (1) Any person charged with an offense punishable by
18 imprisonment who desires to be represented by an appointed attorney shall file
19 with the court in which the person is charged a written certificate of
20 indigency. The certificate of indigency shall be in a form approved by the
21 Commission and shall be provided by the court in which the person is charged.
22 The certificate of indigency shall be executed under oath by the person and
23 shall state in bold print that a false statement is punishable as a Class D
24 felony. Upon execution, the certificate of indigency shall be made a
25 permanent part of the indigent person's records.

26 (2) If the court in which the person is charged determines that
27 the person qualifies for the appointment of an attorney under standards set by
28 the Commission, the court shall, except as otherwise provided by this act,
29 appoint the trial public defender to represent the person before the court.

30 (3) The appointing court may at any time review and redetermine
31 whether a person is an indigent person who qualifies for the appointment of an
32 attorney pursuant to this act.

33 (b) The State of Arkansas or a county, or both, may file a civil action
34 for recovery of money expended in the representation of a person who is
35 determined by a court not to have been indigent at the time expenditures were

1 made. Suit shall be brought within three (3) years after the date of filing
2 of a certificate of indigency. Nothing in this section shall be construed to
3 bar a prosecution for perjury or other offenses based on misrepresentation of
4 financial status.

5

6 SECTION 14. (a) A trial public defender or a deputy trial public
7 defender shall not:

8 (1) Receive any funds, services, or other thing of monetary
9 value, directly or indirectly, for the representation of an indigent person
10 pursuant to court appointment except the compensation authorized by law.

11 (2) Refer any person, indigent or otherwise, who contacts the
12 trial public defender to any other attorney except pursuant to guidelines
13 established by the Commission.

14 (b) Nothing in this section shall be construed to bar a prosecution or
15 other disciplinary action against a trial public defender or deputy trial
16 public defender who commits a violation of law or the Supreme Court Rules of
17 Professional Conduct.

18 (c) The Commission and the executive director shall not interfere with
19 the discretion, judgment, or advocacy of a trial public defender, a deputy
20 trial public defender, or an appointed private attorney in the representation
21 of indigent persons, but nothing in this subsection shall be construed to
22 preclude the Commission or executive director from refusing to approve an
23 expenditure of public funds.

24

25 SECTION 15. Arkansas Code 14-20-102 is hereby amended to read as
26 follows:

27 "§14-20-102. Fund for defense of indigents.

28 (a) (1) There is hereby created on the books of the treasurer of each
29 county in the state a fund to be used for the purpose of paying reasonable and
30 necessary costs incurred in the defense of indigent persons accused of
31 criminal offenses and in the representation of persons against whom
32 involuntary admissions procedures for mental health or alcohol/narcotic
33 commitments or criminal commitments have been brought, and for representation
34 in civil and criminal matters of persons deemed incompetent by the court due
35 to minority or mental incapacity, which have been brought in any circuit

1 courts, chancery courts, juvenile courts, probate courts, city or county
2 division of municipal courts including, but not limited to, investigative
3 expenses, expert witness fees, and legal fees.

4 (2) Where there are adequate unappropriated moneys in this fund, the
5 quorum court may also provide for the use of the funds for the purpose of
6 defraying the cost of the juvenile division of chancery court.

7 (3) Where there are adequate unappropriated moneys in this fund, the
8 quorum court may also provide for the use of the funds for the purpose of
9 defraying the cost of medical and dental costs incurred by the county for
10 indigent defendants incarcerated in the county jail.

11 (4) The quorum court is authorized to supplement the fund by additional
12 appropriation from the county general fund, and expenditures from such fund
13 shall be made in the manner and amounts prescribed by the quorum court.

14 (b)(1) In addition to all other costs and fees provided by law, there
15 is hereby imposed a fee in the sum of *five dollars (\$5.00)*, to be taxed as
16 costs in all civil cases filed, and upon a person upon conviction, plea of
17 guilty, plea of nolo contendere, or bond forfeiture, in felony, misdemeanor,
18 traffic violation cases for violation of state law or local ordinance, and
19 violation of city ordinances, filed in any circuit, chancery, probate,
20 municipal, city, or police court within the county. However, no such fees
21 shall be taxed as costs in any action filed in any small claims court.

22 (2) *Eighty percent (80%) of the funds collected pursuant to*
23 *subsection (b)(1) of this section shall be credited to the fund created*
24 *pursuant to subsection (a)(1) of this section and twenty percent (20%) of the*
25 *funds collected pursuant to subsection (b)(1) of this section shall be*
26 *remitted to the State Treasurer and credited to the "Public Defender Fund"*

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

33 (c) In any county where a public defender commission has been
34 established under §§ 16-87-101 - 16-87-111, the amount to be paid for attorney
35 fees, investigative costs, and other costs under subdivision (a)(1) of this

1 section shall be determined in a manner prescribed by the quorum court acting
2 with the advisory resolution of the public defender commission.

3 (d) In addition to all other costs and fees provided by law, each
4 county quorum court may levy an additional fee not to exceed five dollars
5 (\$5.00) to be taxed as costs in all civil cases filed, and upon a person upon
6 conviction, plea of guilty, pleas of nolo contendere, or bond forfeiture, in
7 felony, misdemeanor, traffic violation cases for violation of state law or
8 local ordinance, and violation of city ordinances, filed in any circuit,
9 chancery, probate, municipal, city, or police court within the county.
10 However, no such fees shall be taxed as costs in any action filed in any small
11 claims court. Monies collected pursuant to this subsection shall be deposited
12 into the county fund created by subsection (a)(1) of this section."
13

14 "SECTION 16. (a) Each county in the state shall implement a public
15 defender system designed to provide legal representation to indigent persons
16 charged with offenses punishable by imprisonment. The Commission shall
17 annually evaluate the public defender system of each county and determine
18 whether the system is in compliance with the policies and standards
19 established by the Commission pursuant to this act.

20 (b) The Capital, Conflicts and Appellate Office shall not be appointed
21 to represent an indigent person in the courts of a county unless the
22 Commission has determined that the county is in compliance with the policies
23 and standards established by the Commission pursuant to this act. If during a
24 period that a county is not in compliance with the policies and standards
25 established by the Commission pursuant to this act, the Capital, Conflicts and
26 Appellate Office represents an indigent person charged with a crime committed
27 in the county all legal fees, expenses, and costs incurred by the Capital,
28 Conflicts and Appellate Office during the period of noncompliance, including
29 reasonable compensation for the time spent by personnel of the Capital,
30 Conflicts and Appellate Office, shall be paid by the county. The Commission
31 shall certify the legal fees, expenses, and costs incurred by the Capital,
32 Conflicts and Appellate Office during such period of noncompliance to the
33 Chief Fiscal Officer of the state, who is authorized to transfer such legal
34 fees, expenses, and costs to the Commission from the County Aid Fund general
35 revenue turnback funds and to charge such legal fees, expenses, and costs

1 transferred to the Commission against the general revenue turnback to the
2 county in which the crime was committed.

3 (c) Except as provided in this act or by other specific statutory
4 authority, all legal fees or other expenses or costs incurred after the
5 effective date of this act in the representation of indigent persons charged
6 with crimes punishable by imprisonment shall be paid by the county in which
7 the crime was committed.

8

9 SECTION 17. Definitions.

10 For purpose of this act:

11 (a) Commission means the Arkansas Public Defender Commission created
12 by this act.

13 (b) Executive director means the person appointed by the Commission
14 pursuant to this act.

15 (c) Indigent person means a person who, at the time his need is
16 determined, is without sufficient funds or assets to employ an attorney or
17 afford other necessary expenses incidental thereto."

18

19 SECTION 18. All provisions of this act of a general and permanent
20 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
21 Code Revision Commission shall incorporate the same in the Code.

22

23 SECTION 19. If any provision of this act or the application thereof to
24 any person or circumstance is held invalid, such invalidity shall not affect
25 other provisions or applications of the act which can be given effect without
26 the invalid provision or application, and to this end the provisions of this
27 act are declared to be severable.

28

29 SECTION 20. All laws and parts of laws in conflict with this act are
30 hereby repealed. Arkansas Code §16-92-108; §16-92-109(b); Act 229 of 1993;
31 and Act 281 of 1993 are specifically repealed.

32

33 SECTION 21. EMERGENCY. It is hereby found and determined by the
34 Seventy-Ninth General Assembly that the decision of the Arkansas Supreme Court
35 in *State v. Post et al*, Case No. 92-787, has created great uncertainty

1 regarding the payment of the legal fees and expenses in connection with the
2 legal representation of indigent persons charged with crimes punishable by
3 imprisonment and that delay in the effective date of this act beyond July 1,
4 1993, would cause irreparable harm to the proper implementation of a statewide
5 public defender program. Therefore, an emergency is hereby declared to exist
6 and this act being necessary for the immediate preservation of the public
7 peace, health and safety shall be in full force and effect from and after July
8 1, 1993.

9 /s/ Senator Dowd

10

11

12