

ARKANSAS SENATE
88th General Assembly - Regular Session, 2011
Amendment Form

Subtitle of Senate Bill No. 941

REGARDING THE ARKANSAS PUBLIC DEFENDER COMMISSION.

Amendment No. 1 to Senate Bill No. 941

Amend Senate Bill No. 941 as originally introduced:

Delete Sections 3 through 6 and substitute:

"SECTION 3. Arkansas Code § 16-87-213 is amended to read as follows:
16-87-213. Certificate of indigency.

(a)(1)(A) Any person charged with an offense punishable by imprisonment who desires to be represented by an appointed attorney shall file with the court in which the person is charged a written certificate of indigency.

(B) The certificate of indigency shall be in a form approved by the Arkansas Public Defender Commission and shall be provided by the court in which the person is charged.

(C) The certificate of indigency shall be executed under oath by the person and shall state in bold print that a false statement is punishable as a Class D felony.

(D) Upon execution, the certificate of indigency shall be made a permanent part of the indigent person's records.

(2)(A)(i) If the court in which the person is charged determines that the person qualifies for the appointment of an attorney under standards set by the commission, the court, except as otherwise provided ~~by~~ in this subchapter, shall appoint the trial public defender to represent the person before the court.

(ii) The court shall not appoint counsel ~~prior to~~ before review of the submitted affidavit.

(iii) The commission shall develop and provide affidavit of indigency forms.

(iv) All completed affidavits of indigency shall be entered into the record at the time of appointment.

(v)(a) The court may make a finding of partial indigency and at the time of appointment set an attorney's fee based upon the defendant's ability to pay.

(b) This fee is to be paid by the defendant before the resolution of the case.

(vi) A finding of indigency may be challenged by the commission or its attorneys at the time of the appointment.



(B)(i)(a)(1) At the time of appointment of counsel, the court shall assess a user fee of not less than ten dollars (\$10.00) nor more than ~~one hundred dollars (\$100)~~ two hundred fifty dollars (\$250) to be paid to the commission in order to defray the costs of the public defender system.

(2) Payment of the user fee is to be made before a resolution in the case.

(b) The fee may be waived if the court finds such an assessment to be too burdensome.

(ii)(a) All the user fees shall be collected by the county or city official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in the circuit courts and district courts of this state who shall remit to the commission by the tenth day of each month all of the fees collected on forms provided by the commission.

(b) The commission shall deposit the money collected into a separate account within the State Central Services Fund entitled "Public Defender User Fees", where it is to be used for all cases involving a risk of loss of liberty.

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

(b)(1) The State of Arkansas or a county, or both, may file a civil action for recovery of money expended in the representation of a person who is determined by a court not to have been indigent at the time expenditures were made.

(2) Suit shall be brought within three (3) years after the date a certificate of indigency is filed.

(c) Nothing in this section shall be construed to bar a prosecution for perjury or other offenses based on misrepresentation of financial status.

SECTION 4. Arkansas Code § 16-87-303 is amended to read as follows:
16-87-303. Selection and qualifications of public defenders.

(a) Each person selected as a public defender shall be:

- (1) Licensed to practice law in the State of Arkansas; and
- (2) Experienced in the defense of criminal cases.

(b)(1) ~~Any~~ A person interested in being considered for appointment as a public defender in a judicial district shall submit his or her name to the Arkansas Public Defender Commission.

~~(2)(A) The commission shall evaluate and submit up to three (3) names to the judges within the judicial district.~~

~~(B) By majority vote, the judges will select one (1) of the candidates whose name was submitted by the commission as the public defender.~~

~~(C) If one (1) of the candidates submitted does not receive a majority vote from the judges, then the commission shall select the public defender.~~

(2) The executive director of the commission shall consult with the judges within the judicial district prior to hiring a managing or chief public defender.

(c)(1) The public defender in each judicial district shall be appointed for a term of two (2) years and shall be removed by the commission before the expiration of his or her term only for just cause.

(2) Just cause for removal shall consist of permanent physical or mental disability seriously interfering with the performance of duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice.

(d) After selecting a qualified candidate, the commission shall notify all judges in the judicial district of the selection.

~~(d)~~(e) The public defender shall be eligible for reappointment.

~~(e)~~(f) Vacancies in the office shall be filled in the same manner as the initial appointment."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator M. Lamoureux

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Secretary