

State of Arkansas

76th General Assembly

First Extraordinary Session, 1987

SENATE BILL

28

By: Senator Bookout

"AN ACT TO ESTABLISH IN CRAIGHEAD COUNTY OF THE SECOND JUDICIAL CIRCUIT OF ARKANSAS A PUBLIC DEFENDER SYSTEM TO PROVIDE COUNSEL FOR INDIGENT PERSONS CONSTITUTIONALLY ENTITLED THERETO; AND FOR OTHER PURPOSES."

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

SECTION 1. DEFINITIONS. As used in this Act, the following terms shall have these meanings ascribed to them:

(a) "Counsel" shall mean any attorney used to serve as counsel pursuant to the provisions of this Act.

(b) "Public Defender" shall mean any person appointed within the Public Defender System which may be created by this Act.

(c) "Expenses" shall include the cost of the operation of the office, investigation, other preparation and trial.

(d) "Indigent Person" shall mean a person detained for or accused of a serious crime who is unable to employ an attorney or afford other necessary expenses incidental thereto as required by the Constitution of the State of Arkansas and the United States of America.

(e) "Serious Crime" shall include any felony, misdemeanor or offense, the penalty for which includes the possibility of confinement or the prolongation of confinement.

(f) "Circuit Court" shall mean the circuit judges of the Second Judicial Circuit of Arkansas having criminal jurisdiction.

(g) "Circuit" shall mean the Second Judicial Circuit of Arkansas in which Craighead County is located.

SECTION 2. If the Circuit Judges of the Second Judicial Circuit for Arkansas shall determine that the number of indigent persons accused of

serious crimes in the Craighead County Circuit Court creates a need for the assistance of a Public Defender System for proper administration of justice in said Craighead County Circuit Court, said Judges may certify said fact to the Craighead County Quorum Court and request the Quorum Court to establish a Public Defender System as authorized in this Act. Upon receipt of such request, the Quorum Court of Craighead County is hereby authorized to create a Public Defender System for indigent persons accused of serious crimes in said County, in the manner authorized in this Act, and to provide for the compensation of attorneys and investigators as the Quorum Court deems necessary, and for the reasonable expenses of the operation of the Public Defender System.

SECTION 3. The general budget of the Public Defender's Office, including salaries and expenses, shall be set by the Craighead County Quorum Court, considering the recommendations of the County Judge, the Craighead County Public Defender Committee, the Executive Committee of the Craighead County Bar Association, and the Circuit Judges of said Circuit. In the event federal funds are received to assist in said budget, the same shall be used for that purpose. In the event federal funds are discontinued or unavailable, then the Quorum Court may provide funds for the purpose of financing the operation of the Public Defender's Office.

SECTION 4. Duties of the Public Defender and qualifications of same.

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

(b) The Public Defender and Deputy Public Defenders when appointed, although entitled to maintain private civil law practices, shall operate the office of the Public Defender from 8:30 a.m. to 12:00 p.m. and from 1:30 p.m. until 5:00 p.m., Monday through Friday, of each week, except for vacations, holidays, illnesses, and other days which for good cause the office should be closed.

(c) The Public Defender shall maintain records regarding the conduct of his office and the performance of his duties pursuant to procedures which may be established by the Judicial Department of the State of Arkansas; and the records may be available to the public, except matters which are privileged under existing law.

SECTION 5. CRIMINAL PENALTY. Any person desiring to obtain the services of the Public Defender shall affirm in writing that he is without funds or assets with which to employ private counsel; the affirmation shall further provide in bold print that a false statement as to financial status shall be punishable by sentence in the State Penitentiary of not less than one (1) year, nor more than five (5) years; and a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). The affirmation certificate shall be provided by the Public Defender to the indigent person and upon execution of the same affirmation shall be made a permanent part of the indigent person's record.

SECTION 6. RECOVERY FROM DEFENDANT. (a) The Public Defender on behalf of the County may recover payment or reimbursement, as the case may be, from each person who has received legal assistance, or any benefit under this Act to which he was not entitled and for which he refused to pay or reimburse. Suit must be brought within three (3) years after the date the aid was received.

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

(c) Amounts recovered under this Section shall be paid into the General Fund of the County wherein the charge was placed and the service rendered.

(d) It shall be unlawful for the Public Defender or any of his Deputies to receive any funds, services or other compensation, directly or indirectly, from any needy person represented; neither shall a Public Defender refer any person, indigent or otherwise, who contacted the Public Defender to any other attorney, for any purpose. Violation of this Section shall be grounds for immediate removal of the Public Defender or his Deputies found to be in violation. Nothing herein shall prohibit the prosecution of such offering Public Defender or his Deputies, or other disciplinary action.

SECTION 7. This Act is cumulative to all other Acts heretofore enacted to provide for legal services of indigent persons and does not repeal any existing statutes.

SECTION 8. SEVERABILITY. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 9. EMERGENCY CLAUSE. The Seventy-Sixth General Assembly, meeting in Extraordinary Session, hereby finds and determines that it is essential to the administration of justice in conformity with the Constitutional guarantee and right to effective assistance of counsel that persons who are financially unable to employ counsel be provided the same at public expense; that the Second Judicial Circuit has not, pursuant to Statute, petitioned to create a Public Defender Commission for said Judicial Circuit; that the System of the Circuit Court assigning attorneys to represent indigent defendants for little or no compensation is a severe burden on the lawyers of the Circuit; that many lawyers have not developed or maintained adequate expertise in the highly specialized field of criminal law to effectively represent indigent defendants pursuant to the assigned counsel system; and that this Act is immediately necessary to provide a system for making effective assistance of counsel available to indigent defendants in Craighead County in order to assure the proper administration of justice and to relieve attorneys of the undue burden and the indigent defendants of the potential handicap, which each must bear under the assigned counsel system. Additionally it is felt that the adoption of a Public Defender System would expedite the removal of prisoners from the County Jail at a considerable savings to the County. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from the date of its passage and approval.

