

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

HOUSE BILL

1183

By: Representative Gilbert

For An Act To Be Entitled

"AN ACT TO ESTABLISH IN BAXTER COUNTY OF THE FOURTEENTH 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, unless the context otherwise requires. (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 judge of the Fourteenth Judicial Circuit of Arkansas having criminal jurisdiction.

SECTION 2. Creation of public defender system. If the Circuit Court shall determine that the number of indigent persons accused of serious crimes in Baxter County creates a need for the assistance of a Public Defender System for the proper administration of justice in said Baxter County, said Circuit Court may certify said fact to the Baxter Court and request the Quorum

court to establish a Public Defender System as authorized and provided for in this Act. Upon receipt of such request, the Quorum Court of Baxter County is hereby authorized to create a Public Defender System for indigent persons accused of serious crimes in said Baxter County, in the manner authorized and provided for 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. Appointment of Public Defender, duties, and qualifications of same. (a) The Public Defender, and any Deputy Public Defender, must be competent attorneys licensed to practice law in the State of Arkansas.

(b) The Public Defender and Deputy Public Defenders shall represent those persons charged with serious crimes and found to be indigent by the Circuit Court, Municipal Court, or Juvenile Court of Baxter County. The Public Defender and any Deputy Public Defenders shall be entitled to maintain a private civil law practice.

(c) The Public Defender shall be nominated by a majority vote of a five-member Baxter County Public Defender Committee composed of the County Judge, the Circuit Judge, the Municipal Judge of Baxter County, Arkansas, and two regular practicing attorneys in Baxter County, Arkansas to be selected by the Baxter County Bar Association. The appointment of the Public Defender shall be made by the Circuit Court upon such nomination of said Committee.

(d) Each Public Defender may appoint Deputy Defenders if authorized by the Baxter County Public Defender Committee.

(e) The Public Defender, or Deputy Defender, shall serve at the pleasure of the Baxter County Public Defender Committee.

(f) The Public Defender shall maintain records regarding the conduct of his office in the performance of his duties pursuant to procedures which may be established by the Judicial Department of the State of Arkansas.

(g) If the Judge of any Court determines that a person subject to the jurisdiction of the Court is entitled to representation and a Public Defender has been created under the provisions of this Act to represent persons before the Court, the Court may appoint the Public Defender, or Deputy Public Defender, as the case may be, to represent the person.

SECTION 4. Budget of Public Defender system. The general budget of the

Public Defender's Office, including salaries and expenses, shall be set by the Baxter County Quorum Court, after considering the recommendations of the Baxter County Public Defender Committee.

The Quorum Court may provide funds for the purpose of financing the operation of the Public Defender's Office, taking into consideration all available funds, including grants.

Nothing contained in this Act shall be construed to require that the Public Defender, or Deputy Public Defender, shall be an "employee" of the County or State of Arkansas, it being expressly understood that the Quorum Court may desire the Public Defender or Deputy Public Defender to be an independent contractor. The determination of the method of payment of salaries, expenses, and any other benefits, shall be made by the Quorum Court of Baxter County, Arkansas, after considering the recommendations of the Baxter County Public Defender Committee.

SECTION 5. Application by indigent person for services - 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 Court or the Public Defender to the indigent person and upon execution of the affirmation certificate, it shall become a permanent part of the indigent person's record.

The Circuit Court, Municipal Court or Juvenile Court, as the case may be, may determine, with respect to each defendant and proceeding, whether the person is indigent.

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) The Circuit Court, Municipal Court and Juvenile Court of Baxter County, Arkansas are hereby authorized to assess an amount up to the sum of Three Hundred Fifty Dollars (\$350.00) against each defendant as a condition of their probation, if said defendant received legal assistance or benefits under this Act, or if said defendant had a Court-appointed attorney, whether or not pursuant to this Act. Before assessing any amounts, the Circuit Court, Municipal Court, or Juvenile court shall first determine that the defendant has the ability to pay said Court-Ordered amount in the time and manner set by the Court.

(d) Amounts recovered under this Section may be paid into the General Fund of the County wherein the charge was placed and the service rendered, or into a separate fund established by the Quorum Court.

SECTION 7. Cumulative Act. 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 provisions or applications, and to this end the provisions of this Act are declared to be severable.

SECTION 9. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly 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 Fourteenth 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 District; 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 Baxter County in order to assure the proper administration of justice and to relieve attorneys of the undo burden, and the indigent defendants of the potential handicap, which each must bear under the assigned counsel system. Additionally, that 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.