

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: S3/27/01 S3/29/01 H4/12/01

A Bill

SENATE BILL 878

5 By: Senator Everett
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 CODE CONCERNING THE ARKANSAS PUBLIC DEFENDER
11 COMMISSION; AND FOR OTHER PURPOSES.
12

Subtitle

14 AN ACT TO AMEND VARIOUS SECTIONS OF THE
15 ARKANSAS CODE CONCERNING THE ARKANSAS
16 PUBLIC DEFENDER COMMISSION.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code 16-87-203(a), concerning the powers and
22 duties of the Arkansas Public Defender Commission, is amended to add an
23 additional subdivision to read as follows:

24 (14) To perform all other functions and duties as authorized by law.
25

26 SECTION 2. Arkansas Code 16-87-205(c), concerning the Capital,
27 Conflicts and Appellate Office, is amended to read as follows:

28 16-87-205. Capital, Conflicts, and Appellate Office.

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

31 (1)(A) 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's office and the indigent person, or if for any
34 other reason the court determines that the trial public defender cannot or
35 should not represent the indigent person.

36 (B) Such representation may be in conjunction with

1 appointed private attorneys.

2 (C) In capital murder cases, unless the prosecuting
3 attorney informs the circuit court at the arraignment of the defendant that
4 the death penalty will not be sought, it shall be presumed for purposes of
5 this section that the death penalty will be sought.

6 ~~(D) Should the Capital, Conflicts, and Appellate Office~~
7 ~~also have a conflict, or for any other reason cannot or should not serve, the~~
8 ~~indigent person shall be represented by trial public defenders from another~~
9 ~~area, or, as a last resort, by private attorneys whose names appear on the~~
10 ~~list of attorneys maintained by the commission, or by both a trial public~~
11 ~~defender from another area and a private attorney whose name appears on the~~
12 ~~list maintained by the commission.~~ (i) The Executive Director may assign the
13 Capital, Conflicts, and Appellate Office, a trial public defender from
14 another area, a private attorney whose name appears on a list of attorneys
15 maintained by the commission, or a combination of private and public defender
16 attorneys to represent the indigent person.

17 (ii) The Executive Director shall notify the trial
18 court of the assignment and an order reflecting the assignment shall be
19 entered.

20 ~~(E) Subject to caseload restrictions and subject to~~
21 ~~conflict of interest considerations, the circuit courts shall give preference~~
22 ~~to the appointment of the Capital, Conflicts, and Appellate Office in the~~
23 ~~appointment of counsel in capital cases if the trial public defender cannot~~
24 ~~represent the indigent person and shall appoint private attorneys only as a~~
25 ~~last resort;~~

26 (2)~~(A)~~ In noncapital cases, if a conflict of interest is
27 determined by the court to exist between the trial public defender's office
28 and the indigent person or if for any other reason the court determines that
29 the trial public defender cannot or should not represent the indigent person,
30 the indigent person shall be represented by a trial public defender from
31 another area.

32 ~~(B) Subject to caseload restrictions and conflict of~~
33 ~~interest considerations, the court may notify the Capital, Conflicts, and~~
34 ~~Appellate Office to represent the indigent.~~

35 ~~(C) As a last resort, the court may appoint a private~~
36 ~~attorney to represent an indigent;~~

1 ~~(3) The Capital, Conflicts, and Appellate Office may perfect~~
 2 ~~direct appeals and petitions for writs of certiorari for cases assigned to it~~
 3 ~~by Arkansas courts. then the court, if time permits, shall contact the Public~~
 4 ~~Defender Commission to determine if a public defender from an adjacent area~~
 5 ~~is available for appointment; if time does not permit, or if there is not a~~
 6 ~~public defender from an adjacent area available, then the court may appoint a~~
 7 ~~private attorney and the trial judge shall, within twenty (20) days of the~~
 8 ~~appointment, notify, in writing, the Public Defender Commission of the~~
 9 ~~appointment, the type of case, and the reason for the appointment.~~

10
 11 SECTION 3. Arkansas Code 16-87-209 is repealed.

12 ~~16-87-209. Court appointed attorneys.~~

13 ~~(a)(1) If the court determines that a conflict of interest exists~~
 14 ~~between an indigent person and the office of the trial public defender, the~~
 15 ~~case shall be reassigned by the court to another trial public defender in an~~
 16 ~~adjacent area.~~

17 ~~(2) As a last resort, a private attorney who is included in a~~
 18 ~~list of volunteers who have agreed to accept such appointments may be~~
 19 ~~appointed.~~

20 ~~(b)(1) All licensed attorneys residing in Arkansas shall be notified~~
 21 ~~in writing by the Arkansas Public Defender Commission that a list is being~~
 22 ~~prepared of attorneys willing to represent indigent persons.~~

23 ~~(2) Attorneys notified under this section shall have a~~
 24 ~~reasonable time to submit the information requested by the commission.~~

25 ~~(c)(1) A list for each judicial district shall be prepared, certified,~~
 26 ~~and updated annually by the commission.~~

27 ~~(2) A separate list of attorneys throughout the state qualified~~
 28 ~~and willing to accept appointment as lead counsel in capital cases shall be~~
 29 ~~prepared, certified, and updated annually by the commission.~~

30 ~~(3) The commission shall create a second list of attorneys who~~
 31 ~~may be appointed to assist the lead counsel and the appointing courts shall~~
 32 ~~appoint attorneys to assist the lead counsel in capital cases.~~

33 ~~(d) The appointing court shall attempt to equalize the appointments~~
 34 ~~for all attorneys on the list, but this subchapter does not deprive a court~~
 35 ~~of the power to appoint particularly qualified and willing attorneys in~~
 36 ~~capital or other complex litigation.~~

1 ~~(e) In no event shall an attorney who has not voluntarily agreed to~~
2 ~~accept appointments be appointed to represent an indigent person.~~

3
4 SECTION 4. Arkansas Code 16-87-210 is repealed.

5 ~~16-87-210. Attorney's fees and expenses.~~

6 ~~(a) When private attorneys are appointed to represent an indigent~~
7 ~~person and authorized by the Public Defender Commission, the attorneys or~~
8 ~~trial public defenders shall be paid by the commission.~~

9 ~~(b) The commission may authorize the disbursement of interim fees in~~
10 ~~complex cases.~~

11 ~~(c) The attorneys shall also be reimbursed for reasonable expenses.~~

12
13 SECTION 5. Arkansas Code 16-87-211 is amended to read as follows:

14 16-87-211. Compensation.

15 (a) ~~At~~ On an interim basis in complex cases or at the conclusion of
16 each case, the appointed attorney shall submit his bill to the appointing
17 court which shall issue an order ~~for appropriate~~ authorizing compensation.

18 (b) An application for compensation shall be submitted to the Arkansas
19 Public Defender Commission and accompanied by the affidavit of the appointed
20 attorney detailing the hours spent on the case and the services rendered and
21 whether compensation was received or has been applied for from any other
22 source; the Arkansas Public Defender Commission shall determine and set the
23 compensation award based upon guidelines established by the commission.

24 (c) There shall be no maximum amount of compensation in capital cases.

25 ~~(d) Any attorney dissatisfied with the decision of the appointing~~
26 ~~court may appeal to the Arkansas Supreme Court.~~

27 ~~(e) The state may also have the right of appeal.~~

28
29 SECTION 6. Arkansas Code 16-87-212 is amended to read as follows:

30 16-87-212. Court fees and expenses.

31 (a)(1) The commission is authorized to pay for certain expenses
32 regarding the defense of indigents.

33 (2) The expenses shall include, but shall not necessarily be
34 limited to, fees for appointed counsel, expert witnesses, temporary
35 investigators, testing, and travel.

36 (3) Whenever, in a case involving an indigent person, a judge

1 orders an authorized payment, a copy of the order, accompanied by a detailed
2 explanation of services rendered, time spent and expenses incurred, shall be
3 transmitted to the commission, and the commission shall set the amount of
4 compensation. ~~the payment of funds for the aforementioned expenses, the judge~~
5 ~~shall transmit a copy of the order to the commission, which is authorized in~~
6 ~~its discretion to pay the funds.~~ Orders as authorized throughout this
7 chapter shall be paid by the commission provided sufficient funds are
8 available.

9 (b)(1) With the approval of the executive director, trial public
10 defenders, appointed private attorneys, and the Capital, Conflicts, and
11 Appellate Office are hereby authorized to utilize the services of the State
12 Crime Laboratory for pathology and biology, toxicology, criminalistics, raw
13 drug analysis, latent fingerprint identification, questioned documents
14 examination, firearms and toolmarks identification, and in other such areas
15 as the trial judge may deem necessary and appropriate.

16 (2) If approved by the executive director, the State Crime
17 Laboratory shall provide the requested services.

18 (c) At the discretion of the Arkansas Public Defender Commission,
19 capital murder cases and all proceedings under the Arkansas Rules of Criminal
20 Procedure, Rule 37.5, shall be paid entirely by the Arkansas Public Defender
21 Commission.

22
23 SECTION 7. Arkansas Code 16-87-213(a), concerning certificates of
24 indigency, is amended to read as follows:

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

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

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

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

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

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

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

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

14 (ii) The fee shall be collected by the individual or
15 entity designated by the quorum court pursuant to § 16-13-709 to collect
16 fines, costs, and restitution or, in the case of a municipal court, the
17 municipal court clerk.

18 (iii)(a) All such user fees shall be forwarded to
19 the county treasurer to the credit of the public defender user fee fund, who
20 shall then remit 100% of such fees monthly to the commission on forms
21 provided by the commission.

22 (b) The commission will deposit the money
23 collected into a separate account with State Central Services entitled
24 "Public Defender User Fees".

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

28
29 SECTION 8. Arkansas Code 16-87-302 is amended to read as follows:
30 16-87-302. Funding of public defenders.

31 (a) Effective ~~January 1, 1998~~ July 1, 2001, the Arkansas Public
32 Defender Commission shall be responsible for the payment of the following:

33 (1) The salaries of public defenders;
34 (2) The salaries of secretaries and other support staff of the
35 public defender's office;

36 (3) The payment of the costs of certain expenses, as authorized

1 by § 16-87-212.

2 (b) Effective ~~January 1, 1998~~ July 1, 2001, each county or counties
3 within a judicial district shall be responsible for the payment of the
4 following:

5 (1) The cost of facilities, equipment, supplies, and other
6 office expenses necessary to the effective and efficient operation of the
7 public defender's office; and

8 (2) The compensation of additional personnel within the office
9 of the public defender, when approved in advance by the quorum court.

10

11 SECTION 9. Arkansas Code 16-87-303 is amended to read as follows:
12 16-87-303. Selection and qualifications of public defenders.

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

14 (1) Licensed to practice law in the State of Arkansas; and

15 (2) Experienced in the defense of criminal cases.

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

19 ~~(2) (A) The commission shall evaluate each candidate and make a~~
20 ~~recommendation to the circuit, chancery, and circuit chancery judges within~~
21 ~~the judicial district.~~

22 ~~(B) The judges shall, by majority vote, choose the public~~
23 ~~defender from the list of all persons considered and evaluated by the~~
24 ~~commission.~~

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

27 (B) The judges will, by majority vote, select one of the
28 candidates whose name was submitted by the commission, as the public
29 defender.

30 (C) If one of the candidates submitted does not receive a
31 majority vote from the judges, then the Public Defender Commission shall
32 select the public defender.

33 (c)(1) Beginning January 1, 1998, the public defender in each judicial
34 district shall be appointed for a term of two (2) years and shall be removed
35 by the commission before the expiration of his term only for just cause.

36 (2) Just cause for removal shall consist of permanent physical

1 or mental disability seriously interfering with the performance of duties,
2 willful misconduct in office, willful and persistent failure to perform
3 public defender duties, habitual intemperance, or conduct prejudicial to the
4 administration of justice.

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

6 (e) Vacancies in the office shall be filled in the same manner as the
7 initial appointment.

8

9 SECTION 10. Arkansas Code 16-87-304(c), concerning assignments of
10 public defenders, is amended to read as follows:

11 (c)(1) There shall be at least one (1) public defender position
12 allocated to each judicial district.

13 (2)(A) Where appropriate, a position or positions may be
14 assigned to a single county.

15 (B) In counties where more than one (1) position is
16 allocated, the commission may designate one (1) or more of the positions as
17 chief public defenders.

18 (3)~~(A)~~ When one (1) or more chief public defenders is assigned
19 to a county or judicial district and said chief public defender shall have
20 administrative authority over other public defenders within the county or
21 district, the chief public defender may ~~be given the authority to~~ select the
22 other public defenders ~~in consultation with~~ subject to the approval of the
23 Arkansas Public Defender Commission, ~~if such selection process is approved~~
24 ~~by the judges within the judicial district.~~

25 ~~(B) If such a selection process is approved, the chief~~
26 ~~public defender, and not the judges as authorized by § 16-87-303(b)(2)(B),~~
27 ~~shall select the public defenders.~~

28 (4)~~(A)~~ Public defender positions may be allocated on a full-time
29 or part-time basis. When a public defender is employed on a part-time basis,
30 he may engage in the general practice of law. No person who serves as a full-
31 time public defender may engage in the private practice of law. No person
32 shall serve as a part-time public defender who also serves as a part-time
33 municipal court judge, city court judge, or deputy prosecuting attorney in
34 any judicial district.

35 ~~(B) When a public defender is employed on a part-time~~
36 ~~basis, he may engage in the general practice of law.~~

1 ~~(C) No person shall serve as a part-time public defender~~
2 ~~who also serves as a part-time municipal court judge, city court judge, or~~
3 ~~deputy prosecuting attorney in any judicial district.~~

4
5 SECTION 11. Arkansas Code 16-87-306 is amended to read as follows:

6 16-87-306. Duties.

7 The public defender in each judicial district shall have the following
8 duties:

9 (1) Defend indigents within the district as determined by the circuit,
10 municipal, ~~city, police,~~ juvenile, probate, or chancery courts in the
11 district in all felony, misdemeanor, juvenile, guardianship, and mental
12 *health cases, all traffic cases punishable by incarceration, and all contempt*
13 *proceedings punishable by incarceration. Except for juvenile representation*
14 *in FINS cases, in no case may a public defender be appointed, or the*
15 *commission be responsible for payment, where there is no risk of*
16 *incarceration or loss of liberty;* and

17 (2)(A) In all capital cases where the death penalty is sought, two (2)
18 attorneys shall be appointed, unless the prosecuting attorney informs the
19 circuit court at the arraignment of the defendant that the death penalty will
20 not be sought.

21 (B) The Capital, Conflicts, and Appellate Office of the Arkansas
22 Public Defender Commission may be appointed, consistent with § 16-87-205.

23 (C) It should be presumed for purposes of this section that the
24 death penalty will be sought.

25
26 SECTION 12. Arkansas Code 16-87-307 is amended to read as follows:

27 16-87-307. Conflicts of interest.

28 (a) If a court determines that a conflict of interest exists between
29 an indigent person and a public defender, the case shall be reassigned as
30 follows:

31 (1) If there is, within the county or judicial district, another
32 public defender, the appointment of whom would not create a conflict of
33 interest, the judge shall appoint that public defender to defend the person;

34 (2) If there is no other public defender within the county or
35 judicial district eligible to represent the person, the judge shall notify
36 the Arkansas Public Defender Commission, which may appoint a public defender

1 from an adjacent area; or

2 (3) ~~As a last resort,~~ a A private attorney may be appointed by
3 the judge pursuant to § 16-87-210 who shall, within twenty (20) days of the
4 appointment, notify in writing the Arkansas Public Defender Commission of the
5 appointment, the type of case, and the reason for the appointment.

6 (b) The Arkansas Public Defender Commission shall continue to maintain
7 a list of private attorneys based upon their qualifications for acceptance of
8 appointment.

9 (c)(1) A list for each judicial district shall be prepared, certified,
10 and updated annually by the commission.

11 (2) A separate list of attorneys throughout the state qualified
12 and willing to accept appointment as lead counsel in capital cases shall be
13 prepared, certified, and updated annually by the commission.

14 (3) The commission shall create a second list of attorneys who
15 may be appointed to assist the lead counsel.

16 /s/ Everett

17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36