

1 State of Arkansas *As Engrossed: S3/15/11 S3/29/11 S3/31/11*

2 88th General Assembly

A Bill

3 Regular Session, 2011

SENATE BILL 941

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5 By: Senator M. Lamoureux

6 By: Representative Wright

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For An Act To Be Entitled

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AN ACT REGARDING THE ARKANSAS PUBLIC DEFENDER
COMMISSION; AND FOR OTHER PURPOSES.

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Subtitle

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REGARDING THE ARKANSAS PUBLIC DEFENDER
COMMISSION.

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

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SECTION 1. Arkansas Code § 16-87-211 is amended to read as follows:

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16-87-211. Compensation.

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

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(b)(1)(A) An application for compensation shall be submitted to the Arkansas Public Defender Commission, accompanied by ~~the affidavit of the appointed attorney detailing the hours spent on the case and the services rendered and~~ an itemized bill with a detailed explanation of services rendered, time spent, and expenses incurred.

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(B) The application for compensation should also indicate whether compensation was received or has been applied for from any other source.

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(2) The commission shall determine and set the compensation award based upon guidelines established by the commission.

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(c) There shall not be ~~no~~ a maximum amount of compensation in capital cases.

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2 SECTION 2. Arkansas Code § 16-87-212(a), regarding court fees and
3 expenses that the Arkansas Public Defender Commission is authorized to pay,
4 is amended to read as follows:

5 (a)(1) The Arkansas Public Defender Commission is authorized to pay
6 for certain expenses regarding the defense of indigents.

7 (2) The expenses shall include, but shall not necessarily be
8 limited to, fees for:

9 ~~(A) appointed~~ Appointed counsel;

10 ~~(B) expert~~ Expert witnesses;

11 ~~(C) temporary investigators~~ Investigators;

12 ~~(D) Mitigation specialists;~~

13 ~~(E) testing,~~ Testing; and

14 ~~(F) travel~~ Travel of the:

15 (i) Appointed counsel;

16 (ii) Expert witness;

17 (iii) Investigator; or

18 (iv) Mitigation specialist.

19 ~~(3)(A) Whenever a judge orders an authorized payment in a case~~
20 ~~involving an indigent person, a copy of the order accompanied by a detailed~~
21 ~~explanation of services rendered, time spent, and expenses incurred shall be~~
22 ~~transmitted to the commission, and the commission shall set the amount of~~
23 ~~compensation.~~

24 ~~(B)(3) Orders as authorized throughout this chapter shall be~~
25 ~~paid by the commission provided~~ If sufficient funds are available, the
26 commission shall pay all orders as authorized throughout this chapter.

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28 SECTION 3. Arkansas Code § 16-87-213 is amended to read as follows:

29 16-87-213. Certificate Affidavit of indigency.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (b) The commission shall deposit the money
35 collected into a separate account within the State Central Services Fund
36 entitled "Public Defender User Fees", where it is to be used for all cases

1 involving a risk of loss of liberty.

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

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

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

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

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14 /s/M. Lamoureux
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