

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

# A Bill

HOUSE BILL 1213

5 By: Representative Maddox  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING INDIGENT PERSONS AND THE USE OF A  
9 PUBLIC DEFENDER; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 CONCERNING INDIGENT PERSONS AND THE USE  
12 OF A PUBLIC DEFENDER.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 16-87-201 is amended to read as follows:  
20 16-87-201. Definitions.

21 For the purpose of this subchapter:

22 (1) "Commission" means the Arkansas Public Defender Commission  
23 created by this subchapter;

24 (2) "Executive director" means the person appointed by the  
25 commission pursuant to this subchapter; ~~and~~

26 (3) "Indigent person" means a person who, at the time his or her  
27 need is determined, is without sufficient funds or assets to employ an  
28 attorney due to substantial financial hardship or afford other necessary  
29 expenses incidental ~~thereto~~ to employing an attorney; and

30 (4) "Substantial financial hardship" means that a person's  
31 current or future financial situation includes without limitation one (1) or  
32 more of the following:

33 (A) Receipt of public assistance such as:

34 (i) Food stamps;

35 (ii) Temporary Assistance for Needy Families;

36 (iii) Medicaid;



- 1                    (iv) Disability insurance; and
- 2                    (v) Public housing;
- 3                    (B) Earning less than two hundred percent (200%) of the
- 4 federal poverty guidelines, as they existed on January 1, 2021;
- 5                    (C) Being incarcerated; and
- 6                    (D) Being admitted to a residential mental health
- 7 facility.

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9            SECTION 2. Arkansas Code § 16-87-213 is amended to read as follows:  
 10            16-87-213. Certificate of indigency.

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

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

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

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

23                    (E)(i) The certificate of indigency also shall function as  
 24 a legally binding contractual agreement in which the person charged agrees  
 25 that in exchange for legal representation provided by the state, he or she  
 26 shall pay the amount ordered by the court, both upon the initial appointment  
 27 of an attorney under subdivision ~~(a)(2)(A)~~(a)(3)(A) of this section and for  
 28 any amount ordered by the court after the case has concluded.

29                    (ii) The certificate of indigency shall contain a  
 30 notice that reads, "Your state income tax refund, legal settlements or  
 31 favorable verdicts, lottery winnings, or any moneys or property forfeited by  
 32 the state shall be intercepted to satisfy this debt under Ark. Code Ann. §  
 33 16-87-217."

34                    (2) The court shall conduct a preliminary review of the person's  
 35 certificate of indigency using the following standards:

36                    (A) It is presumed that a person is not indigent if the

1 person is admitted to bail and the person or another person on behalf of the  
 2 person posts a bond, other than by personal recognizance;

3 (B) A person who is admitted to bail shall be subjected to  
 4 a more rigorous review by the court to determine if retaining private counsel  
 5 would constitute a substantial hardship, considering the following  
 6 circumstances:

- 7 (i) The seriousness of the charges being faced;
- 8 (ii) The person's monthly expenses;
- 9 (iii) Local private counsel rates;
- 10 (iv) The person's income or available funds from any  
 11 other source, including public assistance, to which the person is entitled;
- 12 (v) Property owned by the person or in which he or  
 13 she has an economic interest;
- 14 (vi) The person's outstanding financial obligations;
- 15 (vii) The existence, number, and ages of any  
 16 dependents;
- 17 (viii) The person's employment and job training  
 18 history; and
- 19 (ix) The person's highest level of formal education  
 20 attained; and

21 (C)(i) If the court makes the preliminary determination  
 22 that the person is or may be indigent, the court shall require the person to  
 23 make application to the district public defender office, an appointed  
 24 attorney, or an attorney under contract to provide indigent public defender  
 25 services.

26 (ii) The district public defender office, appointed  
 27 attorney, or attorney under contract to provide indigent public defender  
 28 services shall also inquire further into the person's economic status.

29 ~~(2)(A)~~ (3)(A) If the court in which the person is charged  
 30 determines that the person qualifies for the appointment of an attorney by  
 31 being indigent or partially indigent under standards set by the commission  
 32 and this section, the court, except as otherwise provided by this subchapter,  
 33 shall appoint the trial public defender to represent the person before the  
 34 court.

35 (B) The court shall not appoint an attorney prior to  
 36 review of the submitted affidavit certificate of indigency.

1 (b)(1) At the time of appointment of an attorney, the court  
2 immediately shall assess a fee of not less than ten dollars (\$10.00) nor more  
3 than four hundred dollars (\$400) to be paid to the commission in order to  
4 defray the costs of the public defender system.

5 (2) The fee under subdivision (b)(1) of this section may be  
6 waived if the court finds such an assessment to be too burdensome.

7 (3) The fee under subdivision (b)(1) of this section shall be  
8 collected at the beginning of the proceeding and is separate from any  
9 additional attorney's fee that might be assessed by the court.

10 (4)(A) The commission shall deposit the money collected under  
11 subdivision (b)(1) of this section into a separate account within the State  
12 Central Services Fund entitled "Public Defender User Fees" to which access  
13 shall only be available to the commission.

14 (B) The commission may carry over any funds remaining in  
15 the separate account under subdivision (b)(4)(A) of this section at the end  
16 of the fiscal year to the subsequent year.

17 (c) All fees under this subchapter shall be collected by the county or  
18 city official, agency, or department designated under § 16-13-709 as  
19 primarily responsible for the collection of fines assessed in the circuit  
20 courts and district courts of this state, and the collecting county or city  
21 official, agency, or department shall remit to the commission by the tenth  
22 day of each month all of the fees collected on forms provided by the  
23 commission.

24 (d) The appointing court may at any time review and redetermine  
25 whether or not a person is ~~an indigent person who~~ and qualifies for the  
26 appointment of an attorney ~~pursuant to~~ under this subchapter.

27 (e) This section does not bar a prosecution for perjury or other  
28 offenses based on misrepresentation of financial status.

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30 SECTION 3. Arkansas Code § 16-87-302(b), concerning the funding of  
31 public defenders, is amended to read as follows:

32 (b) Each county or counties within a judicial district shall be  
33 responsible for the payment of the following:

34 (1)(A) The cost of facilities, equipment, supplies, and other  
35 office expenses necessary to the effective and efficient operation of the  
36 public defender's office.

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- (B) Funding for these expenditures may be from:
  - (i) A county administration of justice fund;
  - (ii) A county's general fund;
  - (iii) A county's public defender fund;
  - (iv) A county's indigent defense fund;
  - (v) A county's public defender investigator fund; or
  - (vi) Any other fund authorized by law for that

purpose.

(C) These expenditures shall comply with an itemized, line-item budget appropriated by the quorum court, ~~and~~.

(D) The county or counties within a judicial district shall not be financially responsible for travel within the judicial district by a public defender; and

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