

1 State of Arkansas
2 93rd General Assembly
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4

As Engrossed: H2/23/21

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.

Subtitle

12 CONCERNING INDIGENT PERSONS AND THE USE
13 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 is uncertain or precarious and is*
32 *presumed if the person's financial situation include without limitation one*
33 *(1) or more of the following:*

34 *(A) Receipt of public assistance such as:*

35 *(i) Food stamps;*

36 *(ii) Temporary Assistance for Needy Families;*



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

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11 SECTION 2. Arkansas Code § 16-87-213 is amended to read as follows:
 12 16-87-213. Certificate of indigency.

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

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

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

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

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

31 (ii) The certificate of indigency shall contain a
 32 notice that reads, "Your state income tax refund, legal settlements or
 33 favorable verdicts, lottery winnings, or any moneys or property forfeited by
 34 the state shall be intercepted to satisfy this debt under Ark. Code Ann. §
 35 16-87-217."

36 (2) The court shall conduct a preliminary review of the person's

1 certificate of indigency, and if the court makes the preliminary
2 determination that the person is or may be indigent based upon the person's
3 stating he or she faces substantial financial hardship, the court shall
4 appoint the public defender to represent the person.

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

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

13 (4) If the court does not find the person indigent after a
14 preliminary review of the person's certificate of indigency, the court shall
15 then evaluate if the person qualifies as indigent using the following
16 factors:

17 (A) The seriousness of the charges being faced;

18 (B) The person's monthly expenses;

19 (C) Local private counsel rates;

20 (D) The person's income or available funds from any other
21 source, including public assistance, to which the person is entitled;

22 (E) Property owned by the person or in which he or she has
23 an economic interest;

24 (F) The person's outstanding financial obligations;

25 (G) The existence, number, and ages of any dependents;

26 (H) The person's employment and job training history; and

27 (I) The person's highest level of formal education
28 attained.

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

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

35 (3) The fee under subdivision (b)(1) of this section shall be
36 collected at the beginning of the proceeding and is separate from any

1 additional attorney's fee that might be assessed by the court.

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

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

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

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

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

21 (f)(1) The court may at any time request, and upon request the
22 Department of Finance and Administration shall provide, an indigent person's
23 past three (3) years of income tax returns in order for the court to confirm
24 or review a determination of indigency.

25 (2) The confirmation or review by the court under subdivision
26 (f)(1) of this section shall be in camera with the defendant and his or her
27 appointed counsel.

28 (3) The court shall place the income tax returns used for the
29 confirmation or review under this subsection under seal.

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32 /s/Maddox
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