

1 State of Arkansas As Engrossed: H2/22/21 H2/24/21

2 93rd General Assembly

A Bill

3 Regular Session, 2021

HOUSE BILL 1330

4

5 By: Representative Bryant

6 By: Senator B. Ballinger

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For An Act To Be Entitled

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AN ACT CONCERNING THE APPOINTMENT OF THE PUBLIC

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DEFENDER TO REPRESENT A PERSON WHO IS SUFFERING FROM

11

A MENTAL ILLNESS; AND FOR OTHER PURPOSES.

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Subtitle

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CONCERNING THE APPOINTMENT OF THE PUBLIC

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DEFENDER TO REPRESENT A PERSON WHO IS

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SUFFERING FROM A MENTAL ILLNESS.

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

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22 *SECTION 1. Arkansas Code § 16-87-213 is amended to read as follows:*

23 *16-87-213. Certificate of indigency.*

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

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

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

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

36 *(E)(i) The certificate of indigency also shall function as*



1 a legally binding contractual agreement in which the person charged agrees
2 that in exchange for legal representation provided by the state, he or she
3 shall pay the amount ordered by the court, both upon the initial appointment
4 of an attorney under subdivision (a)(2)(A) of this section and for any amount
5 ordered by the court after the case has concluded.

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

10 (2)(A) If the court in which the person is charged determines
11 that the person qualifies for the appointment of an attorney by being
12 indigent or partially indigent under standards set by the commission, the
13 court, except as otherwise provided by this subchapter, shall appoint the
14 trial public defender to represent the person before the court.

15 (B) The court shall not appoint an attorney prior to
16 review of the submitted affidavit.

17 (b)(1) Notwithstanding subsection (a) of this section and under the
18 limited circumstance that the mental incapacity of a defendant prevents the
19 defendant from comprehending questioning by the court concerning his or her
20 indigency and for the purpose of expediting the criminal proceeding, the
21 court may summarily appoint an attorney for a defendant in a criminal
22 proceeding that carries the possibility of incarceration.

23 (2) If an appointed attorney subsequently questions the
24 indigency of the defendant, the appointed attorney may seek to be relieved as
25 attorney of record.

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

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

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

35 (4)(A) The commission shall deposit the money collected under
36 subdivision ~~(b)(1)(c)(1)~~ of this section into a separate account within the

1 State Central Services Fund entitled "Public Defender User Fees" to which
2 access shall only be available to the commission.

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

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

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

16 ~~(e)~~(f) This section does not bar a prosecution for perjury or other
17 offenses based on misrepresentation of financial status.

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19 /s/Bryant
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