

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4  
5 By: Senator E. Williams  
6

# A Bill

SENATE BILL 921

## For An Act To Be Entitled

8 AN ACT CONCERNING THE REPAYMENT OF FEES THAT ARE OWED  
9 RELATED TO COURT-ORDERED REPRESENTATION BY THE PUBLIC  
10 DEFENDER; AND FOR OTHER PURPOSES.

### Subtitle

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13 CONCERNING THE REPAYMENT OF FEES THAT ARE  
14 OWED RELATED TO COURT-ORDERED  
15 REPRESENTATION BY THE PUBLIC DEFENDER.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 16-87-213 is amended to read as follows:  
22 16-87-213. Certificate of indigency.

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

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

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

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

35 (E)(i) The certificate of indigency also shall function as  
36 a legally binding contractual agreement in which the person charged agrees



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

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

10 (2)(A)~~(i)~~ 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 ~~(i)(B)~~ The court shall not appoint ~~counsel~~ an attorney  
 16 prior to review of the submitted affidavit.

17 ~~(B)(i)(a)(b)(1)~~ At the time of appointment of ~~counsel~~ an attorney, the  
 18 court immediately shall assess a fee of not less than ten dollars (\$10.00)  
 19 nor more than ~~one~~ four hundred dollars ~~(\$100)~~ (\$400) to be paid to the  
 20 commission in order to defray the costs of the public defender system.

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

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

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

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

33 ~~(ii)(a)(c)~~ ~~All the user fees~~ All fees under this subchapter shall be  
 34 collected by the county or city official, agency, or department designated  
 35 under § 16-13-709 as primarily responsible for the collection of fines  
 36 assessed in the circuit courts and district courts of this state, ~~who~~ and the

1 collecting county or city official, agency, or department shall remit to the  
2 commission by the tenth day of each month all of the fees collected on forms  
3 provided by the commission.

4 ~~(b) The commission shall deposit the money~~  
5 ~~collected into a separate account within the State Central Services Fund~~  
6 ~~entitled "Public Defender User Fees".~~

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

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

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

16 ~~(e)(e)~~ Nothing in this section shall be construed to bar This section  
17 does not bar a prosecution for perjury or other offenses based on  
18 misrepresentation of financial status.

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20 SECTION 2. Arkansas Code Title 16, Chapter 87, Subchapter 2, is  
21 amended to add a new section to read as follows:

22 16-87-217. Recovery of fees owed.

23 (a)(1) The State of Arkansas and the county may file a civil action  
24 for recovery of money expended in the representation of a person who is  
25 determined by a court not to have been indigent at the time expenditures were  
26 made.

27 (2) Suit shall be brought within three (3) years after the date  
28 a certificate of indigency is filed.

29 (b)(1) The State of Arkansas also shall recover any fees owed or money  
30 expended in the representation of a person who is determined by a court not  
31 to have been indigent at the time expenditures were made by attaching a lien  
32 to the person's state income tax refund, wages, legal settlements or  
33 favorable verdicts, lottery winnings, or any moneys or property forfeited by  
34 the state.

35 (2) To effectuate a lien under subdivision (b)(1) of this  
36 section, a public defender shall file a notice of the lien setting forth

1 services rendered to the person and a claim for reasonable value of the  
2 services with the clerk of the circuit court not later than ten (10) days  
3 after the disposition of the case.

4 (3) The person named in the notice of the lien shall be served  
5 personally with a copy of the lien in court immediately at the end of the  
6 trial court proceedings.

7 (4) The circuit court shall determine whether all or any part of  
8 the lien shall be allowed.

9 (c) A copy of the lien and the circuit court's order, if any, shall be  
10 filed with the Department of Finance and Administration.

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12 SECTION 3. Arkansas Code Title 16, Chapter 87, Subchapter 2, is  
13 amended to add a new section to read as follows:

14 16-87-218. Schedule of costs for legal services.

15 (a) As used in this section:

16 (1) "Early disposition" means a disposition that occurs within  
17 sixty (60) days of the date of the person's arrest or before the state files  
18 a criminal information, whichever occurs sooner; and

19 (2) "Extended matter" means a case that involves legal  
20 proceedings that extend beyond a completed trial.

21 (b) At the time of final disposition of any charges pending against a  
22 defendant represented by a public defender, the public defender shall ask the  
23 court to enter a judgment against the defendant in favor of the State of  
24 Arkansas for legal services rendered by the public defender.

25 (c) The amount of judgment shall be based on the following nonbinding  
26 fee schedule:

27 (1) Capital murder, § 5-10-101, in which the death penalty was  
28 given, including any appeal and post-conviction remedy, twelve thousand five  
29 hundred dollars (\$12,500);

30 (2) Capital murder, § 5-10-101, in which the death penalty was  
31 not given, murder in the first degree, § 5-10-102, or Class Y felony:

32 (A) For an early disposition, five hundred dollars (\$500);

33 (B) For a negotiated plea or disposition before trial, two  
34 thousand five hundred dollars (\$2,500); or

35 (C) For a trial or an extended matter, seven thousand five  
36 hundred dollars (\$7,500);

1           (3) Any other felony homicide, §§ 5-10-103 – 5-10-106, Class A  
2 felony or Class B felony:

3                   (A) For an early disposition, two hundred fifty dollars  
4 (\$250);

5                   (B) For a negotiated plea or disposition before trial, one  
6 thousand two hundred fifty dollars (\$1,250); or

7                   (C) For a trial or an extended matter, five thousand  
8 dollars (\$5,000);

9           (4) A Class C felony, Class D felony, unclassified felony, or  
10 driving while intoxicated, § 5-65-103, third offense:

11                   (A) For an early disposition, one hundred twenty-five  
12 dollars (\$125);

13                   (B) For a negotiated plea or disposition before trial, six  
14 hundred twenty-five dollars (\$625); or

15                   (C) For a trial or an extended matter, two thousand five  
16 hundred dollars (\$2,500);

17           (5) Any other misdemeanor:

18                   (A) For an early disposition, sixty-five dollars (\$65.00);

19                   (B) For a negotiated plea or disposition before trial, one  
20 hundred twenty-five dollars (\$125); or

21                   (C) For a trial or an extended matter, five hundred  
22 dollars (\$500);

23           (6) Any juvenile matter:

24                   (A) For an early disposition, sixty-five dollars (\$65.00);

25                   (B) For a negotiated plea or disposition before trial, one  
26 hundred twenty-five dollars (\$125); or

27                   (C) For a trial or an extended matter, five hundred  
28 dollars (\$500); or

29           (7) Any post-conviction relief that is not a direct appeal of  
30 the conviction:

31                   (A) For an early disposition, two hundred dollars (\$200);

32                   (B) For a negotiated plea or disposition before trial or  
33 hearing, four hundred dollars (\$400); or

34                   (C) For a trial or hearing or an extended matter, six  
35 hundred twenty-five dollars (\$625).

36           (d) A court is not required to enter a judgment against a defendant

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