

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: H3/27/13

A Bill

SENATE BILL 921

5 By: Senator E. Williams
6

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.
11

Subtitle

12
13 CONCERNING THE REPAYMENT OF FEES THAT ARE
14 OWED RELATED TO COURT-ORDERED
15 REPRESENTATION BY THE PUBLIC DEFENDER.
16
17
18

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

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.

19
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 legal settlements or favorable verdicts, lottery winnings, or
33 any moneys or property forfeited by the state.

34 (2) To effectuate a lien under subdivision (b)(1) of this
35 section, a public defender shall file a notice of the lien setting forth
36 services rendered to the person and a claim for reasonable value of the

1 services with the clerk of the circuit court not later than ten (10) days
2 after the disposition of the case.

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

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

8 (c) In the event that a circuit court, county court, or district court
9 renders a judgment for recovery of money in a civil action as described in
10 this section, the Arkansas Public Defender Commission may file a claim for a
11 setoff of the judgment amount against the person's state income tax refund as
12 a claimant agency authorized under § 26-36-301 et seq.

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

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

17 (a) As used in this section:

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

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

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

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

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

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

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

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

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

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

5 (A) For an early disposition, two hundred fifty dollars
6 (\$250);

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

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

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

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

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

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

19 (5) Any other misdemeanor:

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

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

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

25 (6) Any juvenile matter:

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

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

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

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

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

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

36 (C) For a trial or hearing or an extended matter, six

1 hundred twenty-five dollars (\$625).

2 (d) A court is not required to enter a judgment against a defendant
3 under this section.

4

5 *SECTION 2. Arkansas Code § 26-36-303(1)(A), concerning the designation*
6 *of claimant agencies for purposes of claiming a setoff of state income tax*
7 *refunds, is amended to add an additional subdivision to read as follows:*

8

9 (xv) The Arkansas Public Defender Commission created under § 16-87-202.

10

11

12

13

/s/E. Williams

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36