

SENATE AMENDMENT 1 TO SB26.

adding the following words after the word "itemized" as it appears on line 7 of page 4:
"including all prosecuting attorney fees"

AND

by deleting lines 29 and 30 on page 4 in their entireties and substituting therefor the following: "from tickets issued by the Arkansas Highway Police and the Arkansas State Highway and Transportation Department, the"

AND

by adding the word ", fees" immediately after the word "fine" as it appears on line 8 of page 6

AND

by deleting the number "\$50.00" as it appears on line 34 of page 7 and substituting therefor "\$25.00"

AND

by deleting line 18 on page 16 in its entirety and substituting therefor the following:
"§ 16-10-133;

(17) The Department of Arkansas State Police Fund."

AND

by deleting line 28 on page 16 in its entirety and substituting therefor the following:
"court shall be thirty dollars (\$30.00); provided, however, that this fee shall not apply to revocation of conditional release of insanity acquittees pursuant to § 5-16-316."

AND

deleting Sections 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 in their entireties and substituting therefor the following:

SECTION 12. Funding of Public Defenders.

(a) Effective January 1, 1998, the Arkansas Public Defender Commission shall be responsible for the payment of the following:

(1) the salaries of public defenders;

(2) the salaries of secretaries and other support staff of the public defender's office;

(3) the payment of the costs of certain expenses, as authorized by Arkansas Code Annotated § 16-87-212.

(b) Effective January 1, 1998, each county of counties within a judicial district shall be responsible for the payment of the following:

(1) the cost of facilities, equipment, supplies, and other office expenses of the public defender's office; and

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

SECTION 13. Selection and Qualifications of Public Defenders.

(a) Each person selected as a public defender shall be:

(1) licensed to practice law in the State of Arkansas; and

(2) experienced in the defense of criminal cases.

(b) Any person interested in being considered for appointment as a public defender in a judicial district shall submit his name to the Arkansas Public Defender Commission. The Commission shall evaluate each candidate and make a recommendation to the circuit, chancery, and circuit-chancery judges within the judicial district. The judges shall, by majority vote, choose the public defender from the list of all persons considered and evaluated by the Commission.

(c) The public defender in each judicial district shall be appointed for a term of two years to begin January 1, 1998 and shall be removed by the Commission before the expiration of his term only for just cause. Just cause for removal shall consist of permanent physical or mental disability seriously interfering with the performance of duties, willful misconduct in office, willful and persistent failure to perform public defender duties, habitual intemperance, or conduct prejudicial to the administration of justice.

(d) The public defender shall be eligible for reappointment.

(e) Vacancies in the office shall be filled in the same manner as the initial appointment.

SECTION 14. Distribution and Placement of Public Defender Positions.

(a) Effective January 1, 1998, there shall be created within the Arkansas Public Defender Commission a number of positions, including chief public defenders, public defenders, investigators, and secretaries.

(b) The Arkansas Public Defender commission shall allocate positions to each county and/or judicial district based on an appropriate formula adopted by the Commission. In the distribution of positions, the Commission shall be guided by:

(1) the current distribution and type of positions across the state;

(2) an evaluation of court case filings and dispositions, the number of judges, the size and population of the county or district, and other appropriate factors; and

(3) the desire to avoid the necessity of appointing outside public defenders or private counsel due to conflicts of interest.

(c) (1) There shall be at least one public defender position allocated to each judicial district.

(2) Where appropriate, a position or positions may be assigned to a single county. In counties where more than one position is allocated, the Commission may designate one or more of the positions as chief public defenders.

(3) When one or more chief public defenders is assigned to a county or judicial district and said chief public defender shall have administrative authority over other public defenders within the county or district, the chief public defender may be

given the authority to select the other public defenders in consultation with the Arkansas Public Defender Commission, if such selection process is approved by the judges within the judicial district. If such a selection process is approved, the chief public defender, and not the judges as authorized by Section 13 (b) of this Act, shall select the public defenders.

(4) Public defender positions may be allocated on a full-time or part-time basis. When a public defender is employed on a part-time basis, he may engage in the general practice of law. No person shall serve as a part-time public defender who also serves as a part-time municipal court judge, city court judge, deputy prosecuting attorney, city attorney, or county attorney in any judicial district.

(d) The Commission shall develop the initial allocation of public defender positions to all counties and judicial districts on or before August 1, 1997. The plan shall be reviewed by the Joint Interim Committee on Judiciary on or before October 1, 1997.

SECTION 15. Salaries of Public Defenders.

(a) The entry level salaries of public defenders and public defender staff positions shall be consistent with that established by the state pay plan for the appropriate grade of each position.

(b) The public defenders and public defender staff positions shall be subject to the Uniform Attendance and Leave Policy Act.

SECTION 16. The public defender in each judicial district shall have the following duties:

(1) Defend indigents within the District as determined by the circuit, municipal, city, police, juvenile, probate or chancery courts in the district in all felony, misdemeanor, juvenile, guardianship, and mental health cases, all traffic cases punishable by incarceration, and all contempt proceedings punishable by incarceration.

(2) In all capital cases where the death penalty is sought two attorneys shall be appointed, unless the prosecuting attorney informs the circuit court at the arraignment of the defendant that the death penalty will not be sought. The Capital, Conflicts, and Appellate Office of the Public Defender Commission may be appointed, consistent with Arkansas Code Annotated § 16-87-205. It should be presumed for purposes of this section that the death penalty will be sought.

SECTION 17. Trial Public Defender Office.

There is hereby created within the Arkansas Public Defender Commission the Trial Public Defender Office to be comprised as follows:

(1) The Trial Public Defender Office shall supervise the development and operations of each of the components of the Arkansas trial public defender system pursuant to the rules, regulations and standards for governing the system adopted by the Commission.

(2) The Executive Director of the Commission shall appoint a defense services administrator. The administrator shall be chosen solely on the basis of training, experience, and other qualifications. The administrator need not be licensed to practice

law.

(3) The administrator may hire support staff and other personnel as necessary to properly discharge the duties assigned to the Trial Public Defender Office to the extent allowed and as funds are appropriated by the General Assembly.

SECTION 18. Arkansas Code Annotated § 16-87-203(a) is amended to read as follows:

"(a) The commission shall have the following powers and duties:

- (1) To establish policies and standards for the public defender system throughout the state, including standards for determining who qualifies as an indigent person;
- (2) To establish policies and standards for the organization and operation of ~~trial~~ public defender's offices throughout the state, including funding, compensation, staffing, and standards of experience for attorneys assigned to particular cases;
- (3) To allocate personnel ~~approve the annual budget~~ for each ~~trial~~ public defender's office throughout the state;
- (4) To require annual reports regarding expenditures, caseloads, and status of cases from each ~~trial~~ public defender;
- (5) To evaluate the performance of the Executive Director of the Arkansas Public Defender Commission, the Capital, Conflicts, and Appellate Office, the Trial Public Defender Office, each ~~trial~~ public defender, and private attorneys assigned to represent indigent persons;
- (6) To approve the reassignment of cases from one ~~trial~~ public defender to another ~~trial~~ public defender in an adjacent area for the purpose of avoiding conflicts or adjusting caseloads;
- (7) To approve the purchase, rental, and sharing of office space, equipment, or personnel among ~~trial~~ public defenders in the event and to the extent such items have been provided through an appropriation of the General Assembly;
- (8) To establish employee personnel policies for the commission and the ~~trial~~ public defenders;
- (9) To accept and to authorize a ~~trial~~ public defender to accept moneys, gifts, grants, or services from any public or private source;
- (10) To enter and authorize a ~~trial~~ public defender to enter into contracts with individuals, educational institutions, nonprofit associations, or state or federal agencies, including contracts for the provision of legal services related to the defense of indigent persons;
- (11) To maintain for each judicial district a current list of private attorneys who are willing to accept court appointments and who meet any other qualifications established by the commission; and
- (12) To maintain a separate list of private attorneys who are willing to accept court appointments in capital cases and who meet any other qualifications established by the commission."

SECTION 19. Arkansas Code Annotated § 16-87-204(b) is amended to read as follows:

"(b) The executive director shall have the following powers and duties:

- (1) To supervise the operations of the Capital, Conflicts, and Appellate Office, and the Trial Public Defender Office;
- (2) To maintain records of the operation of the public defender system, including, but not limited to, the following:
 - (A) Detailed descriptions of the organization of each ~~trial~~ public defender's office;
 - (B) The caseload of each ~~trial~~ public defender's office, including cases assigned to private attorneys;
 - (C) Budgets and actual expenditures of the commission and each ~~trial~~ public defender's office;
 - (D) Reassignment of cases from one ~~trial~~ public defender to another ~~trial~~ public defender in an adjacent area; and
 - (E) Assignment of cases to private attorneys.
- (3) To present to the commission within ninety (90) days after the end of the fiscal year an annual report on the operation of the public defender system which shall include an accounting of all funds received and disbursed, an evaluation of the cost-effectiveness of the public defender system, and recommendations for improvement;
- (4) To prepare a budget for the operations of the commission;
- (5) To allocate and disburse funds appropriated for the operations of the commission and the public defender system pursuant to guidelines established by the commission;
- (6) To allocate public defenders, investigators, and secretary positions to the office of the public defender in each county or judicial district, based upon a formula established by the commission;
- ~~_____ (6) (7)~~ To establish procedures for evaluating the performance of public defenders and private attorneys participating in the public defender system, pursuant to policies and standards developed by the commission;
- ~~_____ (7) (8)~~ To appear before and provide assistance to the General Assembly and other relevant bodies regarding matters related to the public defender system;
- ~~_____ (8) (9)~~ To convene conferences and training seminars related to the public defender system;
- ~~_____ (9) (10)~~ To compile and disseminate statutes, court opinions, and other information to ~~trial~~ public defenders and private attorneys participating in the public defender system;
- ~~_____ (10) (11)~~ To maintain a brief bank for use in connection with appeals; and
- ~~_____ (11) (12)~~ To perform other duties related to the administration of the public defender system as the commission may direct.

SECTION 20. Conflicts of Interest.

If a court determines that a conflict of interest exists between an indigent person and the public defender, the case shall be reassigned as follows:

(1) If there is, within the county or judicial district, another public defender, the appointment of whom would not create a conflict of interest, the judge shall appoint that public defender to defend the person.

(2) If there is no other public defender within the county or judicial district eligible to represent the person, the judge shall notify the Arkansas Public Defender Commission, which may appoint a public defender from an adjacent area.

(3) As a last resort, a private attorney may be appointed by the judge, pursuant to Section 21 of this Act.

SECTION 21. Arkansas Code Annotated § 16-87-210 is amended to read as follows:

"16-87-210. Attorney fees and expenses.

(a) When private attorneys ~~or trial public defenders from another area~~ are appointed to represent an indigent person and authorized by the Public Defender Commission, the attorneys or trial public defenders shall be paid by ~~the county wherein the crime was committed~~ the Commission.

(b) The ~~courts~~ Commission may authorize the disbursement of interim fees in complex cases.

(c) The attorneys ~~or trial public defenders~~ shall also be reimbursed for reasonable expenses.

SECTION 22. Arkansas Code Annotated § 16-87-212(a) is amended to read as follows:

"16-87-212. Court fees and expenses.

(a)(1) The commission is authorized to pay for certain expenses regarding the defense of indigents, ~~other than salaries, attorney's fees, and regular office expenses~~.

(2) The expenses shall include, but shall not necessarily be limited to, fees for appointed counsel, expert witnesses, temporary investigators, testing, and travel.

(3)~~(A)~~ Whenever, in a case involving an indigent person, a judge orders the payment of funds for the aforementioned expenses, the judge shall transmit a copy of the order to the commission, which is authorized in its discretion to pay the funds."

~~—————(B) If the commission declines to pay the funds, the funds shall be paid by the county wherein the crime was committed, provided that the Arkansas Supreme Court may promulgate rules for the stay of such orders in the event that they are contested.~~

SECTION 23. Transition to State Funding.

(a) It is the intent of the General Assembly, in the transition to a state-funded public defender system, to provide an appropriate and adequate level of legal representation to indigent persons in all areas of the state. It is recognized by the General Assembly that in many areas of the state, resources have not been available to support a public defender system at the necessary level. It is also recognized, however, that in other areas, a system has been developed which is appropriately and successfully

servicing indigent persons and the justice system. With the transition from local funding of the system to state funding of the system, it is not the intent of the General Assembly to adversely affect those systems which are working well or to put in place a system which is too inflexible to respond to local needs or restrictions.

(b) In its administration of the system, therefore, the Arkansas Public Defender Commission is charged with the authority and responsibility to establish and maintain a system of public defenders which equitably serves all areas of the state, provides quality representation, makes prudent use of state resources, and works with others in the justice system at the state and local level to provide an appropriate level of legal services to indigent persons in our state.

SECTION 24. Arkansas Code Annotated § 16-96-403 is amended to read as follows:

"16-96-403. Imposition by circuit court on appeal - Costs.

~~— The fines, penalties, forfeitures, and costs imposed by the circuit court for the violation of municipal ordinances or any law, in cases appealed from the inferior courts of cities of the first class, cities of the second class, or incorporated towns, shall be collected and disbursed by the sheriff in the following manner:~~

~~— (1) The fine or penalty imposed for the violation of the city or town ordinance or any law shall be immediately paid to the city or town treasury of the city or town whose ordinance or any law was violated for city or town purposes;~~

~~— (2) The inferior court costs shall be retaxed in the circuit court and shall be paid immediately to the city or town treasury for city or town purposes;~~

~~— (3) The costs taxed for the trial in the circuit court shall be paid to the county treasurer for county purposes.~~

The fines, penalties, forfeitures, and costs imposed by the circuit court for offenses which are misdemeanors or violations under state law or local ordinance or for traffic offenses which are misdemeanors or violations under state law or local ordinance, in cases appealed from the municipal, city or police courts of this state, shall be collected and disbursed in the following manner:

(1) If the appeal proceeds to a de novo bench trial or jury trial, the fines, penalties, forfeitures and costs imposed by the circuit court shall be collected by the sheriff and paid to the county treasurer;

(2) If the defendant pleads guilty or nolo contendere or the circuit court dismisses the appeal, the judgment of the municipal, city or police court shall be affirmed;

(i) The circuit court clerk shall, within thirty days, of the affirmance or dismissal, notify in writing the municipal, city or police court from which the appeal originated, of the affirmance or dismissal;

(ii) Upon receipt of the notice of affirmance or dismissal, the municipal, city or police court shall collect and disburse the fines, penalties, forfeitures and costs pursuant to 16-17-707.

(3) Nothing in this act shall affect the right of municipal, city or police courts

to require a supersedeas bond for an appeal to circuit court nor the ability of these courts to collect any fine, penalty, forfeiture or costs imposed in the absence of a supersedeas bond."

SECTION 25. Arkansas Code Annotated § 21-6-403 is amended to read as follows:

"21-6-403. Circuit and chancery court clerks - Uniform filing fees.

(a) (1) The uniform filing fees to be charged by the clerks of the circuit and chancery courts for initiating or reopening a cause of action in the circuit and chancery courts in the state shall be as prescribed in this section.

(2) No portion of the filing fees shall be refunded.

(b) (1) For initiating a cause of action in the circuit court, including appeals \$110.00

(2) For initiating a cause of action in the chancery court 110.00

(3) For reopening a cause of action in the chancery court ..30.00

(c) No fee shall be charged or collected by the clerks of the circuit and chancery courts when the court, by order, pursuant to Arkansas Rules of Civil Procedure, Rule 72, allows an indigent person to prosecute a cause of action in forma pauperis.

(d) No initial filing fee shall be charged for domestic violence petitions filed pursuant to Arkansas Code Annotated § 9-15-201 et. seq. Established filing fees may be assessed pursuant to Act 401 of 1995.

~~—(e)~~ (e) No fee shall be charged or collected by the clerks of the circuit and chancery courts for reopening a cause of action in the chancery court under the following circumstances:

(1) (A) An agreed order is presented to be filed; or

(B) An order of income withholding is to be filed; and

(2) No service of process is required.

~~—(d)~~ (f) No county shall authorize, and no circuit or chancery court clerk shall assess or collect, any other filing fees than those authorized by this section, unless specifically provided by state law.

SECTION 26. Justice Building Construction Fund.

(a) There is hereby created in accordance with Arkansas Code Annotated §§ 19-4-801 - 806, inclusive, and 19-6-101 et seq., a cash fund entitled the Justice Building Construction Fund, which shall be maintained in such depository bank or banks as may, from time to time, be designated by the State Building Services Department.

(b) All moneys transferred to and deposited in the Justice Building Construction Fund, whether pursuant to Section 10 of this Act or otherwise, and all income, interest, and earnings thereof, are declared to be cash funds, restricted in their use, and dedicated and are to be used solely for, the financing of additions, extensions, and improvements to, the renovation of, and the equipping of such additions, extensions, and improvements of the State Justice Building situated on the Capitol Grounds. Such cash funds shall not be deemed to be a part of the State Treasury for any purpose, including,

without limitation, the provisions of Article 5, § 29, Article 16, § 12, or Amendment 20 to the Arkansas Constitution, or any other constitutional or statutory provision.

(c) The Justice Building Construction Fund shall be held and the amounts therein invested by the State Building Services Department in accordance with the authority provided in Arkansas Code Annotated §§ 22-3-901 et seq. The State Building Services Department may also use the Justice Building Construction Fund to provide for the repayment of obligations issued by the Arkansas Development Finance Authority pursuant to the State Agencies Facilities Acquisition Act of 1991, as amended (Arkansas Code Annotated §§ 22-3-1401 et seq.), to accomplish the purposes specified in subsection (b) of this section and to pay the costs and expenses related to the issuance of such obligations.

(d) The provisions of Arkansas Code Annotated §§ 22-3-1402(c) and 22-3-1406 shall not be applicable in any respect to the construction of additions or extensions to, the renovation of, or the equipping of such additions, extensions, and renovations of the State Justice Building, and shall not, under any circumstances, constitute a limitation on or prohibition to the financing of such capital improvements by the Arkansas Development Finance Authority.

SECTION 27. Arkansas Code Annotated § 16-10-133 is amended to read as follows:

"16-10-133. Trial court staff.

(a) Beginning July 1, 1996, positions shall be authorized and funds appropriated to the Auditor of State from the State Administration of Justice Fund to provide one (1) staff person for each of the judges of the circuit, chancery, and probate courts. The staff person may be employed to perform secretarial, docketing, and management services. Each judge of the circuit, chancery, or probate court shall report to the Administrative Office of the Courts his intention to employ such a staff person. Two (2) or more judges within a judicial district may employ jointly, in their discretion, one (1) staff person when coordinated with the Administrative Office of the Courts.

(b) The circuit, chancery, or probate judges authorized by subsection (a) of this section to employ a staff person shall have the authority to select and hire the person who will serve, and any person so employed shall serve at the will and pleasure of the judge.

(c) The entry level salary of a trial court staff person shall be equal to that established in the state pay plan at grade 16. No trial court staff person authorized by this act shall receive a salary from the state in excess of twenty-five thousand dollars (\$25,000); provided, however, that beginning July 1, 1997, those persons who have reached the maximum salary limit may receive such increases in salary as are recommended for other State employees in the State Personnel Pay Plan adopted by the General Assembly. A county or counties shall be authorized to supplement the base salary of any trial court staff person, when approved by the quorum court.

(d) The staff persons shall be subject to the Uniform Attendance and Leave Policy Act, § 21-4-201 et seq., as administered by the judge by whom they are employed.

(e) A trial judge who already has one (1) or more staff persons on April 13, 1995 shall designate one (1) such staff person to be subject to and paid by the provisions of this act."

SECTION 28. Arkansas Code Annotated § 26-60-112 is amended to read as follows:

"26-60-112. Disposition of funds collected.

(a) The revenues from the additional tax levied by § 26-60-105(b) shall be deemed special revenues and shall be deposited and distributed according to § 15-12-103.

(b) The revenues derived from the tax levied by § 26-60-105(a) shall be deposited by the Director of the Department of Finance and Administration in the State Treasury, and the Treasurer of State shall, after deducting three percent (3%) thereof for distribution to the Constitutional Officers Fund and the State Central Services Fund to be used for the purposes as provided by law, distribute the net amount thereof as follows:

(1) Ten percent (10%) of the remainder shall be distributed as special revenues, as follows:

(A) The first forty thousand dollars (\$40,000) thereof during each fiscal year shall be credited to the County and Circuit Clerks Continuing Education Fund, which is established in the State Treasury, to be used for defraying the expenses of training seminars and other educational projects benefiting county and circuit clerks in this state, as provided by appropriations enacted by the General Assembly; and

(B) The remainder of the ten percent (10%) thereof available for distribution during each fiscal year shall be credited as special revenues to the County Aid Fund, to be distributed in the manner provided by law to the circuit clerk in the county in which the property upon which the tax is paid is situated, to be paid over by the circuit clerk to the county general fund;

(2) Ninety percent (90%) of the remainder thereof shall be distributed as follows:

(A) The entire amount collected during each fiscal year until there has been collected an amount of such tax equaling the amount of tax collected under this chapter during fiscal year 1982-83 shall be credited as general revenues to be allocated to the various funds participating in the distribution of general revenues in the amount of each such fund as provided by and to be used for the respective purposes set forth in the Revenue Stabilization Law, § 19-5-101 et seq.; and

(B) After making the distribution thereof as provided in subdivision (b) (2) (A) of this section, the remainder available each fiscal year shall be credited as special revenues to the ~~County Aid~~ Administration of Justice Fund to be used for supplementing moneys therein for court reporter salaries and expenses ~~as provided by law in the event that the moneys available in the Court Reporters Fund are inadequate during any fiscal year to make the necessary payments for salary and related expenses of the various court reporters of the state.~~ Any amount received over and above this amount shall be ~~deposited into the State Treasury as general revenues~~ credited as special

revenues to the County Aid Fund."

AND

by appropriately renumbering subsequent sections of the bill.