

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: H3/27/13
A Bill

SENATE BILL 921

By: Senator E. Williams

For An Act To Be Entitled

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

Subtitle

CONCERNING THE REPAYMENT OF FEES THAT ARE
OWED RELATED TO COURT-ORDERED
REPRESENTATION BY THE PUBLIC DEFENDER.

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

SECTION 1. Arkansas Code § 16-87-213 is amended to read as follows:
16-87-213. Certificate of indigency.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16-87-217. Recovery of fees owed.

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

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

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

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

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

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

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

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

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

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

(a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Any other misdemeanor:

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

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

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

(6) Any juvenile matter:

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

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

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

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

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

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

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

hundred twenty-five dollars (\$625).

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

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

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

/s/E. Williams