

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H2/22/21 H2/24/21
A Bill

HOUSE BILL 1330

By: Representative Bryant
By: Senator B. Ballinger

For An Act To Be Entitled

AN ACT CONCERNING THE APPOINTMENT OF THE PUBLIC
DEFENDER TO REPRESENT A PERSON WHO IS SUFFERING FROM
A MENTAL ILLNESS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING THE APPOINTMENT OF THE PUBLIC
DEFENDER TO REPRESENT A PERSON WHO IS
SUFFERING FROM A MENTAL ILLNESS.

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) 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.

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

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

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

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

(2) The fee under subdivision ~~(b)(1)(c)(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)(c)(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)(c)(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)~~(c)(4)(A) of this section at the end of the fiscal year to the subsequent year.

~~(e)~~(d) 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, 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.

~~(d)~~(e) 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.

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

/s/Bryant