

NORTH CAROLINA GENERAL ASSEMBLY
1963 SESSION

CHAPTER 1080
SENATE BILL 335

1 AN ACT TO AUTHORIZE THE APPOINTMENT OF COUNSEL FOR INDIGENT
2 DEFENDANTS CHARGED WITH FELONIES AND CERTAIN MISDEMEANORS.

3
4 The General Assembly of North Carolina do enact:

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6 **Section 1.** G.S. 15-4.1 is hereby rewritten so that the same shall hereafter read as
7 follows:

8 "**Sec. 15-4.1. Appointment of Counsel for Indigent Defendants.** When a defendant charged
9 with a felony is not represented by counsel, before he is required to plead the Judge of the
10 Superior Court shall advise the defendant that he is entitled to counsel. If the Judge finds that
11 the defendant is indigent and unable to employ counsel, he shall appoint counsel for the
12 defendant but the defendant may waive the right to counsel in all cases except a capital felony
13 by a written waiver executed by the defendant, signed by the presiding Judge and filed in the
14 record in the case. The Judge may in his discretion appoint counsel for an indigent defendant
15 charged with a misdemeanor if in the opinion of the Judge such appointment is warranted
16 unless the defendant executes a written waiver of counsel as above specified. A defendant with
17 or without counsel may plead guilty but if the defendant is without counsel, the Judge shall
18 inform the accused of the nature of the charge and the possible consequences of his plea, and as
19 a condition of accepting the plea of guilty the Judge shall examine the defendant and shall
20 ascertain that the plea was freely, understandingly and voluntarily made, without undue
21 influence, compulsion or duress, and without promise of leniency, but a defendant without
22 counsel cannot plead guilty to an indictment charging a capital felony. Unless the Judge
23 determines that the plea of guilty was so made, it shall not be accepted. In case of an appeal to
24 the Supreme Court the Judge shall appoint counsel for such appeal or continue the services of
25 counsel already appointed for the trial. The Judge shall appoint counsel as soon as possible and
26 practicable to the end that counsel so appointed may have adequate notice and sufficient time to
27 prepare for a defense."

28 When an appeal is taken under this Act the county shall make available trial transcript and
29 records required for an adequate and effective appellate review.

30 **Sec. 2.** G.S. 15-5 is hereby rewritten so that the same shall hereafter read as
31 follows:

32 "**Sec. 15-5. Fees Allowed Counsel Assigned to Indigent Defendant.** Whenever an attorney is
33 appointed by the court to defend an indigent defendant, he shall receive a fee for performing
34 such service to be fixed by the court which shall be reasonable and commensurate with the time
35 consumed, the nature of the case, the amount of fees usually charged for such cases in the
36 county or locality. The fee so allowed shall be entered as a judgment against the defendant,
37 signed by the court, and docketed in the judgment docket in the office of the Clerk of the
38 Superior Court and shall constitute a lien as provided by the general law of the State pertaining
39 to judgments. Any funds collected by reason of said judgment shall be deposited in the State
40 Treasury. All costs necessary for the administration of this Section shall be paid by the State of
41 North Carolina except regular and ordinary court costs which shall be paid by the county as
42 now provided by law."

1 **Sec. 3.** The North Carolina State Bar Council shall have authority to make rules and
2 regulations for the implementation of this Act relating to the manner and method of assigning
3 counsel, the practice of the Courts with respect to determination of indigency, the waiver of
4 counsel and related matters, the adoption and approval of plans by any district Bar regarding
5 the method of assignment of counsel among the licensed attorneys of said district and such
6 other matters as shall provide for the protection of the Constitutional rights of all indigent
7 persons charged with crime and the reasonable allocation of responsibility for the defense of
8 indigent defendants among the licensed attorneys of this State: Provided, however, that no such
9 rules and regulations shall become effective until certified to and approved by the Supreme
10 Court of North Carolina.

11 **Sec. 4.** There is hereby appropriated from the general fund of the State of North
12 Carolina, or from any other available funds of the State, the sum of five hundred thousand
13 dollars (\$500,000.00) for the fiscal year ending June 30, 1964, and five hundred thousand
14 dollars (\$500,000.00) for the fiscal year ending June 30, 1965, for the purpose of paying the
15 fees, costs and expenses provided for by this Act. All costs, fees, and expenses shall be paid by
16 voucher issued by the State Treasurer according to the procedures for payment of debts due by
17 the State and supported by order of the court.

18 (a) In all criminal cases in the Superior Courts of this State there shall be taxed against
19 the defendant the sum of four dollars (\$4.00) to be paid into the State Treasury for the purpose
20 of assisting in the appropriation required under this Act and a sum of one dollar (\$1.00) to be
21 taxed against each defendant as aforesaid to be paid into the general fund of the county wherein
22 the case is tried to assist counties with the appropriations that will be required as the result of
23 this Act.

24 (b) Any defendant making a false affirmation in regard to the question of indigence
25 under this Act shall be guilty of perjury and punished as provided in G.S. 14-209.

26 **Sec. 5.** All laws and clauses of laws in conflict with the provisions of this Act are
27 hereby repealed.

28 **Sec. 6.** This Act shall be in full force and effect from and after its ratification.

29 In the General Assembly read three times and ratified, this the 21st day of June,
30 1963.