

programs shall establish a plan to comply with the provisions of court orders entered pursuant to this section.

Approved May 5, 1988

CHAPTER 1161

PUBLIC DEFENDER REPRESENTATION OF INDIGENT ADULTS AND JUVENILES

S.F. 2304

AN ACT relating to the administration of legal representation of indigent persons in criminal cases and proceedings under chapter 232 by local public defenders, and the state public defender's office, and providing an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13B.1, Code 1987, is amended by striking the section and inserting in lieu thereof the following:

13B.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Appointed attorney" means an attorney appointed and compensated by the state to represent an indigent defendant.
2. "Department" means the department of inspections and appeals.
3. "Financial statement" means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance at public expense.
4. "State public defender" means the state public defender appointed pursuant to this chapter.

Sec. 2. Section 13B.2, Code 1987, is amended to read as follows:

13B.2 POSITION ESTABLISHED.

The position of state ~~appellate~~ public defender is established within the department of inspections and appeals. The governor shall appoint the state ~~appellate~~ public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate, no less frequently than once every four years, whether or not there has been a new ~~appellate~~ state public defender appointed during that time, and shall establish the ~~appellate~~ state public defender's salary.

Sec. 3. Section 13B.3, Code 1987, is amended to read as follows:

13B.3 QUALIFICATIONS OF ~~APPELLATE~~ STATE PUBLIC DEFENDER.

Only persons admitted to practice law in this state shall be appointed ~~appellate~~ state public defender or assistant ~~appellate~~ state public defender.

Sec. 4. Section 13B.4, Code 1987, is amended to read as follows:

13B.4 JURISDICTION OF ~~APPELLATE~~ STATE PUBLIC DEFENDER.

The ~~appellate~~ state public defender shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued, and may represent indigents in proceedings instituted pursuant to chapter 908, and shall not engage in the private practice of law. The court may, upon the application of the indigent or the indigent's trial attorney, or on its own motion, appoint the ~~appellate~~ state public defender to represent the indigent on appeal or on appeal in postconviction proceedings.

Sec. 5. Section 13B.5, Code 1987, is amended to read as follows:

13B.5 STAFF.

The appellate state public defender may appoint assistant appellate state public defenders who, subject to the direction of the appellate state public defender, shall have the same duties as the appellate state public defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the appellate state public defender. The appellate state public defender and the appellate state public defender's staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 18.117.

Sec. 6. Section 13B.6, Code 1987, is amended to read as follows:

13B.6 ACCOUNT ESTABLISHED.

1. There is established in the state general fund an account to be known as the appellate state public defender operating account. The appellate state public defender may bill a county for services rendered to the county by the office of the appellate state public defender. Receipts shall be deposited in the operating account established under this section. There is appropriated from the state general fund all amounts deposited in the appellate state public defender operating account for use in maintaining the operations of the office of appellate state public defender.

2. The department of inspections and appeals shall provide internal accounting and related fiscal services for the appellate state public defender.

Sec. 7. Section 13B.7, Code 1987, is amended to read as follows:

13B.7 SUPERVISORY DUTY.

The appellate state public defender may supervise the provision of legal services, funded by an appropriation to the Iowa department of corrections, to inmates of adult correctional institutions in civil cases involving prison litigation.

Sec. 8. NEW SECTION. 13B.8 OFFICE OF LOCAL PUBLIC DEFENDER.

1. The state public defender may establish or abolish local public defender offices. In determining whether to establish or abolish a local public defender office, the state public defender shall consider the following:

a. The number of cases or potential cases where a local public defender is or would be involved.

b. The population of the area served or to be served.

c. The willingness of the local private bar to participate in cases where a public defender is or would be involved.

d. Other factors which the state public defender deems to be important.

Before establishing or abolishing a local public defender office, the state public defender shall provide a written report detailing the reasons for the action to be taken to the justice systems appropriations subcommittee, the chairperson, vice chairperson, and ranking member of the senate committee on judiciary, and the chairperson, vice chairperson, and ranking member of the house of representatives committee on judiciary and law enforcement. The report shall contain a statement of the estimated fiscal impact of the action taken. Any action taken in establishing or abolishing a local public defender office shall only take effect upon the approval of the general assembly. If the state public defender proposes to abolish a local public defender office prior to the beginning of any regular session of the general assembly and the general assembly takes no action regarding that proposal during the first ninety days of the first regular session occurring after the proposal is made, the office shall be abolished.

2. The state public defender may appoint a local public defender and may remove the local public defender for cause. The local public defender must be an attorney admitted to the practice of law before the Iowa supreme court.

3. The compensation of the local public defender and staff of the local public defender offices shall be fixed by the state public defender.

4. The state public defender shall provide suitable office space, furniture, equipment, and supplies for the office of local public defender out of funds appropriated to the department for this purpose.

Sec. 9. NEW SECTION. 13B.9 POWERS AND DUTIES OF LOCAL PUBLIC DEFENDERS.

1. The local public defender shall do all of the following:

a. Represent without fee an indigent person who is under arrest or charged with a crime if the indigent person requests it or the court orders it. The local public defender shall counsel and defend an indigent defendant at every stage of the criminal proceedings and prosecute before or after conviction any appeals or other remedies which the local public defender considers to be in the interest of justice unless the court appoints other counsel.

b. Represent an indigent party, without fee and upon an order of the court, in child in need of assistance, family in need of assistance, delinquency, and termination of parental rights proceedings pursuant to chapter 232. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 and prosecute before or after judgment any appeals or other remedies which the local public defender considers to be in the interest of justice unless the court appoints other counsel. The state public defender shall be reimbursed by the counties for services rendered by employees of the local public defenders' offices under this subsection, pursuant to section 232.141.

c. Make an initial determination of indigence as required under section 815.9 prior to the initial arraignment or other initial court appearance.

d. Make an annual report to the state public defender. The report shall include all cases handled by the local public defender during the preceding calendar year.

2. An appointed attorney under this section is not liable to a person represented by the attorney pursuant to this chapter for damages as a result of a conviction unless the court determines in a postconviction appeal that the person's conviction resulted from ineffective assistance of counsel.

3. The local public defender may appoint the number of assistant indigent defenders, clerks, investigators, stenographers, and other employees as approved by the state public defender. An assistant local public defender must be an attorney licensed to practice before the Iowa supreme court. Appointments shall be made in the manner prescribed by the state public defender.

Sec. 10. NEW SECTION. 13B.10 DETERMINATION OF INDIGENCY.

1. For purposes of this chapter, a determination of indigency shall be made pursuant to section 815.9.

2. A determination of indigence shall not be made except upon the basis of information contained in a detailed financial statement submitted by the person or by the person's parent, guardian, or custodian. The financial statement shall be in the form prescribed by the board. If a person is determined to be indigent and given legal assistance, the financial statement shall be filed in the person's court file and with the administrator.

3. A person who knowingly submits a false financial statement for the purpose of obtaining legal assistance at public expense commits a fraudulent practice. As used in this subsection "legal assistance" includes appointed counsel, transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person at public expense.

4. The district court shall decide, based upon the financial statement and other relevant information, whether the person is indigent. An indigent defender may make a temporary determination of indigency prior to the initial arraignment or other initial court appearance.

Sec. 11. Section 19A.3, subsection 11, Code Supplement 1987, is amended to read as follows:

11. Professional employees under the supervision of the attorney general, the ~~appellate defender state public defender~~, the auditor of state, the treasurer of state, and the public employment relations board. However, employees of the consumer advocate division of the department of justice, other than the consumer advocate, are subject to the merit system.

Sec. 12. Section 331.321, subsection 2, Code Supplement 1987, is amended by striking the subsection.

Sec. 13. Section 331.322, subsection 5, Code Supplement 1987, is amended to read as follows:

5. Furnish offices within the county for the sheriff, and at the county seat for the recorder, treasurer, auditor, county attorney, county surveyor or engineer, county assessor, and city assessor. ~~If the office of public defender is established, the board shall furnish the public defender's office as provided in section 331.776.~~ The board shall furnish the officers with fuel, lights, and office supplies. However, the board is not required to furnish the county attorney ~~or public defender~~ with law books. The board shall not furnish an office also occupied by a practicing attorney to an officer other than the county attorney ~~or public defender~~.

Sec. 14. Section 602.1302, subsection 2, Code Supplement 1987, is amended by striking the subsection.

Sec. 15. ACCRUED EMPLOYEE RIGHTS.

1. Persons who were paid salaries by the counties immediately prior to becoming state employees as a result of this Act shall not forfeit accrued vacation, accrued sick leave, or seniority, except as provided in this section.

2. As a part of its rulemaking authority, the department of personnel, after consulting with the department of management, shall prescribe rules to provide for the following:

a. Each person referred to in subsection 1 shall have to the person's credit as a state employee commencing on the date of becoming a state employee the number of accrued vacation days that was credited to the person as a county employee as of the end of the day prior to becoming a state employee.

b. Each person referred to in subsection 1 shall have to the person's credit as a state employee commencing on the date of becoming a state employee the number of accrued days of sick leave that was credited to the person as a county employee as of the end of the day prior to becoming a state employee. However, the number of days of sick leave credited to a person under this subsection and eligible to be taken when sick or eligible to be received upon retirement shall not respectively exceed the maximum number of days, if any, or the maximum dollar amount as provided in section 79.23 that state employees generally are entitled to accrue or receive according to rules in effect as of the date the person becomes a state employee.

c. Commencing on the date of becoming a state employee, each person referred to in subsection 1 is entitled to claim the person's most recent continuous period of service in full-time county employment as full-time state employment for purposes of determining the number of days of vacation which the person is entitled to earn each year. The actual vacation benefit, including the limitation on the maximum accumulated vacation leave, shall be determined as provided in section 79.1 according to rules in effect for state employees of comparable longevity, irrespective of any greater or lesser benefit as a county employee.

Sec. 16. COLLECTIVE BARGAINING. A person who becomes a state employee as a result of this Act is a public employee, as defined in section 20.3, subsection 3, for purposes of chapter 20. Such employees shall be accreted into bargaining units which exist for state employees. The public employment relations board shall adopt rules pursuant to chapter 17A to implement this subsection.

Sec. 17. A public office providing indigent defense which is in existence on December 31, 1988, shall become an office of a local public defender under the authority and supervision of the state public defender unless the state public defender determines the office should cease to operate.

Sec. 18. REPEALS. Sections 331.775 through 331.777, Code 1987, are repealed. However, this Act shall not affect the existing terms of office for the appellate defender or public defenders. This Act does not authorize a reduction in compensation provided by the state or a county to any employee of the state appellate defender's office or a public defender's office.

Sec. 19. This Act does not affect a contract in effect at the time of enactment of this section relating to office space, or other services or equipment to be provided to a public defender. However, a county or public defender shall not enter into a contract for any services to be provided to the public defender after enactment of this section without the approval of the department of inspections and appeals.

Sec. 20. For the period beginning January 1, 1989, and ending June 30, 1989, the judicial branch shall reimburse the department of inspections and appeals out of funds appropriated to the judicial branch for the costs of adult indigent defense and costs of juvenile proceedings including attorney and witness fees.

Sec. 21. EFFECTIVE DATES.

1. Section 18 of this Act, being deemed of immediate importance, is effective upon enactment.
2. Sections 1 through 10, 12 through 14, and section 19 of this Act are effective January 1, 1989.

Approved May 5, 1988

CHAPTER 1162

CONSTRUCTION CONTRACTOR REGISTRATION

S.F. 2318

AN ACT relating to the registration of construction contractors; providing for administration and enforcement of a system of registration by the labor commissioner; providing for administrative penalties; providing an effective date; and providing other properly related matters.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 96.11, Code Supplement 1987, is amended by adding the following new subsection:

NEW SUBSECTION. 14. For purposes of contractor registration under chapter 549, the division of job service shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

Sec. 2. **NEW SECTION. 549.1 DEFINITION — EXEMPTION.**

1. As used in this chapter, unless the context otherwise requires, "contractor" means a person who engages in the business of construction, as the term "construction" is defined in section 345-3.82 (96), Iowa Administrative Code, for purposes of the Iowa employment security law. However, a person who earns less than one thousand dollars annually or who performs