

FILED MAR 7 1988

SENATE FILE 2304

BY COMMITTEE ON JUDICIARY

Approved (p. 650)
(formerly SSB 2057)

Passed Senate, Date 4/15/88 Passed House, Date 4/15/88 (p. 1378)

Vote: Ayes 43 Nays 0 Vote: Ayes 92 Nays 3

Approved April 26, 1988

A BILL FOR

1 An Act relating to the representation of indigent and incompetent
2 persons by appointed attorneys, public defenders, and the
3 appellate defender's office; and the determination of
4 indigency.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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ARTICLE 12
LEGAL REPRESENTATION OF
INDIGENT AND INCOMPETENT PERSONS
PART 1
DEFINITIONS

Section 1. NEW SECTION. 602.12101 DEFINITIONS.

As used in this article unless the context otherwise requires:

- 1. "Appellate defender" means the state appellate defender.
- 2. "Appointed attorney" means an attorney appointed by a court and compensated by the state to represent an indigent or incompetent person.
- 3. "Client" means an incompetent or indigent person represented by an appointed attorney or public defender.
- 4. "Financial statement" means a full written disclosure of all assets, liabilities, current income, dependents, and other information the court or public defender requires to determine if the client qualifies for legal assistance at public expense.
- 5. "Incompetent person" means a person who has been adjudicated by a court to be incapable of managing the person's property or caring for the person's own self, or both, or a juvenile.
- 6. "Indigent person" means a person who is unable to retain legal counsel without prejudicing the person's financial ability to provide economic necessities for the person or the person's dependent family.

PART 2
PUBLIC DEFENDERS

Sec. 2. NEW SECTION. 602.12201 OFFICE OF PUBLIC DEFENDER.

- 1. A public defender must be an attorney admitted to the practice of law before the Iowa supreme court.
- 2. The term of office of a public defender is six years.

1 3. A public defender and persons employed in a public
2 defender's office are state employees. However, a public
3 defender and persons employed in a public defender's office
4 are not subject to the exercise of administrative authority
5 and supervision by the supreme court.

6 4. The compensation and expenses of public defenders and
7 employees in a public defender's office shall be paid from
8 funds appropriated to the judicial department and allocated by
9 the state court administrator to the public defender's office
10 for this purpose.

11 5. A public defender or assistant public defender may be a
12 member of a law partnership or a professional corporation on
13 leave of absence.

14 Sec. 3. NEW SECTION. 602.12202 POWERS AND DUTIES OF A
15 PUBLIC DEFENDER.

16 A public defender shall do all of the following:

17 1. Represent without fee each indigent person who is under
18 arrest or charged with a crime if the indigent person requests
19 it or the court orders it. A public defender shall counsel
20 and defend a client at every stage of the criminal proceedings
21 before conviction.

22 2. Make an initial determination of indigence as required
23 under section 815.9 prior to the initial arraignment or other
24 initial court appearance. At or after initial arraignment or
25 other initial court appearance, a determination of indigence
26 shall be made by the court. The financial statement required
27 under section 815.9 shall be retained in the indigent person's
28 court file as a permanent part of the file.

29 3. Represent an incompetent person, including a juvenile,
30 in any matter affecting the rights of the incompetent person
31 if the court orders it.

32 4. Make an annual report to the chief judge, and the
33 district court administrator in the judicial district in which
34 the public defender serves, and to the state court
35 administrator. The report shall include all matters handled

1 by the public defender during the preceding year including the
2 amount of time devoted to each legal matter.

3 A public defender may appoint the number of assistant
4 public defenders, clerks, investigators, stenographers, and
5 other employees. An assistant public defender must be an
6 attorney licensed to practice before the Iowa supreme court.

7 Sec. 4. Section 13B.2, Code 1987, is amended to read as
8 follows:

9 13B.2 POSITION ESTABLISHED.

10 The position of state appellate defender is established
11 within the ~~department-of-inspections-and-appeals~~ judicial
12 department. The ~~governor~~ supreme court shall appoint the
13 state appellate defender, who shall serve at the pleasure of
14 the ~~governor~~, ~~subject-to-confirmation-by-the-senate-no-less~~
15 ~~frequently-than-once-every-four-years~~, ~~whether-or-not-there~~
16 ~~has-been-a-new-appellate-defender-appointed-during-that-time~~
17 supreme court, and shall establish the appellate defender's
18 salary.

19 Sec. 5. Section 13B.6, subsection 2, Code 1987, is amended
20 to read as follows:

21 2. The ~~department-of-inspections-and-appeals~~ judicial
22 department shall provide internal accounting and related
23 fiscal services for the appellate defender.

24 Sec. 6. Section 19A.3, subsection 11, Code Supplement
25 1987, is amended to read as follows:

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

32 Sec. 7. Section 331.321, subsection 2, Code Supplement
33 1987, is amended by striking the subsection.

34 Sec. 8. Section 331.322, subsection 5, Code Supplement
35 1987, is amended to read as follows:

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

13 Sec. 9. Section 602.1302, subsection 2, Code Supplement
14 1987, is amended to read as follows:

15 2. The state shall provide suitable office space for a
16 each public defender if established for a county defender's
17 office established in a judicial district.

18 Sec. 10. Section 602.11101, subsection 6, Code 1987, is
19 amended to read as follows:

20 6. The state shall assume the responsibility for the costs
21 of indigent defense on July 1, 1987. ~~However, an attorney~~
22 ~~appointed to represent an indigent person pursuant to section~~
23 ~~331.777 is not a court employee, as defined in section~~
24 ~~602.1101, subsection 5, and the judicial department does not~~
25 ~~have supervisory power over personnel of public defender~~
26 ~~offices established pursuant to section 331.776.~~

27 Sec. 11. Section 315.9, subsection 2, Code 1987, is
28 amended to read as follows:

29 2. a. A determination of indigence shall not be made
30 except upon the basis of information contained in a detailed
31 financial statement submitted by the person, or in an
32 appropriate case by the person's parent, guardian, or
33 custodian. The financial statement shall be in the form
34 prescribed by the supreme court, and shall contain a full
35 disclosure of all assets, liabilities, current income,

1 dependents, and other information prescribed by the supreme
2 court. The supreme court shall adopt rules under section
3 602.4202 prescribing the form and content of the financial
4 statement, and the standards by which indigency shall be
5 determined under subsection 1. If a person is granted legal
6 assistance as an indigent, the financial statement shall be
7 filed and permanently retained in the person's court file.

8 b. In a criminal prosecution against a person who submits
9 a financial statement to the court for a determination of
10 indigence, the court shall presume that the person is not
11 indigent. A determination of indigence shall be made if the
12 court finds by a preponderance of the evidence that the person
13 qualifies pursuant to the standards established under
14 subsection 1.

15 Sec. 12. Section 909.7, Code 1987, is amended to read as
16 follows:

17 909.7 ABILITY TO PAY FINE PRESUMED -- CLAIM OF INDIGENCY.

18 1. A defendant is presumed to be able to pay a fine.
19 However, if the defendant proves to ~~the satisfaction of~~ the
20 court that the defendant is indigent under section 815.9 and
21 cannot pay the fine, the defendant shall not be sentenced to
22 confinement for the failure to pay the fine. A defendant must
23 raise indigency as a defense to the imposition of the fine at
24 or before the time the sentence is entered.

25 2. If the court issues an order pursuant to section 909.3,
26 a defendant must raise indigency as a defense before the
27 expiration of the time stated in the order to pay the fine.

28 Sec. 13. REPEALS.

29 1. Sections 331.776 and 331.777, Code 1987, are repealed.
30 However, this Act shall not affect the existing terms of
31 office for the appellate defender or public defenders. This
32 Act does not authorize a reduction in compensation or employee
33 benefits provided by the state or a county to any employee of
34 the state appellate offender's office or a public defender's
35 office.

1 2. Section 13B.1, Code 1987, is repealed.

2 Sec. 14. CODIFICATION. The Code editor shall transfer
3 sections 13B.2 through 13B.7 to chapter 602 as a new part 3 of
4 article 12 which is established in this Act.

5 EXPLANATION

6 This bill provides for the consolidation of the state
7 appellate defender's office and public defenders' offices
8 within the judicial department. The state shall pay the cost
9 of these offices through appropriations to the judicial
10 department allocated to the judicial districts by the state
11 court administrator.

12 A public defender shall represent indigent persons and
13 incompetent persons, including juveniles. The public defender
14 shall make an initial determination of indigence prior to an
15 initial arraignment or other court appearance.

16 If indigence is claimed by the defendant for the purpose of
17 obtaining an appointed attorney or a public defender, the
18 court shall presume that the defendant is not indigent. The
19 defendant must prove indigence by a preponderance of the
20 evidence. This same presumption and proof requirements apply
21 if a fine is levied against the defendant.

22 SUCCESSOR TO LSB 7164IS

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FILED MAR 17 1988

STATE OF IOWA

FISCAL NOTE

LSB No. 7164S.2

Staff ID. BAL

BY SENATOR DOYLE

AMENDMENT S-5380 TO SENATE FILE 2304

In compliance with a written request received March 15, 1988, a fiscal note for AMENDMENT S - 5380 TO SENATE FILE 2304 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2304 consolidates the State Appellate Defender's office and county public defenders' offices within the Judicial Department. A public defender's office is no longer supervised by the Board of Supervisors in the county where the office is located. The bill also provides that defendants are presumed to be non-indigent and able to pay a fine.

S - 5380 transfers the State Appellate Defender's office back to the Department of Inspections and Appeals, and alters the name of the office to State Public Defender. The State Public Defender will supervise the local public defenders, who shall become State employees. The amendment makes corrective changes to the Code of Iowa for administration of indigent defense. The amendment also provides that defendants are presumed to be non-indigent and able to pay a fine. Section 15 provides that current contracts are not affected by this legislation and prohibits counties or public defenders from entering into contracts without the approval of the Department of Inspections and Appeals. Section 15 takes effect upon enactment, while the remainder of the amendment takes effect January 1, 1989.

Assumptions

1. The amendment states that a defendant is presumed able to pay a fine. The scope of indigency does not change.
2. In making Public Defenders and their staffs state employees, these PTE positions must comply with the State's comparable worth policy.
3. The State is currently paying the costs of Public Defenders and their offices through the Indigent Defense Appropriation. Cost projections reflect minimum salaries for these positions. Current position holders shall continue to receive their current salary if higher than the minimum. The "Difference" column in the table below is the amount required to bring some of the positions in the 8 Districts to the minimum level.
4. Public Defender offices will not add any more staff than currently exists.
5. No new Public Defender offices will be established.
6. Since these are all new State positions, the salary will reflect the entry-level paygrade.
7. The calculations do not include benefits.
8. Staff in the Public Defenders' offices who perform functions other than Indigent Defense are not included in these calculations.
9. Costs of setting up offices for Public Defenders are already included in the Indigent Defense Appropriation.
10. Public defenders become State employees January 1, 1989.

Fiscal Effect

There is no fiscal impact of presuming non-indigency. It is not possible to estimate how long it will take for the Iowa Department of Personnel to reclassify these positions as State employees. There may be a fiscal effect

STATE OF IOWA

FISCAL NOTE

LSB No. 7164S.2

Staff ID. BAL

REQ. BY SENATOR DOYLE

AMENDMENT S-5380 TO SENATE FILE 2304

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in FY 1989. There will be a fiscal impact in FY 1990. The table illustrates the estimated new State costs for one full year of funding comparable worth.

Position	Total Current State Cost	Total Projected State Cost*	Difference Incr/(Decr)
Public Defenders (8) Min sal = \$39,850	\$ 339,197	\$ 381,222	\$ 42,025
First Assistant (8) Min sal = \$30,200	273,451	302,666	29,215
Staff Attorney (15) Min sal = \$24,400	482,697	501,270	18,573
Investigator (9) Min sal = \$19,000	194,886	205,996	11,110
Office Manager (4) Min sal = \$19,600	71,056	79,005	7,949
Legal Assistant (1) Min sal = \$18,900	18,266	18,900	634
Secretary (15) Min sal = \$14,790	196,890	221,434	24,544
TOTAL	\$ 1,576,443	\$ 1,710,493	\$ 134,050

*Projected cost assumes minimum salaries for the positions listed. The number in parentheses indicates the current total number of positions in all of the Judicial Districts.

Source: Judicial Department
Department of Inspections and Appeals

(LSB 7164S.2, BAL)

Dennis Priddy
Fiscal Director
Legislative Fiscal Bureau
Date: 3/16/88

SENATE FILE 2304

S-5380

1 Amend Senate File 2304 as follows:

2 1. By striking everything after the enacting
3 clause and inserting the following:

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

7 13B.1 DEFINITIONS.

8 As used in this chapter unless the context
9 otherwise requires:

10 1. "Appointed attorney" means an attorney
11 appointed and compensated by the state to represent an
12 indigent defendant.

13 2. "Department" means the department of
14 inspections and appeals.

15 3. "Financial statement" means a full written
16 disclosure of all assets, liabilities, current income,
17 dependents, and other information required to
18 determine if a client qualifies for legal assistance
19 at public expense.

20 4. "State public defender" means the state public
21 defender appointed pursuant to this chapter.

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

24 13B.2 POSITION ESTABLISHED.

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

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

37 13B.3 QUALIFICATIONS OF ~~APPEBATE~~ STATE PUBLIC
38 DEFENDER.

39 Only persons admitted to practice law in this state
40 shall be appointed ~~appeate~~ state public defender or
41 assistant ~~appeate~~ state public defender.

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

44 13B.4 JURISDICTION OF ~~APPEBATE~~ STATE PUBLIC
45 DEFENDER.

46 The ~~appeate~~ state public defender shall represent
47 indigents on appeal in criminal cases and on appeal in
48 proceedings to obtain postconviction relief when
49 appointed to do so by the district court in which the
50 judgment or order was issued, and may represent

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1 indigents in proceedings instituted pursuant to
2 chapter 908, and shall not engage in the private
3 practice of law. The court may, upon the application
4 of the indigent or the indigent's trial attorney, or
5 on its own motion, appoint the appellate state public
6 defender to represent the indigent on appeal or on
7 appeal in postconviction proceedings.

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

10 13B.5 STAFF.

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

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

24 13B.6 ACCOUNT ESTABLISHED.

25 1. There is established in the state general fund
26 an account to be known as the appellate state public
27 defender operating account. The appellate state
28 public defender may bill a county for services
29 rendered to the county by the office of the appellate
30 state public defender. Receipts shall be deposited in
31 the operating account established under this section.
32 There is appropriated from the state general fund all
33 amounts deposited in the appellate state public
34 defender operating account for use in maintaining the
35 operations of the office of appellate state public
36 defender.

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

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

42 13B.7 SUPERVISORY DUTY.

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

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

50 1. The state public defender may establish or

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

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

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

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

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

14 Before establishing or abolishing a local public
15 defender office, the state public defender shall
16 provide a written report detailing the reasons for the
17 action to be taken to the justice systems
18 appropriations subcommittee, the chairperson, vice-
19 chairperson, and ranking member of the senate
20 committee on judiciary, and the chairperson, vice-
21 chairperson, and ranking member of the house of
22 representatives committee on judiciary and law
23 enforcement. The report shall contain a statement of
24 the estimated fiscal impact of the action taken. Any
25 action taken in establishing or abolishing a local
26 public defender office shall only take effect upon the
27 approval of the general assembly. If the state public
28 defender proposes to abolish a local public defender
29 office prior to the beginning of any regular session
30 of the general assembly and the general assembly takes
31 no action regarding that proposal during the first
32 ninety days of the first regular session occurring
33 after the proposal is made, the office shall be
34 abolished.

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

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

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

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

50 1. The local public defender shall do all of the

1 following:

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

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

14 c. Make an annual report to the state public
15 defender. The report shall include all cases handled
16 by the local public defender during the preceding
17 calendar year.

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

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

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

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

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

47 4. The district court shall decide, based upon the
48 financial statement and other relevant information,
49 whether the person is indigent. An indigent defender
50 may make a temporary determination of indigency prior

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1 to the initial arraignment or other initial court
2 appearance.

3 Sec. 11. Section 331.321, subsection 2, Code
4 Supplement 1987, is amended by striking the
5 subsection.

6 Sec. 12. Section 331.322, subsection 5, Code
7 Supplement 1987, is amended to read as follows:

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

21 Sec. 13. Section 602.1302, subsection 2, Code
22 Supplement 1987, is amended by striking the
23 subsection.

24 Sec. 14. A public office providing indigent
25 defense which is in existence on December 31, 1988,
26 shall become an office of a local public defender
27 under the authority and supervision of the state
28 public defender unless the state public defender
29 determines the office should cease to operate.

30 Sec. 15. REPEALS. Sections 331.775 through
31 331.777, Code 1987, are repealed. However, this Act
32 shall not affect the existing terms of office for the
33 appellate defender or public defenders. This Act does
34 not authorize a reduction in compensation or employee
35 benefits provided by the state or a county to any
36 employee of the state appellate defender's office or a
37 public defender's office.

38 Sec. 16. This Act does not affect a contract in
39 effect at the time of enactment of this section
40 relating to office space, or other services or
41 equipment to be provided to a public defender.
42 However, a county or public defender shall not enter
43 into a contract for any services to be provided to the
44 public defender after enactment of this section
45 without the approval of the department of inspections
46 and appeals.

47 Sec. 17. For the period beginning January 1, 1989,
48 and ending June 30, 1989, the judicial branch shall
49 reimburse the department of inspections and appeals
50 out of funds appropriated to the judicial branch for

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1 the costs of adult indigent defense and costs of
2 juvenile proceedings including attorney and witness
3 fees.

4 Sec. 18. EFFECTIVE DATES.

5 1. Section 15 of this Act, being deemed of
6 immediate importance, is effective upon enactment.

7 2. Sections 1 through 14 and section 16 of this
8 Act are effective January 1, 1989."

9 2. Title page, by striking lines 1 through 4 and
10 inserting the following: "An Act relating to the
11 administration of legal representation of indigent
12 persons in criminal cases by local public defenders,
13 and the state public defender's office, and providing
14 an effective date."

S-5380
Filed March 15, 1988

(Signature)

BY TOM MANN, Jr.
DONALD V. DOYLE

FILED MAR 29 1988

STATE OF IOWA

FISCAL NOTE

LSB No. 7164S
Staff ID. BAL

RECEIVED BY SENATOR DOYLE SENATE FILE 2304 AS AMENDED & PASSED BY THE SENATE

In compliance with a written request received March 8, 1988, a fiscal note for SENATE FILE 2304 As Amended and Passed By The Senate is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2304 as amended and passed by the Senate alters the name of the State Appellate Defender's Office to become the State Public Defender's Office. The State Public Defender will supervise the local public defenders, who shall become State employees. Public Defenders are no longer supervised by the Board of Supervisors in the county where the office is located. The proposed legislation makes corrective changes to the Code of Iowa for administration of Indigent Defense. The bill also provides that defendants are presumed to be non-indigent and able to pay a fine. Section 15 provides that current contracts are not affected by this legislation and prohibits counties or public defenders from entering into contracts without the approval of the Department of Inspections and Appeals. Section 15 takes effect upon enactment, while all other Sections take effect January 1, 1989.

Assumptions

1. Senate File 2304 states that a defendant is presumed able to pay a fine. The scope of indigency does not change.
2. In making Public Defenders and their staffs state employees, these FTE positions must comply with the State's comparable worth policy.
3. The State is currently paying the costs of Public Defenders and their offices through the Indigent Defense Appropriation. Cost projections reflect minimum salaries for these positions. Current position holders shall continue to receive their current salary if higher than the minimum. The "Difference" column in the table below is the amount required to bring some of the positions in the 8 Districts to the minimum level.
4. Public Defender offices will not add any more staff than currently exists.
5. No new Public Defender offices will be established.
6. Since these are all new State positions, the salary will reflect the entry-level paygrade.
7. The calculations do not include benefits.
8. Staff in the Public Defenders' offices who perform functions other than Indigent Defense are not included in these calculations.
9. Costs of setting up offices for Public Defenders are already included in the Indigent Defense Appropriation.
10. Public defenders become State employees January 1, 1989.

Fiscal Effect

There is no fiscal impact of presuming non-indigency. It is not possible to estimate how long it will take for the Iowa Department of Personnel to reclassify these Public Defender positions as State employees. Therefore it is not possible to calculate the fiscal impact in FY 1989 (Public Defenders will become State employees half way through FY 1989). There will be a fiscal impact in FY 1990. The table illustrates the estimated new State costs for one full year of funding comparable worth.

STATE OF IOWA
FISCAL NOTE

LSB No. 7164S
 Staff ID. BAL

REQ. BY SENATOR DOYLE SENATE FILE 2304 AS AMENDED & PASSED BY THE SENATE

-2-

Position	Total Current State Cost	Total Projected State Cost*	Difference Incr/(Dece)
Public Defenders (8) Min sal = \$39,850	\$ 339,197	\$ 381,222	\$ 42,025
First Assistant (8) Min sal = \$30,200	273,451	302,666	29,215
Staff Attorney (15) Min sal = \$24,400	482,697	501,270	18,573
Investigator (9) Min sal = \$19,000	194,886	205,996	11,110
Office Manager (4) Min sal = \$19,600	71,056	79,005	7,949
Legal Assistant (1) Min sal = \$18,900	18,266	18,900	634
Secretary (15) Min sal = \$14,790	196,890	221,434	24,544
TOTAL	\$ 1,576,443	\$ 1,710,493	\$ 134,050

*Projected cost assumes minimum salaries for the positions listed.
 The number in parentheses indicates the current total number of
 positions in all of the Judicial Districts.

Source: Judicial Department
 Department of Inspections and Appeals

(LSB 7164S, BAL)

Dennis Proaty
 Fiscal Director
 Legislative Fiscal Bureau
 Date: 3/29/88

Justiciary De Case 3/25-(7-1034)

SENATE FILE **2304**
BY COMMITTEE ON JUDICIARY

(AS AMENDED AND PASSED BY THE SENATE MARCH 17, 1988)
ALL New Language by the Senate

Passed Senate, Date 4/14/88 (p. 1551) Passed House, Date 4/6/88 (p. 1374)
Vote: Ayes 47 Nays 0 Vote: Ayes 72 Nays 3
Approved April 26, 1988
*W. L. L. to reconsider (p. 1622)
" 2/2 4/11 (p. 1672)*

A BILL FOR

1 An Act relating to the administration of legal representation of
2 indigent persons in criminal cases by local public defenders,
3 and the state public defender's office, and providing an
4 effective date.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2304

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

4 13B.1 DEFINITIONS.

5 As used in this chapter unless the context otherwise
6 requires:

7 1. "Appointed attorney" means an attorney appointed and
8 compensated by the state to represent an indigent defendant.

9 2. "Department" means the department of inspections and
10 appeals.

11 3. "Financial statement" means a full written disclosure
12 of all assets, liabilities, current income, dependents, and
13 other information required to determine if a client qualifies
14 for legal assistance at public expense.

15 4. "State public defender" means the state public defender
16 appointed pursuant to this chapter.

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

19 13B.2 POSITION ESTABLISHED.

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

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

31 13B.3 QUALIFICATIONS OF APPELLATE STATE PUBLIC DEFENDER.

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

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

1 follows:

2 13B.4 JURISDICTION OF APPELLATE STATE PUBLIC DEFENDER.

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

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

16 13B.5 STAFF.

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

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

29 13B.6 ACCOUNT ESTABLISHED.

30 1. There is established in the state general fund an
31 account to be known as the appellate state public defender
32 operating account. The appellate state public defender may
33 bill a county for services rendered to the county by the
34 office of the appellate state public defender. Receipts shall
35 be deposited in the operating account established under this

1 section. There is appropriated from the state general fund
2 all amounts deposited in the appellate state public defender
3 operating account for use in maintaining the operations of the
4 office of appellate state public defender.

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

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

10 13B.7 SUPERVISORY DUTY.

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

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

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

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

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

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

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

29 Before establishing or abolishing a local public defender
30 office, the state public defender shall provide a written
31 report detailing the reasons for the action to be taken to the
32 justice systems appropriations subcommittee, the chairperson,
33 vicechairperson, and ranking member of the senate committee on
34 judiciary, and the chairperson, vicechairperson, and ranking
35 member of the house of representatives committee on judiciary

1 and law enforcement. The report shall contain a statement of
2 the estimated fiscal impact of the action taken. Any action
3 taken in establishing or abolishing a local public defender
4 office shall only take effect upon the approval of the general
5 assembly. If the state public defender proposes to abolish a
6 local public defender office prior to the beginning of any
7 regular session of the general assembly and the general
8 assembly takes no action regarding that proposal during the
9 first ninety days of the first regular session occurring after
10 the proposal is made, the office shall be abolished.

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

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

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

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

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

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

34 b. Make an initial determination of indigence as required
35 under section 815.9 prior to the initial arraignment or other

1 initial court appearance.

2 c. Make an annual report to the state public defender.

3 The report shall include all cases handled by the local public
4 defender during the preceding calendar year.

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

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

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

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

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

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

35 Sec. 11. Section 331.321, subsection 2, Code Supplement

1 1987, is amended by striking the subsection.

2 Sec. 12. Section 331.322, subsection 5, Code Supplement
3 1987, is amended to read as follows:

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

16 Sec. 13. Section 602.1302, subsection 2, Code Supplement
17 1987, is amended by striking the subsection.

18 Sec. 14. A public office providing indigent defense which
19 is in existence on December 31, 1988, shall become an office
20 of a local public defender under the authority and supervision
21 of the state public defender unless the state public defender
22 determines the office should cease to operate.

23 Sec. 15. REPEALS. Sections 331.775 through 331.777, Code
24 1987, are repealed. However, this Act shall not affect the
25 existing terms of office for the appellate defender or public
26 defenders. This Act does not authorize a reduction in
27 compensation or employee benefits provided by the state or a
28 county to any employee of the state appellate defender's
29 office or a public defender's office.

30 Sec. 16. This Act does not affect a contract in effect at
31 the time of enactment of this section relating to office
32 space, or other services or equipment to be provided to a
33 public defender. However, a county or public defender shall
34 not enter into a contract for any services to be provided to
35 the public defender after enactment of this section without

1 the approval of the department of inspections and appeals.

2 Sec. 17. For the period beginning January 1, 1989, and
3 ending June 30, 1989, the judicial branch shall reimburse the
4 department of inspections and appeals out of funds
5 appropriated to the judicial branch for the costs of adult
6 indigent defense and costs of juvenile proceedings including
7 attorney and witness fees.

8 Sec. 18. EFFECTIVE DATES.

9 1. Section 15 of this Act, being deemed of immediate
10 importance, is effective upon enactment.

11 2. Sections 1 through 14 and section 16 of this Act are
12 effective January 1, 1989.

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SENATE FILE 2304

H-6030

- 1 Amend Senate File 2304 as amended, passed, and
2 reprinted by the Senate as follows:
- 3 1. Page 4, lines 32 and 33, by striking the words
4 "or the administrator".
- 5 2. Page 4, by inserting after line 33 the
6 following:
7 "b. Represent an indigent party, without fee and
8 upon an order of the court, in child in need of
9 assistance, family in need of assistance, delinquency,
10 and termination of parental rights proceedings
11 pursuant to chapter 232. The local public defender
12 shall counsel and represent an indigent party in all
13 proceedings pursuant to chapter 232 and prosecute
14 before or after judgment any appeals or other remedies
15 which the local public defender considers to be in the
16 interest of justice unless the court appoints other
17 counsel. The state public defender shall be
18 reimbursed by the counties for services rendered by
19 employees of the local public defenders' offices under
20 this subsection, pursuant to section 232.141."
- 21 3. Page 5, by inserting after line 34 the
22 following:
23 "Sec. ____ . Section 19A.3, subsection 11, Code
24 Supplement 1987, is amended to read as follows:
25 11. Professional employees under the supervision
26 of the attorney general, the ~~appealate-defender state~~
27 public defender, the auditor of state, the treasurer
28 of state, and the public employment relations board.
29 However, employees of the consumer advocate division
30 of the department of justice, other than the consumer
31 advocate, are subject to the merit system."
- 32 4. Page 6 by inserting after line 17 the
33 following:
34 "Sec. ____ . ACCRUED EMPLOYEE RIGHTS.
35 1. Persons who were paid salaries by the counties
36 immediately prior to becoming state employees as a
37 result of this Act shall not forfeit accrued vacation,
38 accrued sick leave, or longevity, except as provided
39 in this section.
40 2. As a part of its rulemaking authority, the
41 department of inspections and appeals, after
42 consulting with the department of management, shall
43 prescribe rules to provide for the following:
44 a. Each person referred to in subsection 1 shall
45 have to the person's credit as a state employee
46 commencing on the date of becoming a state employee
47 the number of accrued vacation days that was credited
48 to the person as a county employee as of the end of
49 the day prior to becoming a state employee.
50 b. Each person referred to in subsection 1 shall

H-6030

Page 2

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

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

28 Sec. ____ . COLLECTIVE BARGAINING.

29 A person who becomes a state employee as a result
30 of this Act is a public employee, as defined in
31 section 20.3, subsection 3, for purposes of chapter
32 20. The person may bargain collectively on and after
33 January 1, 1989, as provided by law for a state
34 employee. However, if the person is subject to a
35 collective bargaining agreement negotiated prior to
36 January 1, 1989, the person is entitled to the rights
37 and benefits obtained by the person pursuant to that
38 contract after January 1, 1989, until that contract
39 expires. If the person is subject to a collective
40 bargaining agreement negotiated by a public employer
41 other than the department of inspections and appeals
42 on or after January 1, 1989, the person is not
43 entitled to any rights or benefits obtained by the
44 person pursuant to that contract after becoming a
45 state employee.

46 The department of inspections and appeals is the
47 public employer of the state and local public
48 defenders and employees of those offices for purposes
49 of chapter 20, relating to public employment
50 relations.

H-6030

Page 3

- 1 For purposes of chapter 20, the certified
2 representative, which on January 1, 1989, represents
3 employees who become department of inspections and
4 appeals employees as a result of this Act, shall
5 remain the certified representative when the employees
6 become department of inspections and appeals employees
7 and thereafter, unless the public employee
8 organization is decertified in an election held under
9 section 20.15 or amended or absorbed into another
10 certified organization pursuant to chapter 20.
11 Collective bargaining negotiations shall be conducted
12 on a statewide basis and the certified employee
13 organizations which engage in bargaining shall
14 negotiate on a statewide basis, although bargaining
15 units shall be organized by judicial district. The
16 public employment relations board shall adopt rules
17 pursuant to chapter 17A to implement this subsection."
18 5. Page 6, line 27, by striking the words "or
19 employee benefits".
20 6. Title page, line 2, by inserting after the
21 word "cases" the following: "and proceedings under
22 chapter 232".
23 7. By renumbering as necessary.

By MCKINNEY of Dallas
JAY of Appanoose

H-6030 FILED MARCH 29, 1988

as filed as amended by 6176 4/5 (p. 1378)

SENATE FILE 2304

H-6029

- 1 Amend Senate File 2304 as amended, passed, and
2 reprinted by the Senate as follows:
3 1. Page 4, by inserting after line 33 the
4 following:
5 "b. Represent without fee indigent persons in any
6 proceeding brought under chapter 232. The local
7 public defender shall counsel and represent the person
8 at every stage of the proceedings under chapter 232
9 and prosecute appeals or other remedies which the
10 local public defender considers to be in the interest
11 of justice unless the court or the administrator
12 appoints other counsel."
13 2. By renumbering as necessary.

By ROSENBERG of Story

H-6029 FILED MARCH 29, 1988

as filed 4/5 (p. 1378)

SENATE FILE 2304

H-6059

1 Amend Senate File 2304 as amended, passed, and
2 reprinted by the Senate as follows:
3 1. Page 5, by inserting after line 4 the
4 following:
5 "2. An appointed attorney under this section is
6 not liable to a person represented by the attorney
7 pursuant to this chapter for damages as a result of a
8 conviction unless the court determines in a
9 postconviction appeal that the person's conviction
10 resulted from ineffective assistance of counsel."
11 2. By renumbering as necessary.

BY JAY of Appanoose
ROSENBERG of Story
MCKINNEY of Dallas

H-6059 FILED MARCH 30, 1988

Adopted 4/5 (p. 1378)

SENATE FILE 2304

H-6167

1 Amend the amendment, H-6030, to Senate File 2304,
2 as amended, passed, and reprinted by the Senate as
3 follows:
4 1. Page 1, line 38, by striking the word
5 "longevity" and inserting the following: "seniority".
6 2. Page 1, line 41, by striking the words
7 "inspections and appeals" and inserting the following:
8 "personnel".
9 3. By striking page 2, line 32 through page 3,
10 line 15, and inserting the following: "20. Such
11 employees shall be accreted into bargaining units
12 which exist for state employees. The".
13 4. By renumbering as necessary.

By MCKINNEY of Dallas

H-6167 FILED APRIL 4, 1988

Adopted 4/5 (p. 1378)

SENATE FILE 2304

H-6225

1 Amend Senate File 2304, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 2, by striking line 33 and inserting the
4 following: "bill a county for services rendered to
5 the county, which the county is required to pay
6 pursuant to chapter 222, 229, 230, or 232, by the".

By MUHLBAUER of Crawford
MCKINNEY of Dallas

H-6225 FILED APRIL 5, 1988

Placed o/s 4/11 (p. 1672)

HOUSE AND SENATE
SENATE FILE 2304

5928

1 Amend Senate File 2304 as amended, passed, and
2 reprinted by the Senate as follows:

3 1. Page 4, lines 32 and 33, by striking the words
4 "or the administrator".

5 2. Page 4, by inserting after line 33 the
6 following:

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

21 3. Page 5, by inserting after line 4 the
22 following:

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

29 4. Page 5, by inserting after line 34 the
30 following:

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

33 11. Professional employees under the supervision
34 of the attorney general, the ~~appellate-defender state~~
35 public defender, the auditor of state, the treasurer
36 of state, and the public employment relations board.
37 However, employees of the consumer advocate division
38 of the department of justice, other than the consumer
39 advocate, are subject to the merit system."

40 5. Page 6 by inserting after line 17 the
41 following:

42 "Sec. ____ . ACCRUED EMPLOYEE RIGHTS.

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

48 2. As a part of its rulemaking authority, the
49 department of personnel, after consulting with the
50 department of management, shall prescribe rules to

1 provide for the following:

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

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

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

36 Sec. ____ . COLLECTIVE BARGAINING.

37 A person who becomes a state employee as a result
38 of this Act is a public employee, as defined in
39 section 20.3, subsection 3, for purposes of chapter
40 20. Such employees shall be accreted into bargaining
41 units which exist for state employees. The public
42 employment relations board shall adopt rules pursuant
43 to chapter 17A to implement this subsection."

44 6. Page 6, line 27, by striking the words "or
45 employee benefits".

46 7. Title page, line 2, by inserting after the
47 word "cases" the following: "and proceedings under
48 chapter 232".

49 8. By renumbering, relettering, or redesignating
50 and correcting internal references as necessary.

FILED MAR 9 1988

STATE OF IOWA

FISCAL NOTE

LSB No. 7164S
Staff ID. BAL

REQ. BY SENATOR DOYLE

SENATE FILE 2304

In compliance with a written request received March 8, 1988, a fiscal note for SENATE FILE 2304 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 2304 consolidates the State Appellate Defender's office and public defender's offices within the Judicial Department. A public defender's office is no longer supervised by the Board of Supervisors in the county where the office is located. The bill also provides that defendants are presumed to be able to pay a fine.

Fiscal Effect Summary

	FY 1989 Estimated New State Costs
Appellate Defender	\$ 0
Public Defenders	134,050
Indigency Claims	0
 Total	 \$134,050

APPELLATE DEFENDER

Assumption

1. The bill transfers the Appellate Defender from the Department of Inspections and Appeals to the Judicial Department. This should be reflected by decreasing the Department of Inspections and Appeals' budget and reflecting a corresponding increase in the Judicial Department's budget.

Fiscal Effect

The FY 1988 budget for the Appellate Defender is approximately \$410,000 (revolving fund). No new costs would be associated with transferring these functions to the Judicial Department.

PUBLIC DEFENDERS

Assumptions

1. In making Public Defenders and their staffs state employees, these FTE positions must comply with the State's comparable worth policy.
2. The State is currently paying the costs of Public Defenders and their offices through the Indigent Defense Appropriation. Cost projections reflect minimum salaries for these positions. Current position holders shall continue to receive their current salary if higher than the minimum. The "Difference" column is the amount required to bring some of the positions in the 8 Districts to the minimum level.
3. Public Defender offices will not add any more staff than currently exists.

STATE OF IOWA

FISCAL NOTE

LSB No. 7164S

Staff ID. BAL

REQ. BY SENATOR DOYLE

SENATE FILE 2304

-2-

4. No new Public Defender offices will be established.
5. Since these are all new State positions, the salary will reflect the entry-level paygrade.
6. The calculations do not include benefits.
7. Staff in the Public Defenders' offices who perform functions other than Indigent Defense are not included in these calculations.
8. Costs of setting up offices for Public Defenders are already included in the Indigent Defense Appropriation.

Fiscal Effect

<u>Position</u>	<u>Total Current State Cost</u>	<u>Total Projected State Cost*</u>	<u>Difference Incr/(Decr)</u>
Public Defenders (8) Min sal = \$39,850	\$ 339,197	\$ 381,222	\$- 42,025
First Assistant (8) Min sal = \$30,200	273,451	302,666	29,215
Staff Attorney (15) Min sal = \$24,400	482,697	501,270	18,573
Investigator (9) Min sal = \$19,000	194,886	205,996	11,110
Office Manager (4) Min sal = \$19,600	71,056	79,005	7,949
Legal Assistant (1) Min sal = \$18,900	18,266	18,900	634
Secretary (15) Min sal = \$14,790	196,890	221,434	24,544
TOTAL	<u>\$ 1,576,443</u>	<u>\$ 1,710,493</u>	<u>\$ 134,050</u>

*Projected cost assumes minimum salaries for the positions listed. The number in parentheses indicates the current total number of positions in all of the Judicial Districts.

INDIGENCY CLAIMS

Assumption

1. The bill states that a defendant is presumed able to pay a fine. The scope of indigency does not change.

Fiscal Effect

There is no fiscal impact.

Source: Judicial Department

Inspections and Appeals - Office of Appellate Defender (LSB 7164S, BAL)

Denise Darity
Fiscal Director

Legislative Fiscal Bureau

Date: 3/8/88

JUDICIARY: Doyle, Chair; Mann and Holt

Now
SENATE FILE 2304
BY (PROPOSED INDIGENT DEFENSE
STUDY COMMITTEE BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the representation of indigent and incompetent
2 persons by appointed attorneys, public defenders, and the
3 appellate defender's office; the establishment of district
4 legal defense boards; and the determination of indigency.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 ARTICLE 12
2 LEGAL REPRESENTATION OF
3 INDIGENT AND INCOMPETENT PERSONS
4 PART 1
5 DEFINITIONS

6 Section 1. NEW SECTION. 602.12101 DEFINITIONS.

7 As used in this article unless the context otherwise
8 requires:

9 1. "Appellate defender" means the state appellate
10 defender.

11 2. "Appointed attorney" means an attorney appointed by a
12 court and compensated by the state to represent an indigent or
13 incompetent person.

14 3. "Client" means an incompetent or indigent person
15 represented by an appointed attorney or public defender.

16 4. "District board" means a district legal defense board
17 established under section 602.12201.

18 5. "Financial statement" means a full written disclosure
19 of all assets, liabilities, current income, dependents, and
20 other information the court or public defender requires to
21 determine if the client qualifies for legal assistance at
22 public expense.

23 6. "Incompetent person" means a person who has been
24 adjudicated by a court to be incapable of managing the
25 person's property or caring for the person's own self, or
26 both, or a juvenile.

27 7. "Indigent person" means a person who is unable to
28 retain legal counsel without prejudicing the person's
29 financial ability to provide economic necessities for the
30 person or the person's dependent family.

31 PART 2
32 DISTRICT LEGAL DEFENSE BOARDS

33 Sec. 2. NEW SECTION. 602.12201 DISTRICT LEGAL DEFENSE
34 BOARDS ESTABLISHED.

35 1. A district legal defense board is established in each

1 judicial district.

2 2. Except as provided in paragraph "c", the members of a
3 district board shall be appointed to staggered four-year terms
4 by a majority vote of the district judges who reside in the
5 judicial district. The members are eligible for
6 reappointment. Each district board shall be composed of the
7 following members:

8 a. A county board of supervisor member from a county
9 within the judicial district. If the judicial district is
10 divided into judicial election districts, a county board of
11 supervisor member from a county within each judicial election
12 district shall serve on the district board. However, no
13 county shall be represented on the district board by more than
14 one county board of supervisor member.

15 b. The district court administrator for the judicial
16 district or the administrator's designee.

17 c. A member of the Iowa state bar, who resides in the
18 judicial district, elected by members of the bar residing in
19 the judicial district.

20 d. A person residing in the judicial district who is not
21 an attorney. If there is otherwise an even number of voting
22 members serving on the district board an additional person
23 residing in the judicial district who is not an attorney shall
24 be appointed.

25 e. An attorney practicing in the judicial district who
26 does not regularly defend indigent persons charged with
27 criminal offenses.

28 f. A county attorney of a county in the judicial district
29 who shall serve as a nonvoting member.

30 g. A public defender serving the judicial district who
31 shall serve as a nonvoting member.

32 h. A district judge from the judicial district who shall
33 serve as a nonvoting member.

34 i. An associate district judge from the judicial district
35 who shall serve as a nonvoting member, if the district has an

1 associate district judge.

2 3. If the judicial district is divided into judicial
3 election districts, at least one but not more than two
4 nonvoting members shall be appointed from each judicial
5 election district.

6 4. Members serving on a district board who are not county
7 or state employees being compensated by the county or state at
8 the time of the performance of board duties are entitled to
9 forty dollars per diem for each day spent in the performance
10 of the duties of the board. All members serving on a district
11 board are entitled to actual expenses incurred in the
12 performance of the duties of the board.

13 Sec. 3. NEW SECTION. 602.12202 POWERS AND DUTIES.

14 1. Each district board, by majority vote of the total
15 voting members shall:

16 a. Elect from the entire membership of the district board
17 a chairperson who shall serve a term of one year.

18 b. Monitor the services furnished by public defenders and
19 appointed attorneys.

20 c. Approve the appointment of assistant public defenders
21 and persons employed in a public defender's office.

22 d. Maintain an accounting system as directed by the
23 supreme court to account for all moneys allocated to the
24 district board by the state court administrator.

25 e. Meet at least quarterly and as often as necessary to
26 conduct business.

27 f. Comply with all directives, standards, policies, and
28 procedures established by the supreme court.

29 2. Each district board, by majority vote of the total
30 voting members may:

31 a. Establish an office or offices of public defender.

32 b. Appoint a public defender or public defenders to serve
33 in the judicial district.

34 c. Provide suitable furniture, equipment, and supplies for
35 an office or offices of a public defender established in the

1 judicial district, out of funds appropriated to the judicial
2 department and allocated by the state court administrator to
3 the district board for this purpose.

4 d. Require a public defender or assistant public defender
5 to devote full time to the discharge of the duties of the
6 office and not engage in the private practice of law.

7 PART 3

8 PUBLIC DEFENDERS

9 Sec. 4. NEW SECTION. 602.12301 OFFICE OF PUBLIC
10 DEFENDER.

11 1. A public defender must be an attorney admitted to the
12 practice of law before the Iowa supreme court.

13 2. The term of office of a public defender is six years.

14 3. A public defender and persons employed in a public
15 defender's office are state employees. However, a public
16 defender and persons employed in a public defender's office
17 are not subject to the exercise of administrative authority
18 and supervision by the supreme court.

19 4. The compensation and expenses of public defenders and
20 employees in a public defender's office shall be paid from
21 funds appropriated to the judicial department and allocated by
22 the state court administrator to the public defender's office
23 for this purpose.

24 5. A public defender or assistant public defender may be a
25 member of a law partnership or a professional corporation on
26 leave of absence.

27 Sec. 5. NEW SECTION. 602.12302 POWERS AND DUTIES OF A
28 PUBLIC DEFENDER.

29 A public defender shall do all of the following:

30 1. Represent without fee each indigent person who is under
31 arrest or charged with a crime if the indigent person requests
32 it or the court orders it. A public defender shall counsel
33 and defend a client at every stage of the criminal proceedings
34 before conviction.

35 2. Make an initial determination of indigence as required

1 under section 815.9 prior to the initial arraignment or other
2 initial court appearance. At or after initial arraignment or
3 other initial court appearance, a determination of indigence
4 shall be made by the court. The financial statement required
5 under section 815.9 shall be retained in the indigent person's
6 court file as a permanent part of the file.

7 3. Represent an incompetent person, including a juvenile,
8 in any matter affecting the rights of the incompetent person
9 if the court orders it.

10 4. Make an annual report to the chief judge, the district
11 board, and the district court administrator in the judicial
12 district in which the public defender serves, and to the state
13 court administrator. The report shall include all matters
14 handled by the public defender during the preceding year
15 including the amount of time devoted to each legal matter.

16 A public defender may appoint the number of assistant
17 public defenders, clerks, investigators, stenographers, and
18 other employees approved by the district board. An assistant
19 public defender must be an attorney licensed to practice
20 before the Iowa supreme court.

21 Sec. 6. Section 13B.2, Code 1987, is amended to read as
22 follows:

23 13B.2 POSITION ESTABLISHED.

24 The position of state appellate defender is established
25 within the department-of-inspections-and-appeals judicial
26 department. The governor supreme court shall appoint the
27 state appellate defender, who shall serve at the pleasure of
28 the governor, subject to confirmation by the senate no less
29 frequently than once every four years, whether or not there
30 has been a new appellate defender appointed during that time
31 supreme court, and shall establish the appellate defender's
32 salary.

33 Sec. 7. Section 13B.6, subsection 2, Code 1987, is amended
34 to read as follows:

35 2. The department-of-inspections-and-appeals judicial

1 department shall provide internal accounting and related
2 fiscal services for the appellate defender.

3 Sec. 8. Section 19A.3, subsection 11, Code Supplement
4 1987, is amended to read as follows:

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

11 Sec. 9. Section 331.321, subsection 2, Code Supplement
12 1987, is amended by striking the subsection.

13 Sec. 10. Section 331.322, subsection 5, Code Supplement
14 1987, is amended to read as follows:

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

27 Sec. 11. Section 602.1302, subsection 2, Code Supplement
28 1987, is amended to read as follows:

29 2. The state shall provide suitable office space for a
30 each public defender if established for a county defender's
31 office established in a judicial district.

32 Sec. 12. Section 602.11101, subsection 6, Code 1987, is
33 amended to read as follows:

34 6. The state shall assume the responsibility for the costs
35 of indigent defense on July 1, 1987. ~~However, an attorney~~

1 appointed-to-represent-an-indigent-person-pursuant-to-section
2 331-777-is-not-a-court-employee, as defined in section
3 602-1101, subsection 5, and the judicial department does not
4 have supervisory power over personnel of public defender
5 offices established pursuant to section 331-776.

6 Sec. 13. Section 815.9, subsection 2, Code 1987, is
7 amended to read as follows:

8 2. a. A determination of indigence shall not be made
9 except upon the basis of information contained in a detailed
10 financial statement submitted by the person, or in an
11 appropriate case by the person's parent, guardian, or
12 custodian. The financial statement shall be in the form
13 prescribed by the supreme court, and shall contain a full
14 disclosure of all assets, liabilities, current income,
15 dependents, and other information prescribed by the supreme
16 court. The supreme court shall adopt rules under section
17 602.4202 prescribing the form and content of the financial
18 statement, and the standards by which indigency shall be
19 determined under subsection 1. If a person is granted legal
20 assistance as an indigent, the financial statement shall be
21 filed and permanently retained in the person's court file.

22 b. In a criminal prosecution against a person who submits
23 a financial statement to the court for a determination of
24 indigence, the court shall presume that the person is not
25 indigent. A determination of indigence shall be made if the
26 court finds by a preponderance of the evidence that the person
27 qualifies pursuant to the standards established under
28 subsection 1.

29 Sec. 14. Section 909.7, Code 1987, is amended to read as
30 follows:

31 909.7 ABILITY TO PAY FINE PRESUMED -- CLAIM OF INDIGENCY.

32 1. A defendant is presumed to be able to pay a fine.
33 However, if the defendant proves to the satisfaction of the
34 court that the defendant is indigent under section 815.9 and
35 cannot pay the fine, the defendant shall not be sentenced to

1 confinement for the failure to pay the fine. A defendant must
2 raise indigency as a defense to the imposition of the fine at
3 or before the time the sentence is entered.

4 2. If the court issues an order pursuant to section 909.3,
5 a defendant must raise indigency as a defense before the
6 expiration of the time stated in the order to pay the fine.

7 Sec. 15. REPEALS.

8 1. Sections 331.776 and 331.777, Code 1987, are repealed.
9 However, this Act shall not affect the existing terms of
10 office for the appellate defender or public defenders. This
11 Act does not authorize a reduction in compensation or employee
12 benefits provided by the state or a county to any employee of
13 the state appellate offender's office or a public defender's
14 office.

15 2. Section 13B.1, Code 1987, is repealed.

16 Sec. 16. CODIFICATION. The Code editor shall transfer
17 sections 13B.2 through 13B.7 to chapter 602 as a new part 4 of
18 article 12 which is established in this Act.

19 Sec. 17. DISTRICT BOARD MEMBERS -- INITIAL TERMS.
20 Notwithstanding section 602.12201, the initial members
21 selected to a district legal defense board shall serve for the
22 following terms: Members selected pursuant to section
23 602.12201, subsection 2, paragraphs "a", "d", "f", and "g"
24 shall serve for terms of two years, and all other members
25 selected shall serve for terms of four years.

26 EXPLANATION

27 This bill provides for the consolidation of the state
28 appellate defender's office and public defenders' offices
29 within the judicial department. A district legal defense
30 board is established within each judicial district to monitor
31 the services provided by public defenders and appointed
32 attorneys, and to provide specified administrative support
33 functions. The district board may establish an office of
34 public defender within the judicial district. The state shall
35 pay the cost of these offices through appropriations to the

1 judicial department allocated to the judicial districts by the
2 state court administrator.

3 A public defender shall represent indigent persons and
4 incompetent persons, including juveniles. The public defender
5 shall make an initial determination of indigence prior to an
6 initial arraignment or other court appearance.

7 If indigence is claimed by the defendant for the purpose of
8 obtaining an appointed attorney or a public defender, the
9 court shall presume that the defendant is not indigent. The
10 defendant must prove indigence by a preponderance of the
11 evidence. This same presumption and proof requirements apply
12 if a fine is levied against the defendant.

13 COMPANION TO LSB 7773HI

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SENATE FILE 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 331.796.~~ 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.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2304, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved April 26, 1988

TERRY E. BRANSTAD
Governor

SF 2304