

Reprinted

SENATE FILE **377**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 235)

Passed Senate, Date 3/26/91 (p 883) Passed House, Date _____
Vote: Ayes 46 Nays 2 Vote: Ayes _____ Nays _____

Approved _____
Motion to Reconsider (p. 470) w/d 4/4 (p. 1033)

A BILL FOR

1 An Act relating to the assignment of indigent criminal and
2 juvenile cases to the state public defender and providing
3 an effective date.

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

SENATE FILE 377

S-3192

- 1 Amend Senate File 377 as follows:
- 2 1. Page 5, by inserting after line 3 the
- 3 following:
- 4 "Sec. _____. This Act is repealed effective July 1,
- 5 1993, and the Code editor shall return the language in
- 6 the Code sections amended in this Act to the language
- 7 appearing in the 1991 Code."
- 8 2. By renumbering as necessary.

By BILL HUTCHINS

S-3192 FILED MARCH 26, 1991
ADOPTED (p 882)

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1 Section 1. Section 13B.1, subsection 1, Code 1991, is
2 amended to read as follows:

3 1. "Appointed Assigned attorney" means an attorney
4 appointed assigned by the local public defender or the court
5 and compensated by the state to represent an indigent
6 defendant.

7 Sec. 2. Section 13B.4, Code 1991, is amended by striking
8 the section and inserting in lieu thereof the following:

9 13B.4 DUTIES AND POWERS OF STATE PUBLIC DEFENDER.

10 1. The state public defender shall coordinate the
11 provision of legal representation of all indigents under
12 arrest or charged with a crime, on appeal in criminal cases,
13 and on appeal in proceedings to obtain postconviction relief
14 when ordered to do so by the district court in which the
15 judgment or order was issued, and may provide for the
16 representation of indigents in proceedings instituted pursuant
17 to chapter 908. In indigency matters, all cases, whether
18 criminal or juvenile in nature, shall be assigned by the court
19 to the state public defender or its designee. The state
20 public defender shall not engage in the private practice of
21 law.

22 2. The state public defender shall file with the court in
23 each county a designation of which local public defender
24 office shall receive notice of assignment of cases.

25 Sec. 3. Section 13B.8, subsection 1, unnumbered paragraph
26 2, Code 1991, is amended to read as follows:

27 Before establishing or abolishing a local public defender
28 office, the state public defender shall provide a written
29 report detailing the reasons for the action to be taken to the
30 ~~justice-systems~~ regulation appropriations subcommittee, the
31 chairperson, vice chairperson, and ranking member of the
32 senate committee on judiciary, and the chairperson, vice
33 chairperson, and ranking member of the house of
34 representatives committee on judiciary and law enforcement.
35 The report shall contain a statement of the estimated fiscal

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

10 Sec. 4. Section 13B.9, Code 1991, is amended to read as
11 follows:

12 13B.9 POWERS AND DUTIES OF LOCAL PUBLIC DEFENDERS.

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

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

24 b. Represent an indigent party, without fee and upon an
25 order of the court, in child in need of assistance, family in
26 need of assistance, delinquency, and termination of parental
27 rights proceedings pursuant to chapter 232. The local public
28 defender shall counsel and represent an indigent party in all
29 proceedings pursuant to chapter 232 and prosecute before or
30 after judgment any appeals or other remedies which the local
31 public defender considers to be in the interest of justice
32 unless the court-appoints case is assigned to other counsel.

33 The state public defender shall be reimbursed by the counties
34 for services rendered by employees of the local public
35 defenders' offices under this subsection, pursuant to section

1 232.141.

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

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

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

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

21 4. The state public defender or the state public
22 defender's designee may contract with private attorneys in the
23 judicial election district to handle assignments of indigent
24 cases. The local public defender shall handle every case
25 assigned to the local public defender that the local public
26 defender can reasonably handle.

27 5. If a conflict of interest arises or if the local public
28 defender is unable to handle a case because of a temporary
29 overload of cases, the local public defender shall assign the
30 case to a contract attorney in the county where the case is
31 pending if one exists. The assignment shall be on a
32 rotational or equalizational basis, also considering the
33 experience of the contract attorneys available and the
34 difficulty of the case.

35 6. If no contract attorney exists or if a conflict of

1 interest or overload prevents the contract attorneys from
2 handling a case, the local public defender shall return the
3 case to the court for assignment to a private noncontracting
4 attorney, who has agreed to take such case, on a rotational or
5 equalizational basis, also considering the experience of the
6 attorney and the difficulty of the case.

7 Sec. 5. Section 815.10, Code 1991, is amended to read as
8 follows:

9 815.10 APPOINTMENT OF COUNSEL BY COURT.

10 1. The court, for cause and upon its own motion or upon
11 application by an indigent person or a public defender, may
12 shall appoint a public defender or any attorney who is
13 admitted to the practice of law in this state the state public
14 defender, the state public defender's designee, or an attorney
15 who is admitted to the practice of law in this state in
16 accordance with section 13B.9 to represent an indigent person
17 at any state stage of the criminal or juvenile proceedings or
18 on appeal of any criminal or juvenile action in which the
19 indigent person is entitled to legal assistance at public
20 expense. However, in juvenile cases the court may directly
21 appoint an existing nonprofit corporation established for and
22 engaged in the provision of legal services for juveniles. An
23 appointment shall not be made unless the person is determined
24 to be indigent under section 815.9.

25 2. If a court finds that a person desires legal assistance
26 and is not indigent, but refuses to employ an attorney, the
27 court shall appoint a public defender or another attorney the
28 state public defender or the state public defender's designee
29 to represent the person at public expense. If an attorney
30 other than a public defender is appointed assigned by the
31 court in accordance with section 13B.9, the fee paid to the
32 attorney shall be taxed as a court cost against the person.

33 3. An attorney other than a public defender who is
34 appointed by the court assigned by the court under subsection
35 1 or 2 this section shall apply to the district court for

1 compensation and for reimbursement of costs incurred. The
2 amount of compensation due shall be determined in accordance
3 with section 815.7.

31927
4 Sec. 6. EFFECTIVE DATE. This Act, being deemed of
5 immediate importance, takes effect upon enactment.

6 EXPLANATION

7 This bill provides that all cases involving the legal
8 representation of indigents shall be assigned by the court to
9 the state public defender or a designated local public
10 defender. The bill also provides that local public defenders
11 are to retain assignment of all cases that can reasonably be
12 handled, but in the event that is not possible, the state
13 public defenders will contract with private attorneys in the
14 judicial election districts to handle the overload cases. If
15 no contract attorney is available the local public defender
16 shall assign the case back to the court, which will assign the
17 case to a private attorney. Further, the bill provides a fee
18 structure for attorneys, other than the public defenders, who
19 represent indigents.

20 The bill is effective upon enactment.

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14 when ordered to do so by the district court in which the
15 judgment or order was issued, and may provide for the
16 representation of indigents in proceedings instituted pursuant
17 to chapter 908. In indigency matters, all cases, whether
18 criminal or juvenile in nature, shall be assigned by the court
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23 each county a designation of which local public defender
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21 remedies which the local public defender considers to be in
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34 for services rendered by employees of the local public
35 defenders' offices under this subsection, pursuant to section

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

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

8 2. An appointed assigned attorney under this section is
9 not liable to a person represented by the attorney pursuant to
10 this chapter for damages as a result of a conviction unless
11 the court determines in a postconviction appeal that the
12 person's conviction resulted from ineffective assistance of
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15 assistant public defenders, clerks, investigators,
16 stenographers, and other employees as approved by the state
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18 an attorney licensed to practice before the Iowa supreme
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20 the state public defender.

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22 defender's designee may contract with private attorneys in the
23 judicial election district to handle assignments of indigent
24 cases. The local public defender shall handle every case
25 assigned to the local public defender that the local public
26 defender can reasonably handle.

27 5. If a conflict of interest arises or if the local public
28 defender is unable to handle a case because of a temporary
29 overload of cases, the local public defender shall assign the
30 case to a contract attorney in the county where the case is
31 pending if one exists. The assignment shall be on a
32 rotational or equalizational basis, also considering the
33 experience of the contract attorneys available and the
34 difficulty of the case.

35 6. If no contract attorney exists or if a conflict of

1 interest or overload prevents the contract attorneys from
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32 attorney shall be taxed as a court cost against the person.

33 3. An attorney other than a public defender who is
34 appointed by the court assigned by the court under subsection
35 1 or 2 this section shall apply to the district court for

1 compensation and for reimbursement of costs incurred. The
2 amount of compensation due shall be determined in accordance
3 with section 815.7.

4 Sec. 6. This Act is repealed effective July 1, 1993, and
5 the Code editor shall return the language in the Code sections
6 amended in this Act to the language appearing in the 1991
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8 Sec. 7. EFFECTIVE DATE. This Act, being deemed of
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**SENATE FILE 377
FISCAL NOTE**

A fiscal note for Senate File 377 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 377 requires all cases involving legal representation of indigents (or persons who refuse counsel) to be assigned to the State Public Defender or his designee. The State Public Defender is required to complete all cases that can be reasonably handled. If the State Public Defender is unable to handle a case for some reason, he may contract with a private attorney within the same judicial election district. If neither the State Public Defender nor a contract attorney can handle a case, the case is referred back to court for assignment of a contract or private attorney.

BACKGROUND:

It essentially sets up a statewide referral system for indigent defense cases requiring the courts to assign all cases to the State Public Defender. This allows the State Public Defender to choose which cases would be more financially feasible for the State to represent. Considerable savings to the General Fund are expected because the State Public Defender has a fixed cost per case while the cost per case varies when private counsel is appointed.

Senate File 209 provides for \$4.7 million to the Indigent Defense Program and \$0.5 million to the State Public Defender for expansion. The Public Defender would use the supplemental funds to add 38.0 FTE positions to expand services in Waterloo, Ames, Mason City, Sioux City, Des Moines and Cedar Rapids. The Regulations Appropriations Subcommittee has recommended FY 1992 funding of \$9.4 million for Indigent Defense and additional funds of \$1.9 million for the State Public Defender. The Public Defender would use the funds to annualize the 38.0 FTE positions added in FY 1991 and add an additional 14.0 FTE positions. This would allow for additional expansion at the locations listed above as well as establishment of new Public Defender offices at Dubuque and Fort Dodge. The Public Defender's expansion plans also include 2.0 FTE positions for the Appellate Defender's office and 1.0 FTE position in the State Public Defender's office.

FISCAL IMPACT:

For FY 1991, net General Fund expenditures will be reduced by \$200,000.
For FY 1992, net General Fund expenditures will be reduced by \$4.3 million.

Sources: Department of Inspections and Appeals
Department of Management

(LSB 2260sv, MAS)

FILED MARCH 20, 1991

BY DENNIS PROUTY, FISCAL DIRECTOR

VARN, CH.
HORN
HESTER

SSB 235
JUDICIARY

SENATE FILE 377
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON STURGEON)

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

A BILL FOR

1 An Act relating to the assignment of indigent criminal and
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3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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35 impact of the action taken. Any action taken in establishing

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18 defendant at every stage of the criminal proceedings and
19 prosecute before or after conviction any appeals or other
20 remedies which the local public defender considers to be in
21 the interest of justice unless the court-appoints case is
22 assigned to other counsel.

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24 order of the court, in child in need of assistance, family in
25 need of assistance, delinquency, and termination of parental
26 rights proceedings pursuant to chapter 232. The local public
27 defender shall counsel and represent an indigent party in all
28 proceedings pursuant to chapter 232 and prosecute before or
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30 public defender considers to be in the interest of justice
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3 initial court appearance.

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

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11 person's conviction resulted from ineffective assistance of
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14 assistant public defenders, clerks, investigators,
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16 public defender. An assistant local public defender must be
17 an attorney licensed to practice before the Iowa supreme
18 court. Appointments shall be made in the manner prescribed by
19 the state public defender.

20 4. The state public defender or the state public
21 defender's designee shall contract with private attorneys in
22 the judicial election district to handle assignments of
23 indigent cases and may also contract with other attorneys in
24 the judicial election district on a list of attorneys who are
25 willing to take assignments of indigent cases if neither the
26 local public defender nor a contract attorney can take the
27 assignment. However, the local public defender shall handle
28 every case assigned to the local public defender that the
29 local public defender can reasonably handle.

30 5. If a conflict of interest arises or if the local public
31 defender is unable to handle a case because of a temporary
32 overload of cases, the local public defender shall assign the
33 case to a contract attorney in the county where the case is
34 pending and do so on a rotational or equalizational basis,
35 also considering the experience of the contract attorneys

1 available and the difficulty of the case.

2 6. If a conflict of interest or overload prevents the
3 contract attorneys from handling a case, the local public
4 defender shall assign the case to a private noncontracting
5 attorney, who has agreed to take such case, on a rotational or
6 equalizational basis, also considering the experience of the
7 attorney and the difficulty of the case.

8 Sec. 5. Section 815.7, Code 1991, is amended by striking
9 the section and inserting in lieu thereof the following:

10 815.7 FEES TO ATTORNEYS.

11 1. An attorney assigned to represent a person charged with
12 a crime in this state shall be entitled to a reasonable
13 compensation to be decided in each case by a judge of the
14 district court, including such sum or sums as the court may
15 determine are necessary for investigation in the interests of
16 justice, and in the event of appeal, the cost of obtaining the
17 transcript of the trial and the printing of the trial record
18 and necessary briefs on behalf of the defendant. However, in
19 any case where an attorney has been assigned to represent a
20 criminal defendant, the following amounts cannot be exceeded
21 without prior approval of a judge of the district court:

- 22 a. Class "A" felonies, two thousand dollars.
23 b. Class "B" felonies, one thousand five hundred dollars.
24 c. Class "C" and "D" felonies and aggravated misdemeanors,
25 one thousand dollars.
26 d. Serious misdemeanors, five hundred dollars.
27 e. Simple misdemeanors, one hundred fifty dollars.
28 f. The probable cause portion of parole revocation
29 hearings, two hundred dollars.
30 g. Postconviction relief proceedings, one-half of the
31 amount allowed under this subsection for the offense in the
32 original action.
33 h. Appeals to the supreme court of this state, one
34 thousand six hundred dollars.
35 i. Representation of a party at a juvenile case

1 adjudication and disposition, five hundred dollars, with
2 compensation for representation of a party at each additional
3 review hearing to be determined by the court.

4 2. Hourly rates of compensation in accordance with
5 subsection 1 are forty to sixty dollars per hour for attorneys
6 and twenty to thirty dollars per hour for paralegals, legal
7 assistants, or law clerks.

8 3. An attorney assigned to a case pursuant to section
9 815.10 is not required to remain assigned to the case if the
10 case is transferred to another county or is appealed to an
11 appellate court unless so directed by the court at the request
12 of the defendant, where grounds for further litigation are not
13 capricious or unreasonable, but if the attorney does so, the
14 attorney's fee shall be determined according to subsection 1.
15 Fees for only one attorney shall be awarded in any one case,
16 except that in class "A" felony cases, fees for two attorneys
17 may be authorized and awarded.

18 Sec. 6. Section 815.10, Code 1991, is amended to read as
19 follows:

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22 application by an indigent person or a public defender, may
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29 assistance at public expense. An appointment shall not be
30 made unless the person is determined to be indigent under
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33 and is not indigent, but refuses to employ an attorney, the
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5 3. An attorney other than a public defender who is
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7 defender under subsection-1-or-2 this section shall apply to
8 the district court for compensation and for reimbursement of
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10 determined in accordance with section 815.7.

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