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FILED FEB 23 1998

SENATE FILE 2281
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2106)

(P. 692)
Passed Senate, Date 3-12-98
Vote: Ayes 43 Nays 0
Approved _____

(P. 1733)
Passed House, Date 4-17-98
Vote: Ayes 96 Nays 1

A BILL FOR

1 An Act relating to compensation for the legal defense of indigent
2 persons in criminal, appellate, and certain civil cases.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2281

1 ~~accordance with rules adopted by the state public defender.~~
2 In determining whether substantial hardship would result, the
3 court shall consider not only the person's income, but also
4 the availability of any assets not subject to execution,
5 including but not limited to cash, stocks, bonds, and any
6 other property which may be applied to the satisfaction of
7 judgments.

8 d c. A person with an income level greater than two
9 hundred percent of the most recently revised poverty income
10 guidelines published by the United States department of health
11 and human services shall not be ~~deemed indigent or partially~~
12 indigent entitled to any attorney appointed by the court,
13 unless the person is charged with a felony and the court makes
14 a written finding that ~~given the person's circumstances,~~ not
15 appointing counsel would cause the person substantial
16 hardship. ~~However, the court shall require a person appointed~~

17 ~~counsel to contribute to the cost of representation in~~
18 ~~accordance with rules adopted by the state public defender.~~
19 In determining whether substantial hardship would result, the
20 court shall consider not only the person's income, but also
21 the availability of any assets not subject to execution,
22 including but not limited to cash, stocks, bonds, and any
23 other property which may be applied to the satisfaction of
24 judgments.

25 2. A determination of ~~the indigent status of~~ whether a
26 person is entitled to an appointed attorney shall be made on
27 the basis of an affidavit of financial status submitted at the
28 time of the person's initial appearance before a court or at
29 such later time as a request for court appointment is made.
30 ~~If a person is granted legal assistance as an indigent or~~
31 ~~partial indigent, the financial statement shall be filed and~~
32 ~~permanently retained in the person's court file.~~ The state
33 public defender shall adopt rules prescribing the form and
34 content of the affidavit of financial statement and the
35 criteria by which a determination of indigency shall be based

1 status. The affidavit of financial statement status shall be
2 signed under penalty of perjury and shall contain sufficient
3 information to allow the determination to be made of whether
4 the person meets the guidelines set out in subsection 1 and
5 shall be accompanied by the person's most recent pay slip, if
6 employed is entitled to an appointed attorney under this
7 section. If the person is granted an appointed attorney, the
8 affidavit of financial status shall be filed and permanently
9 retained in the person's court file.

10 3. A person who knowingly submits a false financial
11 statement for the purpose of obtaining legal assistance by
12 appointed counsel commits a fraudulent practice. If a person
13 is granted an appointed attorney, the person shall be required
14 to reimburse the state for the total cost of legal assistance
15 provided to the person. As used in this subsection, "legal
16 assistance" includes legal counsel "Legal assistance" as used
17 in this section shall include not only an appointed attorney,
18 but also transcripts, witness fees and, expenses, and any
19 other goods or services required by law to be provided to an
20 indigent person.

21 4. If the case is a criminal case, all costs and fees
22 incurred for legal assistance shall become due and payable to
23 the clerk of the district court by the person receiving the
24 legal assistance not later than the date of sentencing, or if
25 the person is acquitted or the charges are dismissed, within
26 thirty days of the acquittal or dismissal.

27 5. If the case is other than a criminal case, all costs
28 and fees incurred for legal assistance shall become due and
29 payable to the clerk of the district court by the person
30 receiving the legal assistance not later than the date of any
31 hearing or trial held in the case, or if the case is
32 dismissed, within thirty days of the dismissal.

33 6. An appointed attorney shall submit a report pertaining
34 to the costs and fees for legal assistance to the court at the
35 times specified in subsections 4 and 5. If the appointed

1 attorney is a public defender, the report shall specify the
2 total hours of service plus other expenses. If the appointed
3 attorney is a private attorney, the total amount of legal
4 assistance shall be the total amount of the fees claimed by
5 the appointed attorney together with other expenses.

6 7. If the costs and fees incurred for legal assistance are
7 not paid at the times specified in subsections 4 and 5, the
8 court shall assess an installment payment fee of thirty-five
9 dollars against the person who has received legal assistance.
10 Notwithstanding anything in sections 910.1, 910.2, and 910.9
11 to the contrary, the thirty-five dollar installment payment
12 fee shall be paid prior to crediting any payments received
13 against any amounts due from the person, notwithstanding
14 anything to the contrary in section 910.2. Payment of the
15 thirty-five dollar installment payment fee shall be separately
16 accounted for by the clerk and forwarded together with any
17 other amounts collected for payment of restitution and other
18 finances, penalties, fees, court costs, and surcharges under
19 section 602.8107.

20 8. If all costs and fees incurred for legal assistance are
21 not paid at the times specified in subsections 4 and 5, the
22 court shall order payment of the fees and costs in reasonable
23 installments. Any hearings held for purposes of monitoring
24 compliance with any installment payment plan are not contempt
25 hearings, unless the court specifically designates the hearing
26 as either a contempt or a show cause hearing. A person who is
27 responsible for making payments under a court ordered
28 installment payment plan shall receive notice prior to any
29 hearing that is designated by the court as a show cause or
30 contempt hearing that the court has determined that the person
31 has failed to abide by the terms of the payment plan and
32 should be required to show cause why the person should not be
33 held in contempt.

34 9. If a person is granted an appointed attorney or is
35 receiving legal assistance in accordance with this section and

1 the person is employed, the person shall execute an assignment
2 of wages. An order for assignment of income, in a reasonable
3 amount to be determined by the court, shall also be entered by
4 the court. The state public defender shall prescribe forms
5 for use in wage assignments and court orders entered under
6 this section.

7 10. If any costs and fees are not paid at the times
8 specified under subsections 4 and 5, a judgment shall be
9 entered against the person for any unpaid amounts.

10 Sec. 13. Section 815.10, Code 1997, is amended to read as
11 follows:

12 815.10 APPOINTMENT OF COUNSEL BY COURT.

13 1. The court, for cause and upon its own motion or upon
14 application by an indigent person or a public defender, shall
15 appoint the state public defender, the state public defender's
16 designee pursuant to section 13B.4, or an attorney pursuant to
17 section 13B.9 to represent an indigent person at any stage of
18 the criminal, postconviction, contempt, or juvenile
19 proceedings or on appeal of any criminal, postconviction,
20 contempt, or juvenile action in which the indigent person is
21 entitled to legal assistance at public expense. However, in
22 juvenile cases, the court may directly appoint an existing
23 nonprofit corporation established for and engaged in the
24 provision of legal services for juveniles. An appointment
25 shall not be made unless the person is determined to be
26 indigent under section 815.9. Only one attorney shall be
27 appointed in all cases, except that in class "A" felony cases
28 the court may appoint two attorneys.

29 2. An attorney other than a public defender ~~or a contract~~
30 ~~attorney~~ who is appointed by the court under this section
31 shall apply to the ~~district-court~~ state public defender for
32 compensation and for reimbursement of costs incurred. The
33 amount of compensation due shall be determined in accordance
34 with any indigent defense contract or pursuant to section
35 815.7.

1 3. A contract attorney appointed by the court pursuant to
2 this section and section 13B.4 shall apply to the state public
3 defender for compensation and for reimbursement of costs
4 incurred in accordance with the contract. -- The amount of
5 compensation due shall be determined in accordance with the
6 contract. The state public defender shall adopt rules which
7 specify the specific information which shall be included with
8 all claims for compensation submitted by court-appointed
9 attorneys under this section. If the information required
10 under this section and the rules of the state public defender
11 are not submitted, the claim may be denied until the
12 information is provided. If the information required under
13 this section and the rules of the state public defender is
14 submitted with the claim, the state public defender may
15 approve reasonable and proper compensation to the court-
16 appointed attorney in the manner provided in those rules.

17 Sec. 14. Section 815.11, Code 1997, is amended to read as
18 follows:

19 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

20 Costs incurred under section 232.141, subsection 3,
21 paragraph "c", sections 814.9, 814.10, 814.11, 815.4, 815.5,
22 815.6, 815.7, 815.10, and 822.5, chapter 665, or the rules of
23 criminal procedure on behalf of an indigent shall be paid from
24 funds appropriated by the general assembly to the department
25 of inspections and appeals for those purposes.

26 Sec. 15. Section 822.5, subsection 2, Code 1997, is
27 amended by striking the subsection.

28 Sec. 16. EMERGENCY RULES. The office of the state public
29 defender of the department of inspections and appeals may
30 adopt administrative rules under section 17A.4, subsection 2,
31 and section 17A.5, subsection 2, paragraph "b", to implement
32 the provisions of this Act. The rules shall become effective
33 immediately upon filing, unless a later effective date is
34 specified in the rules. Any rules adopted in accordance with
35 this section shall not take effect before the rules are

1 reviewed by the administrative rules review committee. Any
2 rules adopted in accordance with the provisions of this
3 section shall also be published as notice of intended action
4 as provided in section 17A.4.

5 Sec. 17. Sections 815.9A and 815.10A, Code 1997, are
6 repealed.

7

EXPLANATION

8 This bill makes changes pertaining to the payment of costs
9 for the defense of indigent persons in criminal, juvenile,
10 postconviction, contempt actions, and certain other civil
11 actions. The duties and authority of the state public
12 defender are amended to add postconviction relief and contempt
13 actions to the kinds of cases which are to be handled by that
14 office. The state public defender is given the direct
15 authority to approve, reduce, and modify claims made for
16 payment of indigent defense costs. Procedures are added in
17 the bill which permit the state public defender to set and
18 exceed limitations on indigent defense costs which are
19 submitted for payment by court-appointed attorneys.
20 References are eliminated which make the appointment of
21 counsel on appeals subject to supreme court rules. Instead,
22 the bill substitutes a procedure which provides for the
23 appointment of the state appellate defender, unless the
24 appellate defender has a conflict of interest or a temporary
25 overload of cases. In the latter two situations, the bill
26 provides for the appointment of an attorney who has entered
27 into a contract with the state public defender to handle
28 appeals. If no contract attorney is available, the court may
29 appoint a noncontract attorney on a rotational or equalization
30 basis, considering the experience of the attorney and the
31 difficulty of the case. The appointment must, however,
32 include specific findings that no contract attorney was
33 available. Noncontract attorneys will be paid directly
34 through the state public defender's office and are to submit
35 such reports and information relating to their fees and

1 expenses as are required by the state public defender. A
2 reference to the indigency determination threshold is
3 eliminated in the mental illness civil commitment Code chapter
4 to conform the language to the changes made in the indigency
5 determination thresholds in Code chapter 815.

6 The bill also changes the procedures for determination of
7 an individual's indigence and consequent eligibility for
8 court-appointed counsel at state expense. The requirement
9 that the state public defender's office make an initial
10 determination of indigence prior to the initial arraignment or
11 other initial court appearance is eliminated and all
12 references to determinations of indigency are transferred to
13 Code chapter 815. A person is indigent and entitled to court-
14 appointed counsel if the person has an income level at or
15 below 125 percent of poverty level. This is below the current
16 150 percent of poverty level ceiling. In determining
17 eligibility, the court is to consider not only the person's
18 income, but assets not subject to execution and any other
19 property which may be applied to the satisfaction of
20 judgments. Those persons whose income falls above the new
21 threshold are not entitled to court-appointed counsel unless
22 the court makes a written determination that not appointing
23 counsel on the pending charges would cause the person
24 substantial hardship. Like the original determination of
25 eligibility, the determination of substantial hardship is to
26 be based not only on the person's income, but also on assets
27 not subject to execution and any other property which may be
28 applied to the satisfaction of judgments. A person who
29 receives court-appointed counsel and is employed is required
30 to execute an assignment of wages and the court is to enter an
31 order for assignment of income on forms prescribed by the
32 state public defender. If a person is not able to pay the
33 costs of court-appointed counsel when the costs are due, the
34 court may provide for payment on an installment basis. A \$35
35 installment payment fee will be assessed, however, against the

1 person and will be paid before any other charges owed are
2 paid.

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**SENATE FILE 2281
FISCAL NOTE**

A fiscal note for Senate File 2281, as amended and passed by the Senate, 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 2281, as amended and passed by the Senate, makes changes pertaining to the payment of costs for the defense of indigent persons in criminal, juvenile, post-conviction, contempt actions, and certain other civil actions. The Bill makes changes to the authority of the State Public Defender. The Bill changes the procedures for indigency determination and eligibility. The Bill requires a \$35 installment fee be assessed by the Court when an indigent person does not pay the costs of legal assistance by the sentencing date or within 30 days of the acquittal or dismissal. The Bill provides procedures for hearings for individuals who fail to abide by the terms of their payment plan.

BACKGROUND

In FY 1998, the counties are liable for approximately \$1.1 million for juvenile justice costs. Counties submit claims to the State for payment from the Indigent Defense Fund after they have reached the individual counties' base amount for the year. Each year the base amount is increased by an inflationary factor.

ASSUMPTIONS

1. Installment payments will be utilized by 40.0% of indigent cases.
2. The number of indigent serious misdemeanor cases remains constant at the FY 1997 level of approximately 28,000 with a collection rate of 38.0%.
3. The number of indigent aggravated misdemeanor cases remains constant at the FY 1997 level of approximately 6,000 with a collection rate of 28.0%.
4. The number of indigent OWI cases remains constant at the FY 1997 level of approximately 9,000 with a collection rate of 56.0%.
5. The number of indigent felony cases remains constant at the FY 1997 level of approximately 10,000 with a collection rate of 17.0%.
6. The Judicial Department will follow review procedures and compliance requirements as required by the Bill. Assuming 25.0% of indigent cases would use this review process, Clerk of Court staff time would cost \$5.97 per case. Cases would then be reviewed by a District Court Judge at a cost of \$12.77 per case or a District Associate Judge at a cost of \$11.19 per case. District Court Judges would be utilized for 25.0% of the cases and a District Associate Judge would be utilized for 75.0% of the cases. Department expenditures would increase for FY 1999 by \$231,000 for additional Clerk of Court time, District Court time, and District Court Judges' time.
7. The proposed procedures required by the Court will not affect the current collections by the Judicial Department.
8. The State Public Defender will have no significant increase in costs for

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the increased number of claims to be processed.

9. All juvenile justice claims will be submitted to the State and paid from the Indigent Defense Fund.
10. Each County's base cost for juvenile justice costs will be assessed as an offset of the county allocation of property tax credit in Section 405A.4, Code of Iowa.
11. The total offset for the counties will remain at the FY 1998 level.

FISCAL IMPACT

Senate File 2281, as amended and passed by the Senate, will increase revenue to the General Fund in FY 1999 by approximately \$264,000 and annually thereafter. The General Fund will realize a decrease in expenditures relating to decreased property tax credit payments to counties by approximately \$1.1 million annually. The Bill will also increase expenditures by the Judicial Department by approximately \$231,000 associated with the new review procedure and \$1.1 million for additional county claims in FY 1999 and annually thereafter.

The net effect to the General Fund would be an increase in revenues of \$33,000 in FY 1999 and beyond. The net effect to counties is revenue neutral in FY 1999 and annually thereafter.

SOURCES

Judicial Department
State Public Defender

(LSB 3409sv.3, DHK)

FILED MARCH 17, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2281
FISCAL NOTE

A fiscal note for Amendment S-5225 to Senate File 2281 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 2281 makes changes pertaining to the payment of costs for the defense of indigent persons in criminal, juvenile, postconviction, contempt actions, and certain other civil actions. Amendment S-5225 to SF 2281 requires the State Public Defender to establish fees and procedures for the payment of attorney fees and defense costs. The Amendment provides for the payment of juvenile justice costs.

BACKGROUND

In FY 1998, the counties are liable for approximately \$1.1 million for juvenile justice costs. Counties submit claims to the State for payment from the Indigent Defense Fund after they have reached the individual counties' base amount for the year. Each year the base amount is increased by an inflationary factor.

ASSUMPTIONS

1. The State Public Defender will have no significant increase in costs for the increased number of claims to be processed.
2. All juvenile justice claims will be submitted to the State and paid from the Indigent Defense Fund.
3. Each County's base cost for juvenile justice costs will be assessed as an offset of the county allocation of property tax credit in Section 405A.4, Code of Iowa.
4. The total offset for the counties will remain at the FY 1998 level.

FISCAL IMPACT

The fiscal impact of Amendment S-5225 to SF 2281 is revenue neutral. Under the Amendment, General Fund expenditures will increase by approximately \$1.1 million annually beginning in FY 1999 to pay for the additional county claims. The General Fund will also realize a decrease in expenditures relating to decreased property tax credit payments to counties by approximately \$1.1 million annually.

The net effect to counties is revenue neutral starting in FY 1999 and annually thereafter.

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SOURCES

Judicial Department
State Public Defender

(LSB 3409SV.2, DHK)

FILED MARCH 12, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2281

S-5144

- 1 Amend Senate File 2281, as follows:
- 2 1. Page 2, line 12, by striking the word "delete"
- 3 and inserting the following: "deny".
- 4 2. Page 2, line 15, by inserting after the word
- 5 "action." the following: "Notwithstanding section
- 6 17A.19, subsection 2, proceedings for judicial review
- 7 of the actions of the state public defender may be
- 8 brought in the district court of the county in which
- 9 the original case was brought."
- 10 3. Page 2, line 22, by striking the words "a
- 11 basis" and inserting the following: "the sole basis".
- 12 4. Page 2, line 25, by inserting after the word
- 13 "action." the following: "Notwithstanding section
- 14 17A.19, subsection 2, proceedings for judicial review
- 15 of the actions of the state public defender may be
- 16 brought in the district court of the county in which
- 17 the original case was brought."
- 18 5. Page 3, by inserting after line 4, the
- 19 following:
- 20 "Sec. _____. Section 13B.9, subsection 1, paragraph
- 21 b, Code 1997, is amended to read as follows:
- 22 b. Represent an indigent party, without fee and
- 23 upon an order of the court, in child in need of
- 24 assistance, family in need of assistance, delinquency,
- 25 and termination of parental rights proceedings
- 26 pursuant to chapter 232 in a county served by a public
- 27 defender. The local public defender shall counsel and
- 28 represent an indigent party in all proceedings
- 29 pursuant to chapter 232 in a county served by a public
- 30 defender and prosecute before or after judgment any
- 31 appeals or other remedies which the local public
- 32 defender considers to be in the interest of justice
- 33 unless other counsel is appointed to the case. The
- 34 ~~state-public-defender-shall-be-reimbursed-by-the~~
- 35 ~~counties-for-services-rendered-by-employees-of-the~~
- 36 ~~local-public-defenders'-offices-under-this-subsection,~~
- 37 ~~pursuant-to-section-232-141-~~"
- 38 6. Page 3, by inserting after line 6, the
- 39 following:
- 40 "Sec. _____. Section 13B.9, subsection 3, Code 1997,
- 41 is amended by striking the subsection."
- 42 7. Page 3, by inserting after line 8, the
- 43 following:
- 44 "Sec. _____. Section 124.407, unnumbered paragraphs
- 45 2 and 7, Code 1997, are amended by striking the
- 46 unnumbered paragraphs."
- 47 8. Page 3, by inserting after line 35, the
- 48 following:
- 49 "Sec. _____. Section 232.141, subsections 2 and 3,
- 50 Code Supplement 1997, are amended to read as follows:

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Page 2

1 2. Upon certification of the court, all of the
2 following expenses are a charge upon the county in
3 which the proceedings are held, to the extent provided
4 in subsection 3:

5 a. The fees and mileage of witnesses and the
6 expenses of officers serving notices and subpoenas
7 incurred by an attorney appointed by the court to
8 serve as counsel or guardian ad litem.

9 b. Reasonable compensation for an attorney
10 appointed by the court to serve as counsel or guardian
11 ad litem.

12 3. Costs incurred under subsection 2 shall be paid
13 as follows:

14 a. A For each fiscal year, a county shall be
15 required-to-pay liable for the-fiscal-year-beginning
16 July-1, 1989, an amount equal to the county's base
17 cost for witness and mileage fees and attorney fees
18 established-pursuant-to-section-232.141, subsection-8,
19 paragraph-"d", Code-1989, for the-fiscal-year
20 beginning-July-1, 1989, plus an amount equal to the
21 percentage-rate-of-change-in-the-consumer-price-index
22 as-tabulated-by-the-federal-bureau-of-labor-statistics
23 for-the-current-year-times-the-county's-base-cost A
24 county's base cost shall be the amount a county was
25 required to pay pursuant to section 232.141,
26 subsection 3, Code 1997, for the fiscal year beginning
27 July 1, 1997, and ending June 20, 1998, in accordance
28 with the schedule contained in this Act. The payment
29 of the county's base cost shall be made through an
30 offset of the county allocation as provided in section
31 405A.4.

32 b. A-county's-base-cost-for-a-fiscal-year-plus-the
33 percentage-rate-of-change-amount-as-computed-in
34 paragraph-"a"-is-the-county's-base-cost-for-the
35 succeeding-fiscal-year.--The-amount-to-be-paid-in-the
36 succeeding-year-by-the-county-shall-be-computed-as
37 provided-in-paragraph-"a".

38 c. b. Costs incurred under subsection 2, which-are
39 not-paid-by-the-county-under-paragraphs-"a"-and-"b"
40 shall be reimbursed paid by the state. Reimbursement
41 Payment for the costs of compensation of an attorney
42 appointed by the court to serve as counsel or guardian
43 ad litem shall be made as provided in section 815.7.

44 A county person eligible for payment by the state
45 shall apply for reimbursement-to-the-department-of
46 inspections-and-appeals-which-shall-prescribe-rules
47 and-forms-to-implement-this-subsection payment as
48 provided in section 815.10."

49 9. Page 6, line 12, by striking the word
50 "reasonable" and inserting the following:

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Page 3

- 1 "reasonable".
- 2 10. Page 9, line 30, by inserting after the words
- 3 "of any" the following: "court order following a
- 4 dispositive".
- 5 11. Page 10, line 28, by striking the word
- 6 "receive" and inserting the following: "be given".
- 7 12. Page 11, line 5, by striking the words "for
- 8 use in" and inserting the following: "that may be
- 9 used for".
- 10 13. By numbering and renumbering as necessary.

By O. GENE MADDOX

S-5144 FILED MARCH 4, 1998

WITHDRAWN
3-12-98
(p.692)

SENATE FILE 2281
FISCAL NOTE

A fiscal note for Senate File 2281 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 2281 makes changes pertaining to the payment of costs for the defense of indigent persons in criminal, juvenile, postconviction, contempt actions, and certain other civil actions. The Bill makes changes to the authority of the State Public Defender. The Bill changes the procedures for indigency determination and eligibility. The Bill requires a \$35 installment fee be assessed by the Court when an indigent person does not pay the costs of legal assistance by the sentencing date or within 30 days of the acquittal or dismissal. The Bill provides procedures for hearings for individuals who fail to abide by the terms of their payment plan.

ASSUMPTIONS

1. Installment payments will be utilized by 40.0% of eligible cases.
2. The number of indigent serious misdemeanor cases remains constant at the FY 1997 level of 27,661 with a collection rate of 38.0%.
3. The number of indigent aggravated misdemeanor cases remains constant at the FY 1997 level of 6,280 with a collection rate of 28.0%.
4. The number of indigent OWI cases remains constant at the FY 1997 level of 8,767 with a collection rate of 56.0%.
5. The number of indigent felony cases remains constant at the FY 1997 level of 9,985 with a collection rate of 17.0%.
6. The Judicial Department will follow review procedures and compliance requirements as required by the Bill. Assuming 25.0% of indigent cases would use this review process, Clerk of Court staff time would cost \$5.97 per case. Cases would then be reviewed by a District Court Judge at a cost of \$12.77 per case or a District Associate Judge at a cost of \$11.19 per case. District Court Judges would be utilized for 25.0% of the cases and a District Associate Judge would be utilized for 75.0% of the cases. Department expenditures would increase for FY 1999 by \$231,000 for additional Clerk of Court time, District Court time, and District Court Judges' time.
7. The proposed procedures required by the Court will not affect the current collections by the Judicial Department.

FISCAL IMPACT

Senate File 2281 will increase revenue to the General Fund in FY 1999 by \$264,000. The Bill will increase expenditures by the Judicial Department by \$231,000 in FY 1999. The net effect to the General Fund would be an increase in revenues of \$33,000 in FY 1999 and beyond.

SOURCES

Judicial Department
State Public Defender

(LSB 3409SV, DHK)

FILED MARCH 10, 1998

BY DENNIS PROUTY, FISCAL DIRECTOR

SENATE FILE 2281

S-5225

1 Amend Senate File 2281 as follows:

2 1. By striking page 1, line 31, through page 2,
3 line 25, and inserting the following:

4 "4. The state public defender ~~is authorized to~~
5 ~~review any claim made for payment of indigent defense~~
6 ~~costs and to take the following action if the state~~
7 ~~public defender believes a claim is excessive:~~

8 a. ~~If the claim is from a noncontract attorney,~~
9 ~~the state public defender shall request a review by~~
10 ~~the court granting the claim as to the reasonableness~~
11 ~~of the claim within thirty days of receipt of the~~
12 ~~claim.~~

13 b. ~~If the claim is from a contract attorney, the~~
14 ~~state public defender shall request a review by the~~
15 ~~appointing court as to the reasonableness of the claim~~
16 ~~within thirty days of receipt of the claim shall~~
17 establish hourly rates of compensation to be paid to
18 court-appointed counsel, and shall establish fee
19 limitations for particular categories of cases. The
20 hourly rates and fee limitations shall be reviewed at
21 least every three years.

22 5. The state public defender shall establish an
23 expedited procedure for court-appointed counsel to
24 request advance approval for anticipated compensation
25 in excess of any fee limitation. In determining
26 whether a request should be granted, the state public
27 defender shall consider whether the anticipated
28 services are necessary and reasonable. The state
29 public defender shall not require disclosure by the
30 attorney of any information which is not subject to
31 discovery under applicable law. Actions of the state
32 public defender with regard to requests for advance
33 approval for anticipated compensation in excess of any
34 fee limitation shall be deemed final agency action.

35 Notwithstanding chapter 17A, an attorney whose
36 request for approval is denied may seek an expedited
37 review of the denial by the appointing court, in
38 accordance with rules adopted by the state public
39 defender regarding procedure and conduct of review of
40 denials of requests. The type of review and relief
41 the court may provide shall be limited to the review
42 and relief specified in section 17A.19. The review
43 hearing shall be conducted on an expedited basis, in
44 the manner specified in rules promulgated by the
45 court.

46 6. The state public defender shall establish a
47 procedure for the submission of all claims for payment
48 of indigent defense fees and costs, including the
49 submission of interim claims in appropriate cases.
50 The state public defender shall review any claim made

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WITHDRAWN

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Page 2

1 for payment and shall pay all appropriate and
2 reasonable charges. If any portion of a claim is
3 excessive or not payable under the attorney's
4 appointment, the state public defender may deny that
5 portion of the claim. Actions of the state public
6 defender in approving, denying, or modifying claims
7 shall be deemed final agency action.

8 Notwithstanding the venue restrictions contained in
9 section 17A.19, the appointing court may hear
10 proceedings for judicial review of the actions of the
11 state public defender in approving, denying, or
12 modifying claims for compensation."

13 2. Page 3, by inserting after line 4 the
14 following:

15 "Sec. ____ . Section 13B.9, subsection 1, paragraph
16 b, Code 1997, is amended to read as follows:
17 b. Represent an indigent party, without fee and
18 upon an order of the court, in child in need of
19 assistance, family in need of assistance, delinquency,
20 and termination of parental rights proceedings
21 pursuant to chapter 232 in a county served by a public
22 defender. The local public defender shall counsel and
23 represent an indigent party in all proceedings
24 pursuant to chapter 232 in a county served by a public
25 defender and prosecute before or after judgment any
26 appeals or other remedies which the local public
27 defender considers to be in the interest of justice
28 unless other counsel is appointed to the case. The
29 ~~state-public-defender-shall-be-reimbursed-by-the~~
30 ~~counties-for-services-rendered-by-employees-of-the~~
31 ~~local-public-defenders'-offices-under-this-subsection,~~
32 ~~pursuant-to-section-232-141."~~

33 3. Page 3, by inserting after line 4 the
34 following:

35 "Sec. ____ . Section 13B.8, subsection 2, Code 1997,
36 is amended to read as follows:

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

42 b. The state public defender may appoint assistant
43 local public defenders, clerks, investigators,
44 secretaries, and other employees. An assistant local
45 public defender must be an attorney licensed to
46 practice before the Iowa supreme court and may not
47 engage in the private practice of law."

48 4. Page 3, by inserting after line 6 the
49 following:

50 "Sec. ____ . Section 13B.9, subsection 3, Code 1997,

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-2-

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Page 3

1 is amended by striking the subsection."

2 5. Page 3, by inserting after line 8 the
3 following:

4 "Sec. ____ . Section 124.407, unnumbered paragraphs
5 2 and 7, Code 1997, are amended by striking the
6 unnumbered paragraphs."

7 6. Page 3, by inserting after line 35 the
8 following:

9 "Sec. ____ . Section 232.141, subsections 2 and 3,
10 Code Supplement 1997, are amended to read as follows:

11 2. Upon certification of the court, all of the
12 following expenses are a charge upon the county in
13 which the proceedings are held, to the extent provided
14 in subsection 3:

15 a. The fees and mileage of witnesses and the
16 expenses of officers serving notices and subpoenas
17 incurred by an attorney appointed by the court to
18 serve as counsel or guardian ad litem.

19 b. Reasonable compensation for an attorney
20 appointed by the court to serve as counsel or guardian
21 ad litem.

22 3. Costs incurred under subsection 2 shall be paid
23 as follows:

24 a. A For each fiscal year, a county shall be
25 required-to-pay liable for the-fiscal-year-beginning
26 July-17-1989, an amount equal to the county's base
27 cost for witness and mileage fees and attorney fees
28 established-pursuant-to-section-232-141,-subsection-87
29 paragraph-"d",-Code-1989,-for-the-fiscal-year
30 beginning-July-17-1988,-plus-an-amount-equal-to-the
31 percentage-rate-of-change-in-the-consumer-price-index
32 as-tabulated-by-the-federal-bureau-of-labor-statistics
33 for-the-current-year-times-the-county's-base-cost A
34 county's base cost shall be the amount a county was
35 required to pay pursuant to section 232.141,
36 subsection 3, Code 1997, for the fiscal year beginning
37 July 1, 1997, and ending June 20, 1998, in accordance
38 with the schedule contained in this Act. The payment
39 of the county's base cost shall be made through an
40 offset of the county allocation as provided in section
41 405A.4.

42 b.--A-county's-base-cost-for-a-fiscal-year-plus-the
43 percentage-rate-of-change-amount-as-computed-in
44 paragraph-"a"-is-the-county's-base-cost-for-the
45 succeeding-fiscal-year.--The-amount-to-be-paid-in-the
46 succeeding-year-by-the-county-shall-be-computed-as
47 provided-in-paragraph-"a"-.

48 c. b. Costs incurred under subsection 2, which are
49 not-paid-by-the-county-under-paragraphs-"a"-and-"b"
50 shall be reimbursed paid by the state. Reimbursement

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Page 4

1 Payment for the costs of compensation of an attorney
2 appointed by the court to serve as counsel or guardian
3 ad litem shall be made as provided in section 815.7.
4 A county person eligible for payment by the state
5 shall apply for reimbursement-to-the-department-of
6 inspections-and-appeals-which-shall-prescribe-rules
7 and-forms-to-implement-this-subsection payment as
8 provided in section 815.10.

9 Sec. ____ . Section 237.20, subsection 4, paragraph
10 e, Code Supplement 1997, is amended to read as
11 follows:

12 e. The guardian ad litem of the foster child. The
13 An attorney appointed as guardian ad litem shall be
14 eligible for compensation through section 232.141,
15 subsection ~~7~~-paragraph-"b" 2.

16 Sec. ____ . Section 405A.4, subsection 1, Code 1997,
17 is amended by adding the following new paragraph:

18 NEW PARAGRAPH. d. A deduction of the amount of
19 the county's liability for juvenile court proceedings
20 pursuant to section 232.141."

21 7. Page 5, line 20, by inserting before the word
22 "experience" the following: "qualifications and".

23 8. Page 6, line 12, by striking the word
24 "reasonable" and inserting the following:
25 "reasonable".

26 9. Page 6, line 25, by striking the words "The
27 noncontract" and inserting the following: "The
28 expenses shall include any sum or sums as may be
29 necessary for investigation in the interests of
30 justice and, in the event of any appeal, the cost of
31 obtaining the transcript of the trial and the printing
32 of the trial record and necessary briefs. An".

33 10. Page 6, by striking lines 26 and 27 and
34 inserting the following: "follow the case into
35 another county or into the appellate court unless so
36 directed to do so by the court at-the-request-of-the".

37 11. Page 6, line 30, by inserting after the word
38 "accordingly." the following: "If the attorney
39 follows the case into another county or into appellate
40 court, the attorney shall be entitled to compensation
41 as provided in this section."

42 12. By striking page 9, line 30, through page 10,
43 line 5, and inserting the following: "receiving the
44 legal assistance within ten days of the court's ruling
45 in the case, or if the case is dismissed, within ten
46 days of the dismissal."

47 6. An appointed attorney shall submit a report
48 pertaining to the costs and fees accrued to date for
49 legal assistance to the court at the times specified
50 in subsections 4 and 5. If the appointed attorney is

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Page 5

1 a public defender, the report shall specify the hours
 2 of services plus other expenses. If the appointed
 3 attorney is a private attorney, the report shall
 4 specify the hours of service and the amount of fees
 5 claimed by the attorney plus other expenses. An
 6 appointed attorney shall submit a supplemental report
 7 for any fees and expenses accrued after the times
 8 specified in subsections 4 and 5."

9 13. Page 10, by striking lines 26 through 33 and
 10 inserting the following: "as either a contempt or a
 11 show cause hearing."

12 14. Page 11, line 5, by striking the words "for
 13 use in" and inserting the following: "that may be
 14 used for".

15 15. Page 12, line 14, by striking the word "may"
 16 and inserting the following: "shall".

17 16. Page 12, line 21, by striking the word and
 18 letter "paragraph "c"" and inserting the following:
 19 "paragraph-"e"".

20 17. Page 12, line 24, by inserting after the
 21 words "assembly to the" the following: "office of
 22 state public defender of the".

23 18. Page 13, by inserting after line 4 the
 24 following:

25 "Sec. ____ COUNTY LIABILITY -- JUVENILE JUSTICE
 26 COSTS. A county's liability for juvenile justice
 27 costs under section 232.141, subsections 2 and 3, as
 28 amended by this Act, for the fiscal year beginning
 29 July 1, 1998, and for succeeding fiscal years shall be
 30 as follows:

31	Adair	\$	156
32	Adams	\$	834
33	Allamakee	\$	5,289
34	Appanoose	\$	5,945
35	Audubon	\$	2,005
36	Benton	\$	4,943
37	Black Hawk	\$	102,731
38	Boone	\$	4,525
39	Bremer	\$	748
40	Buchanan	\$	3,176
41	Buena Vista	\$	1,254
42	Butler	\$	3,357
43	Calhoun	\$	893
44	Carroll	\$	1,080
45	Cass	\$	821
46	Cedar	\$	4,156
47	Cerro Gordo	\$	3,755
48	Cherokee	\$	354
49	Chickasaw	\$	4,027
50	Clarke	\$	1,240

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Page 6

1	Clay	\$	1,586
2	Clayton	\$	4,528
3	Clinton	\$	56,288
4	Crawford	\$	835
5	Dallas	\$	506
6	Davis	\$	586
7	Decatur	\$	1,116
8	Delaware	\$	3,662
9	Des Moines	\$	13,979
10	Dickinson	\$	2,080
11	Dubuque	\$	61,845
12	Emmet	\$	1,716
13	Fayette	\$	13,286
14	Floyd	\$	4,783
15	Franklin	\$	980
16	Fremont	\$	2,062
17	Greene	\$	3,050
18	Grundy	\$	8,679
19	Guthrie	\$	468
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21	Hancock	\$	811
22	Hardin	\$	8,111
23	Harrison	\$	652
24	Henry	\$	4,907
25	Howard	\$	10,318
26	Humboldt	\$	1,477
27	Ida	\$	367
28	Iowa	\$	1,362
29	Jackson	\$	4,655
30	Jasper	\$	11,706
31	Jefferson	\$	3,627
32	Johnson	\$	51,401
33	Jones	\$	6,370
34	Keokuk	\$	382
35	Kossuth	\$	848
36	Lee	\$	8,121
37	Linn	\$	91,630
38	Louisa	\$	1,363
39	Lucas	\$	1,247
40	Lyon	\$	1,239
41	Madison	\$	1,345
42	Mahaska	\$	1,490
43	Marion	\$	1,140
44	Marshall	\$	18,695
45	Mills	\$	1,492
46	Mitchell	\$	1,704
47	Monona	\$	1,047
48	Monroe	\$	6,072
49	Montgomery	\$	2,365
50	Muscatine	\$	3,882

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1	O'Brien	\$	2,627
1	Osceola	\$	1,168
3	Page	\$	1,848
4	Palo Alto	\$	1,662
5	Plymouth	\$	637
6	Pocahontas	\$	722
7	Polk	\$	159,117
8	Pottawattamie	\$	23,643
9	Poweshiek	\$	6,968
10	Ringgold	\$	570
11	Sac	\$	904
12	Scott	\$	31,844
13	Shelby	\$	2,077
14	Sioux	\$	1,046
15	Story	\$	26,966
16	Tama	\$	12,323
17	Taylor	\$	2,122
18	Union	\$	6,882
19	Van Buren	\$	968
20	Wapello	\$	14,278
21	Warren	\$	2,062
22	Washington	\$	6,030
23	Wayne	\$	273
24	Webster	\$	20,448
25	Winnebago	\$	344
26	Winneshiek	\$	5,485
27	Woodbury	\$	146,903
28	Worth	\$	260
29	Wright	\$	4,816
30	Total of All Counties	\$	1,079,215"
31	19. By numbering and renumbering as necessary.		

By O. GENE MADDOX

S-5225 FILED MARCH 11, 1998

WITHDRAWN

3-11-98
(P.692)

SENATE FILE 2281

S-5234

1 Amend Senate File 2281 as follows:

2 1. By striking page 1, line 31, through page 2,
3 line 25, and inserting the following:

4 "4. The state public defender ~~is authorized to~~
5 ~~review any claim made for payment of indigent defense~~
6 ~~costs and to take the following action if the state~~
7 ~~public defender believes a claim is excessive:~~

8 a. ~~If the claim is from a noncontract attorney,~~
9 ~~the state public defender shall request a review by~~
10 ~~the court granting the claim as to the reasonableness~~
11 ~~of the claim within thirty days of receipt of the~~
12 ~~claim.~~

13 b. ~~If the claim is from a contract attorney, the~~
14 ~~state public defender shall request a review by the~~
15 ~~appointing court as to the reasonableness of the claim~~
16 ~~within thirty days of receipt of the claim shall~~
17 establish hourly rates of compensation to be paid to
18 court-appointed counsel, and shall establish fee
19 limitations for particular categories of cases. The
20 hourly rates and fee limitations shall be reviewed at
21 least every three years.

22 5. The state public defender shall establish an
23 expedited procedure for court-appointed counsel to
24 request advance approval for anticipated compensation
25 in excess of any fee limitation. In determining
26 whether a request should be granted, the state public
27 defender shall consider whether the anticipated
28 services are necessary and reasonable. The state
29 public defender shall not require disclosure by the
30 attorney of any information which is not subject to
31 discovery under applicable law. Actions of the state
32 public defender with regard to requests for advance
33 approval for anticipated compensation in excess of any
34 fee limitation shall be deemed final agency action.

35 Notwithstanding chapter 17A, an attorney whose
36 request for approval is denied may seek an expedited
37 review of the denial by the appointing court, in
38 accordance with rules adopted by the state public
39 defender regarding procedure and conduct of review of
40 denials of requests. The type of review and relief
41 the court may provide shall be limited to the review
42 and relief specified in section 17A.19. The review
43 hearing shall be conducted on an expedited basis, in
44 the manner specified in rules promulgated by the
45 court.

46 6. The state public defender shall establish a
47 procedure for the submission of all claims for payment
48 of indigent defense fees and costs, including the
49 submission of interim claims in appropriate cases.
50 The state public defender shall review any claim made

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Page 2

1 for payment and shall pay all appropriate and
2 reasonable charges. If any portion of a claim is
3 excessive or not payable under the attorney's
4 appointment, the state public defender may deny that
5 portion of the claim. Actions of the state public
6 defender in approving, denying, or modifying claims
7 shall be deemed final agency action.

8 Notwithstanding the venue restrictions contained in
9 section 17A.19, the appointing court may hear
10 proceedings for judicial review of the actions of the
11 state public defender in approving, denying, or
12 modifying claims for compensation."

13 2. Page 3, by inserting after line 4 the
14 following:

15 "Sec. ____ . Section 13B.9, subsection 1, paragraph
16 b, Code 1997, is amended to read as follows:

17 b. Represent an indigent party, without fee and
18 upon an order of the court, in child in need of
19 assistance, family in need of assistance, delinquency,
20 and termination of parental rights proceedings
21 pursuant to chapter 232 in a county served by a public
22 defender. The local public defender shall counsel and
23 represent an indigent party in all proceedings
24 pursuant to chapter 232 in a county served by a public
25 defender and prosecute before or after judgment any
26 appeals or other remedies which the local public
27 defender considers to be in the interest of justice
28 unless other counsel is appointed to the case. ~~The~~
29 ~~state-public-defender-shall-be-reimbursed-by-the~~
30 ~~counties-for-services-rendered-by-employees-of-the~~
31 ~~local-public-defenders'-offices-under-this-subsection,~~
32 ~~pursuant-to-section-232-141."~~

33 3. Page 3, by inserting after line 4 the
34 following:

35 "Sec. ____ . Section 13B.8, subsection 2, Code 1997,
36 is amended to read as follows:

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

42 b. The state public defender may appoint assistant
43 local public defenders, clerks, investigators,
44 secretaries, and other employees. An assistant local
45 public defender must be an attorney licensed to
46 practice before the Iowa supreme court and may not
47 engage in the private practice of law."

48 4. Page 3, by inserting after line 6 the
49 following:

50 "Sec. ____ . Section 13B.9, subsection 3, Code 1997,

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Page 3

1 is amended by striking the subsection."

2 5. Page 3, by inserting after line 8 the
3 following:

4 "Sec. ____ . Section 124.407, unnumbered paragraphs
5 2 and 7, Code 1997, are amended by striking the
6 unnumbered paragraphs."

7 6. Page 3, by inserting after line 35 the
8 following:

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10 Code Supplement 1997, are amended to read as follows:

11 2. Upon certification of the court, all of the
12 following expenses are a charge upon the county in
13 which the proceedings are held, to the extent provided
14 in subsection 3:

15 a. The fees and mileage of witnesses and the
16 expenses of officers serving notices and subpoenas
17 incurred by an attorney appointed by the court to
18 serve as counsel or guardian ad litem.

19 b. Reasonable compensation for an attorney
20 appointed by the court to serve as counsel or guardian
21 ad litem.

22 3. Costs incurred under subsection 2 shall be paid
23 as follows:

24 a. A For each fiscal year, a county shall be
25 required-to-pay liable for the-fiscal-year-beginning
26 July-1,-1989, an amount equal to the county's base
27 cost for witness and mileage fees and attorney fees
28 established-pursuant-to-section-232.141,-subsection-8,
29 paragraph-"d"-Code-1989,-for-the-fiscal-year
30 beginning-July-1,-1987,-plus-an-amount-equal-to-the
31 percentage-rate-of-change-in-the-consumer-price-index
32 as-tabulated-by-the-federal-bureau-of-labor-statistics
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34 A
35 county's base cost shall be the amount a county was
36 required to pay pursuant to section 232.141,
37 subsection 3, Code 1997, for the fiscal year beginning
38 July 1, 1997, and ending June 30, 1998, in accordance
39 with the schedule contained in this Act. The payment
40 of the county's base cost shall be made through an
41 offset of the county allocation as provided in section
42 405A.4.

42 b. A-county's-base-cost-for-a-fiscal-year-plus-the
43 percentage-rate-of-change-amount-as-computed-in
44 paragraph-"a"-is-the-county's-base-cost-for-the
45 succeeding-fiscal-year.--The-amount-to-be-paid-in-the
46 succeeding-year-by-the-county-shall-be-computed-as
47 provided-in-paragraph-"a"-.

48 c. b. Costs incurred under subsection 2, which-are
49 not-paid-by-the-county-under-paragraphs-"a"-and-"b"
50 shall be reimbursed paid by the state. Reimbursement

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Page 4

1 Payment for the costs of compensation of an attorney
2 appointed by the court to serve as counsel or guardian
3 ad litem shall be made as provided in section 815.7.
4 A county person eligible for payment by the state
5 shall apply for reimbursement-to-the-department-of
6 inspections-and-appeals-which-shall-prescribe-rules
7 and-forms-to-implement-this-subsection payment as
8 provided in section 815.10.

9 Sec. _____. Section 237.20, subsection 4, paragraph
10 e, Code Supplement 1997, is amended to read as
11 follows:

12 e. The guardian ad litem of the foster child. The
13 An attorney appointed as guardian ad litem shall be
14 eligible for compensation through section 232.141,
15 subsection 1, paragraph "b" 2.

16 Sec. _____. Section 405A.4, subsection 1, Code 1997,
17 is amended by adding the following new paragraph:

18 NEW PARAGRAPH. d. A deduction of the amount of
19 the county's liability for juvenile court proceedings
20 pursuant to section 232.141."

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22 "experience" the following: "qualifications and".

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25 "reasonable".

26 9. Page 6, line 25, by striking the words "The
27 noncontract" and inserting the following: "The
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37 11. Page 6, line 30, by inserting after the word
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41 as provided in this section."

42 12. By striking page 9, line 30, through page 10,
43 line 5, and inserting the following: "receiving the
44 legal assistance within ten days of the court's ruling
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46 days of the dismissal.

47 6. An appointed attorney shall submit a report
48 pertaining to the costs and fees accrued to date for
49 legal assistance to the court at the times specified
50 in subsections 4 and 5. If the appointed attorney is

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1 a public defender, the report shall specify the hours
 2 of services plus other expenses. If the appointed
 3 attorney is a private attorney, the report shall
 4 specify the hours of service and the amount of fees
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 13 use in" and inserting the following: "that may be
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15 15. Page 12, line 14, by striking the word "may"
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 18 letter "paragraph "c"" and inserting the following:
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Page 7

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19	Van Buren	\$	968
20	Wapello	\$	14,278
21	Warren	\$	2,062
22	Washington	\$	6,030
23	Wayne	\$	273
24	Webster	\$	20,448
25	Winnebago	\$	344
26	Winneshiek	\$	5,485
27	Woodbury	\$	146,903
28	Worth	\$	260
29	Wright	\$	4,816
30	Total of All Counties	\$	1,079,215"
31	19. By numbering and renumbering as necessary.		

By O. GENE MADDOX

S-5234 FILED MARCH 12, 1998

ADOPTED

(P. 692)

1 Section 1. Section 13B.4, Code 1997, is amended to read as
2 follows:

3 13B.4 DUTIES AND POWERS OF STATE PUBLIC DEFENDER.

4 1. The state public defender shall coordinate the
5 provision of legal representation of all indigents under
6 arrest or charged with a crime, seeking postconviction relief,
7 against whom a contempt action is pending, on appeal in
8 criminal cases, and on appeal in proceedings to obtain
9 postconviction relief when ordered to do so by the district
10 court in which the judgment or order was issued, and may
11 provide for the representation of indigents in proceedings
12 instituted pursuant to chapter 908. The state public defender
13 shall not engage in the private practice of law.

14 2. The state public defender shall file with the clerk of
15 the district court in each county served by a public defender
16 a designation of which local public defender office shall
17 receive notice of appointment of cases. Except as otherwise
18 provided, in each county in which the state public defender
19 files such designation, the state public defender or its
20 designee shall be appointed by the court to represent all
21 eligible indigents, ~~whether-the-case-is-criminal-or-juvenile~~
22 ~~in-nature~~ in all of the cases and proceedings specified under
23 subsection 1. The appointment shall not be made if the state
24 public defender notifies the court that the local public
25 defender will not provide legal representation in cases
26 ~~involving-offenses~~ as identified in the designation by the
27 state public defender.

28 3. The state public defender may contract with persons
29 admitted to practice law in this state for the provision of
30 legal services to indigent ~~or-partially-indigent~~ persons.

31 4. ~~The state public defender is-authorized-to-review-any~~
32 ~~claim-made-for-payment-of-indigent-defense-costs-and-to-take~~
33 ~~the-following-action-if-the-state-public-defender-believes-a~~
34 ~~claim-is-excessive;~~

35 a--if-the-claim-is-from-a-noncontract-attorney--the-state

1 public defender shall request a review by the court granting
2 the claim as to the reasonableness of the claim within thirty
3 days of receipt of the claim.

4 b.---If the claim is from a contract attorney, the state
5 public defender shall request a review by the appointing court
6 as to the reasonableness of the claim within thirty days of
7 receipt of the claim shall establish hourly rates of
8 compensation to be paid to court-appointed counsel, and shall
9 establish fee limitations for particular categories of cases.
10 The hourly rates and fee limitations shall be reviewed at
11 least every three years.

12 5. The state public defender shall establish an expedited
13 procedure for court-appointed counsel to request advance
14 approval for anticipated compensation in excess of any fee
15 limitation. In determining whether a request should be
16 granted, the state public defender shall consider whether the
17 anticipated services are necessary and reasonable. The state
18 public defender shall not require disclosure by the attorney
19 of any information which is not subject to discovery under
20 applicable law. Actions of the state public defender with
21 regard to requests for advance approval for anticipated
22 compensation in excess of any fee limitation shall be deemed
23 final agency action.

24 Notwithstanding chapter 17A, an attorney whose request for
25 approval is denied may seek an expedited review of the denial
26 by the appointing court, in accordance with rules adopted by
27 the state public defender regarding procedure and conduct of
28 review of denials of requests. The type of review and relief
29 the court may provide shall be limited to the review and
30 relief specified in section 17A.19. The review hearing shall
31 be conducted on an expedited basis, in the manner specified in
32 rules promulgated by the court.

33 6. The state public defender shall establish a procedure
34 for the submission of all claims for payment of indigent
35 defense fees and costs, including the submission of interim

1 claims in appropriate cases. The state public defender shall
2 review any claim made for payment and shall pay all
3 appropriate and reasonable charges. If any portion of a claim
4 is excessive or not payable under the attorney's appointment,
5 the state public defender may deny that portion of the claim.
6 Actions of the state public defender in approving, denying, or
7 modifying claims shall be deemed final agency action.

8 Notwithstanding the venue restrictions contained in section
9 17A.19, the appointing court may hear proceedings for judicial
10 review of the actions of the state public defender in
11 approving, denying, or modifying claims for compensation.

12 5 7. The state public defender is-authorized-to may
13 contract with county attorneys to provide collection services
14 related to court-ordered indigent defense restitution of
15 court-appointed attorney fees or the expense of a public
16 defender.

17 6 8. The state public defender shall report in writing to
18 the general assembly by January 20 of each year regarding any
19 funds recouped or collected for court-appointed attorney fees
20 or expenses of a public defender pursuant to section 331.756,
21 subsection 5, or section 602.8107 during the previous calendar
22 year.

23 7 9. The state public defender shall adopt rules, as
24 necessary, pursuant to chapter 17A to administer this chapter
25 and section 815.9.

26 Sec. 2. Section 13B.9, subsection 1, paragraph b, Code
27 1997, is amended to read as follows:

28 b. Represent an indigent party, without fee and upon an
29 order of the court, in child in need of assistance, family in
30 need of assistance, delinquency, and termination of parental
31 rights proceedings pursuant to chapter 232 in a county served
32 by a public defender. The local public defender shall counsel
33 and represent an indigent party in all proceedings pursuant to
34 chapter 232 in a county served by a public defender and
35 prosecute before or after judgment any appeals or other

1 remedies which the local public defender considers to be in
2 the interest of justice unless other counsel is appointed to
3 the case. The state public defender shall be reimbursed by
4 the counties for services rendered by employees of the local
5 public defenders' offices under this subsection, pursuant to
6 section 232.141.

7 Sec. 3. Section 13B.8, subsection 2, Code 1997, is amended
8 to read as follows:

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

13 b. The state public defender may appoint assistant local
14 public defenders, clerks, investigators, secretaries, and
15 other employees. An assistant local public defender must be
16 an attorney licensed to practice before the Iowa supreme court
17 and may not engage in the private practice of law.

18 Sec. 4. Section 13B.9, subsection 1, paragraph c, Code
19 1997, is amended by striking the paragraph.

20 Sec. 5. Section 13B.9, subsection 3, Code 1997, is amended
21 by striking the subsection.

22 Sec. 6. Section 13B.10, subsections 2 through 4, Code
23 1997, are amended by striking the subsections.

24 Sec. 7. Section 124.407, unnumbered paragraphs 2 and 7,
25 Code 1997, are amended by striking the unnumbered paragraphs.

26 Sec. 8. Section 229.19, unnumbered paragraph 3, Code 1997,
27 is amended to read as follows:

28 The court or, if the advocate is appointed by the county
29 board of supervisors, the board shall prescribe reasonable
30 compensation for the services of the advocate. The
31 compensation shall be based upon the reports filed by the
32 advocate with the court. The advocate's compensation shall be
33 paid by the county in which the court is located, either on
34 order of the court or, if the advocate is appointed by the
35 county board of supervisors, on the direction of the board.

1 If the advocate is appointed by the court, the advocate is an
2 employee of the state for purposes of chapter 669. If the
3 advocate is appointed by the county board of supervisors, the
4 advocate is an employee of the county for purposes of chapter
5 670. If the patient or the person who is legally liable for
6 the patient's support is not indigent, the board shall recover
7 the costs of compensating the advocate from that person. If
8 ~~that person has an income level as determined pursuant to~~
9 ~~section 815.9 greater than one hundred percent but not more~~
10 ~~than one hundred fifty percent of the poverty guidelines, at~~
11 ~~least one hundred dollars of the advocate's compensation shall~~
12 ~~be recovered in accordance with rules adopted by the state~~
13 ~~public defender. If that person has an income level as~~
14 ~~determined pursuant to section 815.9 greater than one hundred~~
15 ~~fifty percent of the poverty guidelines, at least two hundred~~
16 ~~dollars of the advocate's compensation shall be recovered in~~
17 ~~accordance with rules adopted by the state public defender.~~

18 Sec. 9. Section 232.141, subsections 2 and 3, Code
19 Supplement 1997, are amended to read as follows:

20 2. Upon certification of the court, all of the following
21 expenses are a charge upon the county in which the proceedings
22 are held, to the extent provided in subsection 3:

23 a. The fees and mileage of witnesses and the expenses of
24 officers serving notices and subpoenas incurred by an attorney
25 appointed by the court to serve as counsel or guardian ad
26 litem.

27 b. Reasonable compensation for an attorney appointed by
28 the court to serve as counsel or guardian ad litem.

29 3. Costs incurred under subsection 2 shall be paid as
30 follows:

31 a. A For each fiscal year, a county shall be required to
32 pay liable for the fiscal year beginning July 1, 1989, an
33 amount equal to the county's base cost for witness and mileage
34 fees and attorney fees established pursuant to section
35 232.141, subsection 8, paragraph "d", Code 1989, for the

1 fiscal-year-beginning-July-1,-1988,-plus-an-amount-equal-to
 2 the-percentage-rate-of-change-in-the-consumer-price-index-as
 3 tabulated-by-the-federal-bureau-of-labor-statistics-for-the
 4 current-year-times-the-county's-base-cost A county's base cost
 5 shall be the amount a county was required to pay pursuant to
 6 section 232.141, subsection 3, Code 1997, for the fiscal year
 7 beginning July 1, 1997, and ending June 30, 1998, in
 8 accordance with the schedule contained in this Act. The
 9 payment of the county's base cost shall be made through an
 10 offset of the county allocation as provided in section 405A.4.

11 b.--A-county's-base-cost-for-a-fiscal-year-plus-the
 12 percentage-rate-of-change-amount-as-computed-in-paragraph-"a"
 13 is-the-county's-base-cost-for-the-succeeding-fiscal-year.--The
 14 amount-to-be-paid-in-the-succeeding-year-by-the-county-shall
 15 be-computed-as-provided-in-paragraph-"a".

16 e. b. Costs incurred under subsection 2, which are not
 17 paid-by-the-county-under-paragraphs-"a"-and-"b" shall be
 18 reimbursed paid by the state. Reimbursement Payment for the
 19 costs of compensation of an attorney appointed by the court to
 20 serve as counsel or guardian ad litem shall be made as
 21 provided in section 815.7. A county person eligible for
 22 payment by the state shall apply for reimbursement-to-the
 23 department-of-inspections-and-appeals-which-shall-prescribe
 24 rules-and-forms-to-implement-this-subsection payment as
 25 provided in section 815.10.

26 Sec. 10. Section 237.20, subsection 4, paragraph e, Code
 27 Supplement 1997, is amended to read as follows:

28 e. The guardian ad litem of the foster child. The An
 29 attorney appointed as guardian ad litem shall be eligible for
 30 compensation through section 232.141, subsection 1, paragraph
 31 "b" 2.

32 Sec. 11. Section 405A.4, subsection 1, Code 1997, is
 33 amended by adding the following new paragraph:

34 NEW PARAGRAPH. d. A deduction of the amount of the
 35 county's liability for juvenile court proceedings pursuant to

1 section 232.141.

2 Sec. 12. Section 602.8106, subsection 1, Code 1997, is
3 amended by adding the following new paragraph:

4 NEW PARAGRAPH. g. The thirty-five dollar installment
5 payment fee assessed in the manner provided in section 815.9.

6 Sec. 13. Section 602.8107, subsection 2, unnumbered
7 paragraph 1, Code Supplement 1997, is amended to read as
8 follows:

9 If the clerk receives payment from a person who is an
10 inmate of a state institution or who is under the supervision
11 of a judicial district department of correctional services,
12 the payment shall be applied to the balance owed under the
13 identified case number of the case which has resulted in the
14 placement of the person in a state institution or under the
15 supervision of the judicial district department of
16 correctional services. If a case number is not identified,
17 the clerk shall apply the payment to the balance owed in the
18 criminal case with the oldest judgment against the person.

19 Payments After payment of a thirty-five dollar installment
20 payment fee under section 815.9, payments received under this
21 section shall be applied in the following priority order:

22 Sec. 14. Section 602.8108, subsection 2, Code 1997, is
23 amended to read as follows:

24 2. Except as otherwise provided, the clerk of the district
25 court shall report and submit to the state court
26 administrator, not later than the fifteenth day of each month,
27 the fines and fees received during the preceding calendar
28 month. Except as provided in subsections 4 and 5, the state
29 court administrator shall deposit the amounts received with
30 the treasurer of state for deposit in the general fund of the
31 state. The state court administrator shall report to the
32 legislative fiscal bureau within thirty days of the beginning
33 of each fiscal quarter the amount received during the previous
34 quarter in the account established under this section. The
35 report shall contain a separate accounting for any amounts

1 received for payment of the thirty-five dollar installment
2 payment fees assessed under section 815.9.

3 Sec. 15. Section 814.11, Code 1997, is amended to read as
4 follows:

5 814.11 INDIGENT'S RIGHT TO COUNSEL.

6 An indigent defendant is entitled to appointed counsel on
7 the appeal of all indictable offenses. Such The appointment
8 is-subject-to-rules-of-the-supreme-court shall be made to the
9 state appellate defender unless the state appellate defender
10 is unable to handle the case due to a conflict of interest or
11 because of a temporary overload of cases. If the state
12 appellate defender is unable to handle the case, the court
13 shall appoint an attorney who has a contract with the state
14 public defender to handle such an appeal. If the court
15 determines that no contract attorney is available to handle
16 the appeal, the court may appoint a noncontract attorney who
17 has agreed to handle the case, but the order of appointment
18 shall include a specific finding that no contract attorney was
19 available. The appointment of noncontract attorneys shall be
20 on a rotational or equalization basis, considering the
21 qualifications and experience of the attorney and the
22 difficulty of the case.

23 Sec. 16. Section 815.4, Code 1997, is amended to read as
24 follows:

25 815.4 SPECIAL WITNESSES FOR INDIGENTS.

26 Witnesses secured for indigent ~~or-partially-indigent~~
27 defendants under R.Cr.P. 19 must file a claim for compensation
28 supported by an affidavit specifying the time expended,
29 services rendered, and expenses incurred on behalf of the
30 defendant.

31 Sec. 17. Section 815.5, Code 1997, is amended to read as
32 follows:

33 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

34 Notwithstanding the provisions of section 622.72,
35 reasonable compensation as determined by the court shall be

1 awarded expert witnesses, expert witnesses for an indigent or
2 partially-indigent person referred to in section 815.4, or
3 called by the state in criminal cases.

4 Sec. 18. Section 815.7, Code Supplement 1997, is amended
5 to read as follows:

6 815.7 FEES TO ATTORNEYS.

7 An attorney who has not entered into a contract authorized
8 under section 13B.4 and who is appointed by the court to
9 represent any person charged with a crime in this state,
10 seeking postconviction relief, against whom a contempt action
11 is pending, appealing a criminal conviction, appealing a
12 denial of postconviction relief, or to serve as counsel for
13 any person or guardian ad litem to a person for any child in
14 juvenile court in this state shall be entitled to a reasonable
15 compensation which shall be the ordinary and customary charges
16 for like services in the community to be decided in each case
17 by a judge of the district court or of the juvenile court, as
18 applicable, including such sum or sums as the court may
19 determine are necessary for investigation in the interests of
20 justice and in the event of appeal the cost of obtaining the
21 transcript of the trial and the printing of the trial record
22 and necessary briefs in behalf of the defendant. -- However, the
23 reasonable compensation awarded an attorney shall not be
24 calculated based upon an at the same hourly rate that exceeds
25 the rate and for the same activities and expenses that a
26 contract attorney as provided in section 13B.4 would receive
27 in a similar case. Such The expenses shall include any sum or
28 sums as may be necessary for investigation in the interests of
29 justice and, in the event of any appeal, the cost of obtaining
30 the transcript of the trial and the printing of the trial
31 record and necessary briefs. An attorney need not follow the
32 case into another county or into the appellate court unless so
33 directed to do so by the court at the request of the
34 defendant, where grounds for further litigation are not
35 capricious or unreasonable, but if such attorney does so, the

1 ~~attorney's fee shall be determined accordingly.~~ If the
2 attorney follows the case into another county or into
3 appellate court, the attorney shall be entitled to
4 compensation as provided in this section. Only one attorney
5 fee shall be so awarded in any one case except that in class
6 "A" felony cases, two may be authorized.

7 Sec. 19. Section 815.9, Code 1997, is amended to read as
8 follows:

9 815.9 INDIGENCY DETERMINED -- PENALTY.

10 1. For purposes of this chapter, ~~section-68-8, section~~
11 ~~222-22~~ chapter 13B, chapter 232, chapter 665, chapter 814,
12 chapter 822, and the rules of criminal procedure, the
13 following apply a person is indigent if the person is entitled
14 to an attorney appointed by the court as follows:

15 a. A person is indigent entitled to an attorney appointed
16 by the court to represent the person if the person has an
17 income level at or below one hundred fifty twenty-five percent
18 of the United States poverty level as defined by the most
19 recently revised poverty income guidelines published by the
20 United States department of health and human services, unless
21 the court determines that the person is able to pay for the
22 cost of an attorney to represent the person on the pending
23 charges. In making the determination of a person's ability to
24 pay for the cost of an attorney, the court shall consider not
25 only the person's income, but also the availability of any
26 assets not subject to execution, including but not limited to
27 cash, stocks, bonds, and any other property which may be
28 applied to the satisfaction of judgments.

29 ~~b.---A person is not indigent if the person has an income~~
30 ~~level greater than one hundred fifty percent of the United~~
31 ~~States poverty level as defined by the most recently revised~~
32 ~~poverty income guidelines published by the United States~~
33 ~~department of health and human services.~~

34 c b. A person with an income level greater than one
35 hundred fifty twenty-five percent, but ~~less than~~ at or below

1 two hundred percent, of the most recently revised poverty
2 income guidelines published by the United States department of
3 health and human services ~~may-be-deemed-partially-indigent-by~~
4 shall not be entitled to an attorney appointed by the court,
5 unless the court pursuant to makes a written finding that,
6 ~~given-the-person's-circumstances,~~ not appointing counsel on
7 the pending charges would cause the person substantial
8 hardship. ~~However,-the-court-shall-require-a-person-appointed~~
9 ~~counsel-to-contribute-to-the-cost-of-representation-in~~
10 ~~accordance-with-rules-adopted-by-the-state-public-defender-~~
11 In determining whether substantial hardship would result, the
12 court shall consider not only the person's income, but also
13 the availability of any assets not subject to execution,
14 including but not limited to cash, stocks, bonds, and any
15 other property which may be applied to the satisfaction of
16 judgments.

17 d c. A person with an income level greater than two
18 hundred percent of the most recently revised poverty income
19 guidelines published by the United States department of health
20 and human services shall not be deemed ~~indigent-or-partially~~
21 ~~indigent~~ entitled to any attorney appointed by the court,
22 unless the person is charged with a felony and the court makes
23 a written finding that ~~,-given-the-person's-circumstances,~~ not
24 appointing counsel would cause the person substantial
25 hardship. ~~However,-the-court-shall-require-a-person-appointed~~
26 ~~counsel-to-contribute-to-the-cost-of-representation-in~~
27 ~~accordance-with-rules-adopted-by-the-state-public-defender-~~
28 In determining whether substantial hardship would result, the
29 court shall consider not only the person's income, but also
30 the availability of any assets not subject to execution,
31 including but not limited to cash, stocks, bonds, and any
32 other property which may be applied to the satisfaction of
33 judgments.

34 2. A determination of ~~the-indigent-status-of~~ whether a
35 person is entitled to an appointed attorney shall be made on

1 the basis of an affidavit of financial status submitted at the
2 time of the person's initial appearance before a court or at
3 such later time as a request for court appointment is made.
4 ~~If a person is granted legal assistance as an indigent or~~
5 ~~partial indigent, the financial statement shall be filed and~~
6 ~~permanently retained in the person's court file.~~ The state
7 public defender shall adopt rules prescribing the form and
8 content of the affidavit of financial statement and the
9 ~~criteria by which a determination of indigency shall be based~~
10 status. The affidavit of financial statement status shall be
11 signed under penalty of perjury and shall contain sufficient
12 information to allow the determination to be made of whether
13 the person ~~meets the guidelines set out in subsection i and~~
14 ~~shall be accompanied by the person's most recent pay slip, if~~
15 employed is entitled to an appointed attorney under this
16 section. If the person is granted an appointed attorney, the
17 affidavit of financial status shall be filed and permanently
18 retained in the person's court file.

19 3. ~~A person who knowingly submits a false financial~~
20 ~~statement for the purpose of obtaining legal assistance by~~
21 ~~appointed counsel commits a fraudulent practice.~~ If a person
22 is granted an appointed attorney, the person shall be required
23 to reimburse the state for the total cost of legal assistance
24 provided to the person. ~~As used in this subsection, "legal~~
25 ~~assistance" includes legal counsel.~~ "Legal assistance" as used
26 in this section shall include not only an appointed attorney,
27 but also transcripts, witness fees and, expenses, and any
28 other goods or services required by law to be provided to an
29 indigent person.

30 4. If the case is a criminal case, all costs and fees
31 incurred for legal assistance shall become due and payable to
32 the clerk of the district court by the person receiving the
33 legal assistance not later than the date of sentencing, or if
34 the person is acquitted or the charges are dismissed, within
35 thirty days of the acquittal or dismissal.

1 5. If the case is other than a criminal case, all costs
2 and fees incurred for legal assistance shall become due and
3 payable to the clerk of the district court by the person
4 receiving the legal assistance within ten days of the court's
5 ruling in the case, or if the case is dismissed, within ten
6 days of the dismissal.

7 6. An appointed attorney shall submit a report pertaining
8 to the costs and fees accrued to date for legal assistance to
9 the court at the times specified in subsections 4 and 5. If
10 the appointed attorney is a public defender, the report shall
11 specify the hours of services plus other expenses. If the
12 appointed attorney is a private attorney, the report shall
13 specify the hours of service and the amount of fees claimed by
14 the attorney plus other expenses. An appointed attorney shall
15 submit a supplemental report for any fees and expenses accrued
16 after the times specified in subsections 4 and 5.

17 7. If the costs and fees incurred for legal assistance are
18 not paid at the times specified in subsections 4 and 5, the
19 court shall assess an installment payment fee of thirty-five
20 dollars against the person who has received legal assistance.
21 Notwithstanding anything in sections 910.1, 910.2, and 910.9
22 to the contrary, the thirty-five dollar installment payment
23 fee shall be paid prior to crediting any payments received
24 against any amounts due from the person, notwithstanding
25 anything to the contrary in section 910.2. Payment of the
26 thirty-five dollar installment payment fee shall be separately
27 accounted for by the clerk and forwarded together with any
28 other amounts collected for payment of restitution and other
29 finances, penalties, fees, court costs, and surcharges under
30 section 602.8107.

31 8. If all costs and fees incurred for legal assistance are
32 not paid at the times specified in subsections 4 and 5, the
33 court shall order payment of the fees and costs in reasonable
34 installments. Any hearings held for purposes of monitoring
35 compliance with any installment payment plan are not contempt

1 hearings, unless the court specifically designates the hearing
2 as either a contempt or a show cause hearing.

3 9. If a person is granted an appointed attorney or is
4 receiving legal assistance in accordance with this section and
5 the person is employed, the person shall execute an assignment
6 of wages. An order for assignment of income, in a reasonable
7 amount to be determined by the court, shall also be entered by
8 the court. The state public defender shall prescribe forms
9 that may be used for wage assignments and court orders entered
10 under this section.

11 10. If any costs and fees are not paid at the times
12 specified under subsections 4 and 5, a judgment shall be
13 entered against the person for any unpaid amounts.

14 Sec. 20. Section 815.10, Code 1997, is amended to read as
15 follows:

16 815.10 APPOINTMENT OF COUNSEL BY COURT.

17 1. The court, for cause and upon its own motion or upon
18 application by an indigent person or a public defender, shall
19 appoint the state public defender, the state public defender's
20 designee pursuant to section 13B.4, or an attorney pursuant to
21 section 13B.9 to represent an indigent person at any stage of
22 the criminal, postconviction, contempt, or juvenile
23 proceedings or on appeal of any criminal, postconviction,
24 contempt, or juvenile action in which the indigent person is
25 entitled to legal assistance at public expense. However, in
26 juvenile cases, the court may directly appoint an existing
27 nonprofit corporation established for and engaged in the
28 provision of legal services for juveniles. An appointment
29 shall not be made unless the person is determined to be
30 indigent under section 815.9. Only one attorney shall be
31 appointed in all cases, except that in class "A" felony cases
32 the court may appoint two attorneys.

33 2. An attorney other than a public defender or-a-contract
34 attorney who is appointed by the court under this section
35 shall apply to the district-court state public defender for

1 compensation and for reimbursement of costs incurred. The
2 amount of compensation due shall be determined in accordance
3 with any indigent defense contract or pursuant to section
4 815.7.

5 3. ~~A contract attorney appointed by the court pursuant to~~
6 ~~this section and section 13B.4 shall apply to the state public~~
7 ~~defender for compensation and for reimbursement of costs~~
8 ~~incurred in accordance with the contract. The amount of~~
9 ~~compensation due shall be determined in accordance with the~~
10 ~~contract. The state public defender shall adopt rules which~~
11 specify the specific information which shall be included with
12 all claims for compensation submitted by court-appointed
13 attorneys under this section. If the information required
14 under this section and the rules of the state public defender
15 are not submitted, the claim may be denied until the
16 information is provided. If the information required under
17 this section and the rules of the state public defender is
18 submitted with the claim, the state public defender shall
19 approve reasonable and proper compensation to the court-
20 appointed attorney in the manner provided in those rules.

21 Sec. 21. Section 815.11, Code 1997, is amended to read as
22 follows:

23 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

24 Costs incurred under section 232.141, subsection 3,
25 paragraph "c", sections 814.9, 814.10, 814.11, 815.4, 815.5,
26 815.6, 815.7, 815.10, and 822.5, chapter 665, or the rules of
27 criminal procedure on behalf of an indigent shall be paid from
28 funds appropriated by the general assembly to the office of
29 state public defender of the department of inspections and
30 appeals for those purposes.

31 Sec. 22. Section 822.5, subsection 2, Code 1997, is
32 amended by striking the subsection.

33 Sec. 23. EMERGENCY RULES. The office of the state public
34 defender of the department of inspections and appeals may
35 adopt administrative rules under section 17A.4, subsection 2,

1 and section 17A.5, subsection 2, paragraph "b", to implement
 2 the provisions of this Act. The rules shall become effective
 3 immediately upon filing, unless a later effective date is
 4 specified in the rules. Any rules adopted in accordance with
 5 this section shall not take effect before the rules are
 6 reviewed by the administrative rules review committee. Any
 7 rules adopted in accordance with the provisions of this
 8 section shall also be published as notice of intended action
 9 as provided in section 17A.4.

10 Sec. 24. COUNTY LIABILITY -- JUVENILE JUSTICE COSTS. A
 11 county's liability for juvenile justice costs under section
 12 232.141, subsections 2 and 3, as amended by this Act, for the
 13 fiscal year beginning July 1, 1998, and for succeeding fiscal
 14 years shall be as follows:

15	Adair	\$	156
16	Adams	\$	834
17	Allamakee	\$	5,289
18	Appanoose	\$	5,945
19	Audubon	\$	2,005
20	Benton	\$	4,943
21	Black Hawk	\$	102,731
22	Boone	\$	4,525
23	Bremer	\$	748
24	Buchanan	\$	3,176
25	Buena Vista	\$	1,254
26	Butler	\$	3,357
27	Calhoun	\$	893
28	Carroll	\$	1,080
29	Cass	\$	821
30	Cedar	\$	4,156
31	Cerro Gordo	\$	3,755
32	Cherokee	\$	354
33	Chickasaw	\$	4,027
34	Clarke	\$	1,240
35	Clay	\$	1,586

1	Clayton	\$ 4,528
2	Clinton	\$ 56,288
3	Crawford	\$ 835
4	Dallas	\$ 506
5	Davis	\$ 586
6	Decatur	\$ 1,116
7	Delaware	\$ 3,662
8	Des Moines	\$ 13,979
9	Dickinson	\$ 2,080
10	Dubuque	\$ 61,845
11	Emmet	\$ 1,716
12	Fayette	\$ 13,286
13	Floyd	\$ 4,783
14	Franklin	\$ 980
15	Fremont	\$ 2,062
16	Greene	\$ 3,050
17	Grundy	\$ 8,679
18	Guthrie	\$ 468
19	Hamilton	\$ 11,077
20	Hancock	\$ 811
21	Hardin	\$ 8,111
22	Harrison	\$ 652
23	Henry	\$ 4,907
24	Howard	\$ 10,318
25	Humboldt	\$ 1,477
26	Ida	\$ 367
27	Iowa	\$ 1,362
28	Jackson	\$ 4,655
29	Jasper	\$ 11,706
30	Jefferson	\$ 3,627
31	Johnson	\$ 51,401
32	Jones	\$ 6,370
33	Keokuk	\$ 382
34	Kossuth	\$ 848
35	Lee	\$ 8,121

1	<u>Linn</u>	\$	<u>91,630</u>
2	<u>Louisa</u>	\$	<u>1,363</u>
3	<u>Lucas</u>	\$	<u>1,247</u>
4	<u>Lyon</u>	\$	<u>1,239</u>
5	<u>Madison</u>	\$	<u>1,345</u>
6	<u>Mahaska</u>	\$	<u>1,490</u>
7	<u>Marion</u>	\$	<u>1,140</u>
8	<u>Marshall</u>	\$	<u>18,695</u>
9	<u>Mills</u>	\$	<u>1,492</u>
10	<u>Mitchell</u>	\$	<u>1,704</u>
11	<u>Monona</u>	\$	<u>1,047</u>
12	<u>Monroe</u>	\$	<u>6,072</u>
13	<u>Montgomery</u>	\$	<u>2,365</u>
14	<u>Muscatine</u>	\$	<u>3,882</u>
15	<u>O'Brien</u>	\$	<u>2,627</u>
16	<u>Osceola</u>	\$	<u>1,163</u>
17	<u>Page</u>	\$	<u>1,848</u>
18	<u>Palo Alto</u>	\$	<u>1,662</u>
19	<u>Plymouth</u>	\$	<u>537</u>
20	<u>Pocahontas</u>	\$	<u>722</u>
21	<u>Polk</u>	\$	<u>159,117</u>
22	<u>Pottawattamie</u>	\$	<u>23,643</u>
23	<u>Poweshiek</u>	\$	<u>6,968</u>
24	<u>Ringgold</u>	\$	<u>570</u>
25	<u>Sac</u>	\$	<u>904</u>
26	<u>Scott</u>	\$	<u>31,844</u>
27	<u>Shelby</u>	\$	<u>2,077</u>
28	<u>Sioux</u>	\$	<u>1,046</u>
29	<u>Story</u>	\$	<u>26,966</u>
30	<u>Tama</u>	\$	<u>12,323</u>
31	<u>Taylor</u>	\$	<u>2,122</u>
32	<u>Union</u>	\$	<u>6,882</u>
33	<u>Van Buren</u>	\$	<u>968</u>
34	<u>Wapello</u>	\$	<u>14,278</u>
35	<u>Warren</u>	\$	<u>2,062</u>

1	Washington	\$	6,030
2	Wayne	\$	273
3	Webster	\$	20,448
4	Winnebago	\$	344
5	Winneshiek	\$	5,485
6	Woodbury	\$	146,903
7	Worth	\$	260
8	Wright	\$	4,816
9	<u>Total of All Counties</u>	<u>\$</u>	<u>1,079,215</u>

10 Sec. 25. Sections 815.9A and 815.10A, Code 1997, are
11 repealed.

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SENATE FILE 2281

H-9236

1 Amend Senate File 2281, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, line 9, by inserting after the word
4 "cases." the following: "In establishing hourly rates
5 or setting per case fee limitations, the state public
6 defender shall consider evidence of ordinary,
7 reasonable and customary charges; rates previously
8 paid by the state; the nature and penal consequences
9 associated with the offense charged; value and costs
10 associated with in-court time, value and costs
11 associated with out-of-court time; and any other
12 relevant factors."

13 2. Page 2, by striking lines 20 through 32 and
14 inserting the following: "applicable law."

15 Notwithstanding chapter 17A, an appointed attorney
16 may seek expedited review of actions of the state
17 public defender with regard to a request for advance
18 approval for anticipated compensation in excess of any
19 fee limitation by filing a motion with the appointing
20 court."

21 3. Page 3, by striking lines 6 through 11 and
22 inserting the following:

23 "Notwithstanding chapter 17A, an appointed attorney
24 may seek review of actions of the state public
25 defender which approve in part, deny, or modify a
26 claim for compensation by filing a motion with the
27 appointing court."

By LAMBERTI of Polk

H-9236 FILED APRIL 16, 1998

Adopted
4-17-98
(P.1733)

SENATE AMENDMENT TO
HOUSE AMENDMENT TO
SENATE FILE 2281

H-9325

1 Amend the amendment, S-5743, to Senate File 2281,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, lines 4 and 5, by striking the words
5 "hourly rates or setting per case".

6 2. Page 1, line 20, by inserting after the word
7 "court." the following: "The type of review and
8 relief that the court may provide shall be limited to
9 the review and relief specified in section 17A.19."

10 3. Page 1, line 27, by inserting after the word
11 "court." the following: "The type of review and
12 relief that the court may provide shall be limited to
13 the review and relief specified in section 17A.19."

14 4. Page 1, by inserting after line 27 the
15 following:

16 "____. Page 4, by inserting after line 25 the
17 following:

18 "Sec. ____ . Section 28E.19, Code 1997, is amended
19 to read as follows:

20 28E.19 JOINT COUNTY INDIGENT DEFENSE FUND.

21 Two or more counties may execute an agreement under
22 this chapter to create a joint county indigent defense
23 fund to be used to compensate attorneys appointed to
24 represent indigents under-section-815-10-when-funds
25 budgeted-for-that-purpose-are-exhausted in those
26 instances in which a county is responsible for
27 payment. In addition to other requirements of an
28 agreement under this chapter, the agreement shall
29 provide for the amount to be paid by each county based
30 on its population to establish and maintain an
31 appropriate balance in the joint fund, and for a
32 method of repayment if a county withdraws more funds
33 than it has contributed."

34 ____ . Page 4, by inserting after line 25 the
35 following:

36 "Sec. ____ . Section 125.78, subsections 1 and 2,
37 Code 1997, are amended to read as follows:

38 1. Determine whether the respondent has an
39 attorney who is able and willing to represent the
40 respondent in the commitment proceeding, and if not,
41 whether the respondent is financially able to employ
42 an attorney and capable of meaningfully assisting in
43 selecting an attorney. In accordance with those
44 determinations, the court shall allow the respondent
45 to select an attorney or shall assign an attorney to
46 the respondent. If the respondent is financially
47 unable to pay an attorney, the county shall pay the
48 attorney shall-be-compensated-in-substantially-the
49 same-manner-as-provided-by-section-815-77-except-that
50 if-the-county-has-a-public-defender, the court may

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Page 2

~~1 assign the public defender or an attorney on the~~
~~2 public defender's staff as the respondent's attorney~~
3 reasonable compensation which shall be the ordinary
4 and customary charges for like services in the county
5 to be determined in each case by the district court.
6 Compensation shall include any sum or sums as may be
7 necessary for investigation in the interests of
8 justice and, in the event of any appeal, the cost of
9 obtaining the transcript of the trial and the printing
10 of the trial record and any necessary briefs.

11 2. If the application includes a request for a
12 court-appointed attorney for the applicant and the
13 court is satisfied that a court-appointed attorney is
14 necessary to assist the applicant in a meaningful
15 presentation of the evidence, and that the applicant
16 is financially unable to employ an attorney, the court
17 shall appoint an attorney to represent the applicant.
18 The county shall pay the attorney shall be compensated
19 in substantially the same manner as provided by
20 section 815.7 reasonable compensation which shall be
21 the ordinary and customary charges for like services
22 in the county to be determined in each case by the
23 district court. Compensation shall include any sum or
24 sums as may be necessary for investigation in the
25 interests of justice and, in the event of any appeal,
26 the cost of obtaining the transcript of the trial and
27 the printing of the trial record and any necessary
28 briefs.

29 Sec. ____ . Section 222.13A, subsection 4, Code
30 1997, is amended to read as follows:

31 4. As soon as practicable after the filing of a
32 petition for approval of the voluntary admission, the
33 court shall determine whether the minor has an
34 attorney to represent the minor in the proceeding. If
35 the minor does not have an attorney, the court shall
36 assign to the minor an attorney. If the minor is
37 unable to pay for an attorney, ~~the attorney shall be~~
38 ~~compensated in substantially the same manner as~~
39 ~~provided in section 815.7~~ the county shall pay the
40 attorney reasonable compensation which shall be the
41 ordinary and customary charges for like services in
42 the county to be determined in each case by the
43 district court. Compensation shall include any sum or
44 sums as may be necessary for investigation in the
45 interests of justice and, in the event of any appeal,
46 the cost of obtaining the transcript of the trial and
47 the printing of the trial record and any necessary
48 briefs.

49 Sec. ____ . Section 222.22, Code 1997, is amended to
50 read as follows:

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Page 3

1 222.22 TIME OF APPEARANCE.

2 The time of appearance shall not be less than five
3 days after completed service unless the court orders
4 otherwise. Appearance on behalf of the person who is
5 alleged to have mental retardation may be made by any
6 citizen of the county or by any relative. The
7 district court shall assign counsel for the person who
8 is alleged to have mental retardation. Counsel shall
9 prior to proceedings personally consult with the
10 person who is alleged to have mental retardation
11 unless the judge appointing counsel certifies that in
12 the judge's opinion, consultation shall serve no
13 useful purpose. The certification shall be made a
14 part of the record. ~~An attorney assigned by the court~~
15 ~~shall receive compensation as the district court shall~~
16 ~~fix to be paid in the first instance by the county.~~
17 The county, in the first instance, shall pay the
18 attorney assigned by the court reasonable compensation
19 which shall be the ordinary and customary charges for
20 like services in the county to be determined in each
21 case by the district court. Compensation shall
22 include any sum or sums as may be necessary for
23 investigation in the interests of justice and, in the
24 event of any appeal, the cost of obtaining the
25 transcript of the trial and the printing of the trial
26 record and any necessary briefs.

27 Sec. ____ . Section 229.8, subsection 1, Code 1997,
28 is amended to read as follows:

29 1. Determine whether the respondent has an
30 attorney who is able and willing to represent the
31 respondent in the hospitalization proceeding, and if
32 not, whether the respondent is financially able to
33 employ an attorney and capable of meaningfully
34 assisting in selecting one. In accordance with those
35 determinations, the court shall if necessary allow the
36 respondent to select, or shall assign to the
37 respondent, an attorney. If the respondent is
38 financially unable to pay an attorney, ~~the attorney~~
39 ~~shall be compensated in substantially the manner~~
40 ~~provided by section 015.7, except that if the county~~
41 ~~has a public defender the court may designate the~~
42 ~~public defender or an attorney on the public~~
43 ~~defender's staff to act as the respondent's attorney~~
44 the county shall pay the attorney reasonable
45 compensation which shall be the ordinary and customary
46 charges for like charges for like services in the
47 county, which shall be determined in each by the
48 district court. Compensation shall include any sum or
49 sums as may be necessary for investigation in the
50 interests of justice and, in the event of any appeal,

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Page 4

1 the cost of obtaining the transcript of the trial and
2 the printing of the trial record and any necessary
3 briefs."

4 _____. By striking page 4, line 26, through page 5,
5 line 17, and inserting the following:

6 "Sec. _____. Section 229.19, unnumbered paragraph 3,
7 Code 1997, is amended to read as follows:

8 The court or, if the advocate is appointed by the
9 county board of supervisors, the board shall prescribe
10 reasonable compensation for the services of the
11 advocate. The compensation shall be based upon the
12 reports filed by the advocate with the court. The
13 advocate's compensation shall be paid by the county in
14 which the court is located, either on order of the
15 court or, if the advocate is appointed by the county
16 board of supervisors, on the direction of the board.
17 If the advocate is appointed by the court, the
18 advocate is an employee of the state for purposes of
19 chapter 669. If the advocate is appointed by the
20 county board of supervisors, the advocate is an
21 employee of the county for purposes of chapter 670.
22 If the patient or the person who is legally liable for
23 the patient's support is not indigent, the board shall
24 recover the costs of compensating the advocate from
25 that person. If that person has an income level as
26 ~~determined-pursuant-to-section-815-9~~ greater than one
27 hundred percent but not more than one hundred fifty
28 percent of the poverty guidelines, at least one
29 hundred dollars of the advocate's compensation shall
30 ~~be recovered in-accordance-with-rules-adopted-by-the~~
31 ~~state-public-defender.~~ If that person has an income
32 ~~level as-determined-pursuant-to-section-815-9~~ greater
33 than one hundred fifty percent of the poverty
34 guidelines, at least two hundred dollars of the
35 advocate's compensation shall be recovered in
36 ~~accordance-with-rules-adopted-by-the-state-public~~
37 ~~defender."~~

38 5. By renumbering, relettering, or redesignating
39 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-9325 FILED APRIL 20, 1998

SENATE FILE 2281

S-5773

1 Amend the amendment, S-5743, to Senate File 2281,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, lines 4 and 5, by striking the words
5 "hourly rates or setting per case".

6 2. Page 1, line 20, by inserting after the word
7 "court." the following: "The type of review and
8 relief that the court may provide shall be limited to
9 the review and relief specified in section 17A.19."

10 3. Page 1, line 27, by inserting after the word
11 "court." the following: "The type of review and
12 relief that the court may provide shall be limited to
13 the review and relief specified in section 17A.19."

By O. GENE MADDIX

S-5773 FILED APRIL 20, 1998
ADOPTED

(P.1392)

S-5743

1 Amend Senate File 2281, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 2, line 9, by inserting after the word
4 "cases." the following: "In establishing hourly rates
5 or setting per case fee limitations, the state public
6 defender shall consider evidence of ordinary,
7 reasonable and customary charges; rates previously
8 paid by the state; the nature and penal consequences
9 associated with the offense charged; value and costs
10 associated with in-court time, value and costs
11 associated with out-of-court time; and any other
12 relevant factors."

13 2. Page 2, by striking lines 20 through 32 and
14 inserting the following: "applicable law.
15 Notwithstanding chapter 17A, an appointed attorney
16 may seek expedited review of actions of the state
17 public defender with regard to a request for advance
18 approval for anticipated compensation in excess of any
19 fee limitation by filing a motion with the appointing
20 court."

21 3. Page 3, by striking lines 6 through 11 and
22 inserting the following:
23 "Notwithstanding chapter 17A, an appointed attorney
24 may seek review of actions of the state public
25 defender which approve in part, deny, or modify a
26 claim for compensation by filing a motion with the
27 appointing court."

28 4. Page 10, line 26, by striking the words
29 "assets not" and inserting the following: "assets".

30 5. Page 11, line 13, by striking the words
31 "assets not" and inserting the following: "assets".

32 6. Page 11, line 30, by striking the words
33 "assets not" and inserting the following: "assets".

34 7. By renumbering, relettering, or redesignating
35 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

Senate Concurred 4/20/98
S-5743 FILED APRIL 17, 1998 (P.1392)

SENATE FILE 2281

S-5765

1 Amend the amendment, S-5743, to Senate File 2281,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, lines 4 and 5, by striking the words
5 "hourly rates or setting per case".

6 2. Page 1, line 11, by inserting after the word
7 "time;" the following: "the amount of funds
8 appropriated for the representation of indigents;".

9 3. Page 1, line 20, by inserting after the word
10 "court." the following: "The type of review and
11 relief that the court may provide shall be limited to
12 the review and relief specified in section 17A.19."

13 4. Page 1, line 27, by inserting after the word
14 "court." the following: "The type of review and
15 relief that the court may provide shall be limited to
16 the review and relief specified in section 17A.19."

By O. GENE MADDIX

S-5765 FILED APRIL 20, 1998
WITHDRAWN

(P.1392)

SENATE FILE 2281

S-5774

1 Amend the amendment, S-5743, to Senate File 2281,
2 as amended, passed, and reprinted by the Senate, as
3 follows:

4 1. Page 1, by inserting after line 27 the
5 following:

6 "____. Page 4, by inserting after line 23 the
7 following:

8 "Sec. ____ Section 28E.19, Code 1997, is amended
9 to read as follows:

10 28E.19 JOINT COUNTY INDIGENT DEFENSE FUND.

11 Two or more counties may execute an agreement under
12 this chapter to create a joint county indigent defense
13 fund to be used to compensate attorneys appointed to
14 represent indigents ~~under section 815.26 when funds~~
15 ~~budgeted for that purpose are exhausted in those~~
16 instances in which a county is responsible for
17 payment. In addition to other requirements of an
18 agreement under this chapter, the agreement shall
19 provide for the amount to be paid by each county based
20 on its population to establish and maintain an
21 appropriate balance in the joint fund, and for a
22 method of repayment if a county withdraws more funds
23 than it has contributed."

24 ____ Page 4, by inserting after line 25 the
25 following:

26 "Sec. ____ Section 125.78, subsections 1 and 2,
27 Code 1997, are amended to read as follows:

28 1. Determine whether the respondent has an
29 attorney who is able and willing to represent the
30 respondent in the commitment proceeding, and if not,
31 whether the respondent is financially able to employ
32 an attorney and capable of meaningfully assisting in
33 selecting an attorney. In accordance with those
34 determinations, the court shall allow the respondent
35 to select an attorney or shall assign an attorney to
36 the respondent. If the respondent is financially
37 unable to pay an attorney, the county shall pay the
38 attorney shall-be-compensated-in-substantially-the
39 same-manner-as-provided-by-section-815-77-except-that
40 if-the-county-has-a-public-defender,-the-court-may
41 assign-the-public-defender-or-an-attorney-on-the
42 public-defender's-staff-as-the-respondent's-attorney
43 reasonable compensation which shall be the ordinary
44 and customary charges for like services in the county
45 to be determined in each case by the district court.
46 Compensation shall include any sum or sums as may be
47 necessary for investigation in the interests of
48 justice and, in the event of any appeal, the cost of
49 obtaining the transcript of the trial and the printing
50 of the trial record and any necessary briefs.

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Page 2

1 2. If the application includes a request for a
2 court-appointed attorney for the applicant and the
3 court is satisfied that a court-appointed attorney is
4 necessary to assist the applicant in a meaningful
5 presentation of the evidence, and that the applicant
6 is financially unable to employ an attorney, the court
7 shall appoint an attorney to represent the applicant.
8 ~~The county shall pay the attorney shall-be-compensated~~
9 ~~in-substantially-the-same-manner-as-provided-by~~
10 section-815.7 reasonable compensation which shall be
11 the ordinary and customary charges for like services
12 in the county to be determined in each case by the
13 district court. Compensation shall include any sum or
14 sums as may be necessary for investigation in the
15 interests of justice and, in the event of any appeal,
16 the cost of obtaining the transcript of the trial and
17 the printing of the trial record and any necessary
18 briefs.

19 Sec. ____ . Section 222.13A, subsection 4, Code
20 1997, is amended to read as follows:

21 4. As soon as practicable after the filing of a
22 petition for approval of the voluntary admission, the
23 court shall determine whether the minor has an
24 attorney to represent the minor in the proceeding. If
25 the minor does not have an attorney, the court shall
26 assign to the minor an attorney. If the minor is
27 unable to pay for an attorney, ~~the-attorney-shall-be~~
28 ~~compensated-in-substantially-the-same-manner-as~~
29 provided-in-section-815.7 the county shall pay the
30 attorney reasonable compensation which shall be the
31 ordinary and customary charges for like services in
32 the county to be determined in each case by the
33 district court. Compensation shall include any sum or
34 sums as may be necessary for investigation in the
35 interests of justice and, in the event of any appeal,
36 the cost of obtaining the transcript of the trial and
37 the printing of the trial record and any necessary
38 briefs.

39 Sec. ____ . Section 222.22, Code 1997, is amended to
40 read as follows:

41 222.22 TIME OF APPEARANCE.

42 The time of appearance shall not be less than five
43 days after completed service unless the court orders
44 otherwise. Appearance on behalf of the person who is
45 alleged to have mental retardation may be made by any
46 citizen of the county or by any relative. The
47 district court shall assign counsel for the person who
48 is alleged to have mental retardation. Counsel shall
49 prior to proceedings personally consult with the
50 person who is alleged to have mental retardation

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Page 3

1 unless the judge appointing counsel certifies that in
2 the judge's opinion, consultation shall serve no
3 useful purpose. The certification shall be made a
4 part of the record. ~~An attorney assigned by the court~~
5 ~~shall receive compensation as the district court shall~~
6 ~~fix to be paid in the first instance by the county.~~
7 The county, in the first instance, shall pay the
8 attorney assigned by the court reasonable compensation
9 which shall be the ordinary and customary charges for
10 like services in the county to be determined in each
11 case by the district court. Compensation shall
12 include any sum or sums as may be necessary for
13 investigation in the interests of justice and, in the
14 event of any appeal, the cost of obtaining the
15 transcript of the trial and the printing of the trial
16 record and any necessary briefs.

17 Sec. ____ . Section 229.8, subsection 1, Code 1997,
18 is amended to read as follows:

19 1. Determine whether the respondent has an
20 attorney who is able and willing to represent the
21 respondent in the hospitalization proceeding, and if
22 not, whether the respondent is financially able to
23 employ an attorney and capable of meaningfully
24 assisting in selecting one. In accordance with those
25 determinations, the court shall if necessary allow the
26 respondent to select, or shall assign to the
27 respondent, an attorney. If the respondent is
28 financially unable to pay an attorney, ~~the attorney~~
29 ~~shall be compensated in substantially the manner~~
30 ~~provided by section 815.77, except that if the county~~
31 ~~has a public defender the court may designate the~~
32 ~~public defender or an attorney on the public~~
33 ~~defender's staff to act as the respondent's attorney~~
34 the county shall pay the attorney reasonable
35 compensation which shall be the ordinary and customary
36 charges for like charges for like services in the
37 county, which shall be determined in each by the
38 district court. Compensation shall include any sum or
39 sums as may be necessary for investigation in the
40 interests of justice and, in the event of any appeal,
41 the cost of obtaining the transcript of the trial and
42 the printing of the trial record and any necessary
43 briefs."

44 ____ . By striking page 4, line 26, through page 5,
45 line 17, and inserting the following:

46 "Sec. ____ . Section 229.19, unnumbered paragraph 3,
47 Code 1997, is amended to read as follows:

48 The court or, if the advocate is appointed by the
49 county board of supervisors, the board shall prescribe
50 reasonable compensation for the services of the

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Page 4

1 advocate. The compensation shall be based upon the
2 reports filed by the advocate with the court. The
3 advocate's compensation shall be paid by the county in
4 which the court is located, either on order of the
5 court or, if the advocate is appointed by the county
6 board of supervisors, on the direction of the board.
7 If the advocate is appointed by the court, the
8 advocate is an employee of the state for purposes of
9 chapter 669. If the advocate is appointed by the
10 county board of supervisors, the advocate is an
11 employee of the county for purposes of chapter 670.
12 If the patient or the person who is legally liable for
13 the patient's support is not indigent, the board shall
14 recover the costs of compensating the advocate from
15 that person. If that person has an income level as
16 ~~determined-pursuant-to-section-815-9~~ greater than one
17 hundred percent but not more than one hundred fifty
18 percent of the poverty guidelines, at least one
19 hundred dollars of the advocate's compensation shall
20 ~~be recovered in-accordance-with-rules-adopted-by-the~~
21 ~~state-public-defender.~~ If that person has an income
22 ~~level as-determined-pursuant-to-section-815-9~~ greater
23 than one hundred fifty percent of the poverty
24 guidelines, at least two hundred dollars of the
25 advocate's compensation shall be recovered in
26 ~~accordance-with-rules-adopted-by-the-state-public~~
27 ~~defender."~~

28 2. By renumbering as necessary.

By O. GENE MADDOX

S-5774 FILED APRIL 20, 1998
ADOPTED

(p.1392)

Maddox
Hansen
McKibben

SSB - 2106

Judiciary
Succeeded by
SF/HF 2281

SENATE/HOUSE FILE
BY (PROPOSED GOVERNOR'S BILL)

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

A BILL FOR

1 An Act relating to compensation for the legal defense of indigent
2 persons in criminal, appellate, and certain civil cases.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 13B.4, Code 1997, is amended to read as
2 follows:

3 13B.4 DUTIES AND POWERS OF STATE PUBLIC DEFENDER.

4 1. The state public defender shall coordinate the
5 provision of legal representation of all indigents under
6 arrest or charged with a crime, seeking postconviction relief,
7 against whom a contempt action is pending, on appeal in
8 criminal cases, and on appeal in proceedings to obtain
9 postconviction relief when ordered to do so by the district
10 court in which the judgment or order was issued, and may
11 provide for the representation of indigents in proceedings
12 instituted pursuant to chapter 908. The state public defender
13 shall not engage in the private practice of law.

14 2. The state public defender shall file with the clerk of
15 the district court in each county served by a public defender
16 a designation of which local public defender office shall
17 receive notice of appointment of cases. Except as otherwise
18 provided, in each county in which the state public defender
19 files such designation, the state public defender or its
20 designee shall be appointed by the court to represent all
21 eligible indigents, ~~whether-the-case-is-criminal-or-juvenile~~
22 ~~in-nature~~ in all of the cases and proceedings specified under
23 subsection 1. The appointment shall not be made if the state
24 public defender notifies the court that the local public
25 defender will not provide legal representation in cases
26 ~~involving-offenses~~ as identified in the designation by the
27 state public defender.

28 3. The state public defender may contract with persons
29 admitted to practice law in this state for the provision of
30 legal services to indigent ~~or-partially-indigent~~ persons.

31 4. The state public defender ~~is-authorized-to~~ shall review
32 any claim made for payment of indigent defense costs and to
33 ~~may~~ take the following ~~action-if-the-state-public-defender~~
34 ~~believes-a-claim-is-excessive~~ actions:

35 a. ~~if-the-claim-is-from-a-noncontract-attorney,~~ the state

1 public-defender-shall-request-a-review-by-the-court-granting
2 the-claim-as-to-the-reasonableness-of-the-claim-within-thirty
3 days-of-receipt-of-the-claim. If all of the charges are
4 appropriate and reasonable, approve the claim for payment.

5 b. If the claim is from a contract attorney, the state
6 public defender shall request a review by the appointing court
7 as to the reasonableness of the claim within thirty days of
8 receipt of the claim. If any portion of the claim is
9 excessive, reduce the claim to an amount which is not
10 excessive and approve the reduced claim.

11 c. If any portion of the claim is not payable under the
12 attorney's appointment, delete those portions of the claim
13 that are not payable and approve the remainder of the claim.

14 Actions of the state public defender in modifying and
15 approving claims shall be deemed final agency action.

16 5. The state public defender may establish fee limitations
17 for the provision of legal services by private attorneys for
18 various classes of cases to which attorneys may be appointed.

19 6. The state public defender may establish procedures and
20 circumstances under which requests to exceed the limitations
21 may be submitted. A denial of a request to exceed the
22 limitations shall not serve as a basis for withdrawal of
23 representation by counsel in the case. The action of the
24 state public defender in denying or granting a request to
25 exceed the limitations shall be deemed final agency action.

26 5 7. The state public defender is authorized to may
27 contract with county attorneys to provide collection services
28 related to court-ordered indigent defense restitution of
29 court-appointed attorney fees or the expense of a public
30 defender.

31 6 8. The state public defender shall report in writing to
32 the general assembly by January 20 of each year regarding any
33 funds recouped or collected for court-appointed attorney fees
34 or expenses of a public defender pursuant to section 331.756,
35 subsection 5, or section 602.8107 during the previous calendar

1 year.

2 7 9. The state public defender shall adopt rules, as
3 necessary, pursuant to chapter 17A to administer this chapter
4 and section 815.9.

5 Sec. 2. Section 13B.9, subsection 1, paragraph c, Code
6 1997, is amended by striking the paragraph.

7 Sec. 3. Section 13B.10, subsections 2 through 4, Code
8 1997, are amended by striking the subsections.

9 Sec. 4. Section 229.19, unnumbered paragraph 3, Code 1997,
10 is amended to read as follows:

11 The court or, if the advocate is appointed by the county
12 board of supervisors, the board shall prescribe reasonable
13 compensation for the services of the advocate. The
14 compensation shall be based upon the reports filed by the
15 advocate with the court. The advocate's compensation shall be
16 paid by the county in which the court is located, either on
17 order of the court or, if the advocate is appointed by the
18 county board of supervisors, on the direction of the board.
19 If the advocate is appointed by the court, the advocate is an
20 employee of the state for purposes of chapter 669. If the
21 advocate is appointed by the county board of supervisors, the
22 advocate is an employee of the county for purposes of chapter
23 670. If the patient or the person who is legally liable for
24 the patient's support is not indigent, the board shall recover
25 the costs of compensating the advocate from that person. ~~If~~
26 ~~that-person-has-an-income-level-as-determined-pursuant-to~~
27 ~~section-815-9-greater-than-one-hundred-percent-but-not-more~~
28 ~~than-one-hundred-fifty-percent-of-the-poverty-guidelines,-at~~
29 ~~least-one-hundred-dollars-of-the-advocate's-compensation-shall~~
30 ~~be-recovered-in-accordance-with-rules-adopted-by-the-state~~
31 ~~public-defender.--if-that-person-has-an-income-level-as~~
32 ~~determined-pursuant-to-section-815-9-greater-than-one-hundred~~
33 ~~fifty-percent-of-the-poverty-guidelines,-at-least-two-hundred~~
34 ~~dollars-of-the-advocate's-compensation-shall-be-recovered-in~~
35 ~~accordance-with-rules-adopted-by-the-state-public-defender-~~

1 Sec. 5. Section 602.8106, subsection 1, Code 1997, is
2 amended by adding the following new paragraph:
3 NEW PARAGRAPH. g. The thirty-five dollar installment
4 payment fee assessed in the manner provided in section 815.9.

5 Sec. 6. Section 602.8107, subsection 2, unnumbered
6 paragraph 1, Code Supplement 1997, is amended to read as
7 follows:

8 If the clerk receives payment from a person who is an
9 inmate of a state institution or who is under the supervision
10 of a judicial district department of correctional services,
11 the payment shall be applied to the balance owed under the
12 identified case number of the case which has resulted in the
13 placement of the person in a state institution or under the
14 supervision of the judicial district department of
15 correctional services. If a case number is not identified,
16 the clerk shall apply the payment to the balance owed in the
17 criminal case with the oldest judgment against the person.

18 Payments After payment of a thirty-five dollar installment
19 payment fee under section 815.9, payments received under this
20 section shall be applied in the following priority order:

21 Sec. 7. Section 602.8108, subsection 2, Code 1997, is
22 amended to read as follows:

23 2. Except as otherwise provided, the clerk of the district
24 court shall report and submit to the state court
25 administrator, not later than the fifteenth day of each month,
26 the fines and fees received during the preceding calendar
27 month. Except as provided in subsections 4 and 5, the state
28 court administrator shall deposit the amounts received with
29 the treasurer of state for deposit in the general fund of the
30 state. The state court administrator shall report to the
31 legislative fiscal bureau within thirty days of the beginning
32 of each fiscal quarter the amount received during the previous
33 quarter in the account established under this section. The
34 report shall contain a separate accounting for any amounts
35 received for payment of the thirty-five dollar installment

1 payment fees assessed under section 815.9.

2 Sec. 8. Section 814.11, Code 1997, is amended to read as
3 follows:

4 814.11 INDIGENT'S RIGHT TO COUNSEL.

5 An indigent defendant is entitled to appointed counsel on
6 the appeal of all indictable offenses. Such The appointment
7 is-subject-to-rules-of-the-supreme-court shall be made to the
8 state appellate defender unless the state appellate defender
9 is unable to handle the case due to a conflict of interest or
10 because of a temporary overload of cases. If the state
11 appellate defender is unable to handle the case, the court
12 shall appoint an attorney who has a contract with the state
13 public defender to handle such an appeal. If the court
14 determines that no contract attorney is available to handle
15 the appeal, the court may appoint a noncontract attorney who
16 has agreed to handle the case, but the order of appointment
17 shall include a specific finding that no contract attorney was
18 available. The appointment of noncontract attorneys shall be
19 on a rotational or equalization basis, considering the
20 experience of the attorney and the difficulty of the case.

21 Sec. 9. Section 815.4, Code 1997, is amended to read as
22 follows:

23 815.4 SPECIAL WITNESSES FOR INDIGENTS.

24 Witnesses secured for indigent ~~or-partially-indigent~~
25 defendants under R.Cr.P. 19 must file a claim for compensation
26 supported by an affidavit specifying the time expended,
27 services rendered, and expenses incurred on behalf of the
28 defendant.

29 Sec. 10. Section 815.5, Code 1997, is amended to read as
30 follows:

31 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

32 Notwithstanding the provisions of section 622.72,
33 reasonable compensation as determined by the court shall be
34 awarded expert witnesses, expert witnesses for an indigent or
35 ~~partially-indigent~~ person referred to in section 815.4, or

1 called by the state in criminal cases.

2 Sec. 11. Section 815.7, Code Supplement 1997, is amended
3 to read as follows:

4 815.7 FEES TO ATTORNEYS.

5 An attorney who has not entered into a contract authorized
6 under section 13B.4 and who is appointed by the court to
7 represent any person charged with a crime in this state,
8 seeking postconviction relief, against whom a contempt action
9 is pending, appealing a criminal conviction, appealing a
10 denial of postconviction relief, or to serve as counsel for
11 any person or guardian ad litem to-a-person for any child in
12 juvenile court in-this-state shall be entitled to a-reasonable
13 compensation which-shall-be-the-ordinary-and-customary-charges
14 for-like-services-in-the-community-to-be-decided-in-each-case
15 by-a-judge-of-the-district-court-or-of-the-juvenile-court,-as
16 applicable,-including-such-sum-or-sums-as-the-court-may
17 determine-are-necessary-for-investigation-in-the-interests-of
18 justice-and-in-the-event-of-appeal-the-cost-of-obtaining-the
19 transcript-of-the-trial-and-the-printing-of-the-trial-record
20 and-necessary-briefs-in-behalf-of-the-defendant;--However,-the
21 reasonable-compensation-awarded-an-attorney-shall-not-be
22 calculated-based-upon-an at the same hourly rate that-exceeds
23 the-rate and for the same activities and expenses that a
24 contract attorney as provided in section 13B.4 would receive
25 in a similar case. Such The noncontract attorney need not
26 follow the case into another county or-into-the-appellate
27 court-unless-so-directed-by-the-court-at-the-request-of-the
28 defendant,-where-grounds-for-further-litigation-are-not
29 capricious-or-unreasonable,-but-if-such-attorney-does-so,-the
30 attorney's-fee-shall-be-determined-accordingly. Only one
31 attorney fee shall be so awarded in any one case except that
32 in class "A" felony cases, two may be authorized.

33 Sec. 12. Section 815.9, Code 1997, is amended to read as
34 follows:

35 815.9 INDIGENCY DETERMINED -- PENALTY.

1 1. For purposes of this chapter, ~~section-68-87-section~~
2 ~~222-22~~ chapter 13B, chapter 232, chapter 665, chapter 814,
3 chapter 822, and the rules of criminal procedure, the
4 following-apply a person is indigent if the person is entitled
5 to an attorney appointed by the court as follows:

6 a. A person is indigent entitled to an attorney appointed
7 by the court to represent the person if the person has an
8 income level at or below one hundred twenty-five percent
9 of the United States poverty level as defined by the most
10 recently revised poverty income guidelines published by the
11 United States department of health and human services, unless
12 the court determines that the person is able to pay for the
13 cost of an attorney to represent the person on the pending
14 charges. In making the determination of a person's ability to
15 pay for the cost of an attorney, the court shall consider not
16 only the person's income, but also the availability of any
17 assets not subject to execution, including but not limited to
18 cash, stocks, bonds, and any other property which may be
19 applied to the satisfaction of judgments.

20 ~~b.--A-person-is-not-indigent-if-the-person-has-an-income~~
21 ~~level-greater-than-one-hundred-fifty-percent-of-the-United~~
22 ~~States-poverty-level-as-defined-by-the-most-recently-revised~~
23 ~~poverty-income-guidelines-published-by-the-United-States~~
24 ~~department-of-health-and-human-services-~~

25 c b. A person with an income level greater than one
26 hundred twenty-five percent, but less-than at or below
27 two hundred percent, of the most recently revised poverty
28 income guidelines published by the United States department of
29 health and human services ~~may-be-deemed-partially-indigent-by~~
30 shall not be entitled to an attorney appointed by the court,
31 unless the court ~~pursuant-to~~ makes a written finding that,
32 ~~given-the-person's-circumstances,~~ not appointing counsel on
33 the pending charges would cause the person substantial
34 hardship. ~~However,~~ ~~the-court-shall-require-a-person-appointed~~
35 ~~counsel-to-contribute-to-the-cost-of-representation-in~~

1 ~~accordance with rules adopted by the state public defender.~~
 2 In determining whether substantial hardship would result, the
 3 court shall consider not only the person's income, but also
 4 the availability of any assets not subject to execution,
 5 including but not limited to cash, stocks, bonds, and any
 6 other property which may be applied to the satisfaction of
 7 judgments.

8 d c. A person with an income level greater than two
 9 hundred percent of the most recently revised poverty income
 10 guidelines published by the United States department of health
 11 and human services shall not be ~~deemed indigent or partially~~
 12 indigent entitled to any attorney appointed by the court,
 13 unless the person is charged with a felony and the court makes
 14 a written finding that, ~~given the person's circumstances,~~ not
 15 appointing counsel would cause the person substantial
 16 hardship. ~~However, the court shall require a person appointed~~
 17 ~~counsel to contribute to the cost of representation in~~

18 ~~accordance with rules adopted by the state public defender.~~
 19 In determining whether substantial hardship would result, the
 20 court shall consider not only the person's income, but also
 21 the availability of any assets not subject to execution,
 22 including but not limited to cash, stocks, bonds, and any
 23 other property which may be applied to the satisfaction of
 24 judgments.

25 2. A determination of the ~~indigent status of~~ whether a
 26 person is entitled to an appointed attorney shall be made on
 27 the basis of an affidavit of financial status submitted at the
 28 time of the person's initial appearance before a court or at
 29 such later time as a request for court appointment is made.
 30 ~~if a person is granted legal assistance as an indigent or~~
 31 ~~partial indigent, the financial statement shall be filed and~~
 32 ~~permanently retained in the person's court file.~~ The state
 33 public defender shall adopt rules prescribing the form and
 34 content of the affidavit of financial statement and the
 35 criteria by which a determination of indigency shall be based

1 status. The affidavit of financial statement status shall be
2 signed under penalty of perjury and shall contain sufficient
3 information to allow the determination to be made of whether
4 the person meets the guidelines set out in subsection 1 and
5 shall be accompanied by the person's most recent pay slip, if
6 employed is entitled to an appointed attorney under this
7 section. If the person is granted an appointed attorney, the
8 affidavit of financial status shall be filed and permanently
9 retained in the person's court file.

10 3. ~~A person who knowingly submits a false financial~~
11 ~~statement for the purpose of obtaining legal assistance by~~
12 ~~appointed counsel commits a fraudulent practice. If a person~~
13 is granted an appointed attorney, the person shall be required
14 to reimburse the state for the total cost of legal assistance
15 provided to the person. As used in this subsection, "legal
16 assistance" includes legal counsel "Legal assistance" as used
17 in this section shall include not only an appointed attorney,
18 but also transcripts, witness fees and, expenses, and any
19 other goods or services required by law to be provided to an
20 indigent person.

21 4. If the case is a criminal case, all costs and fees
22 incurred for legal assistance shall become due and payable to
23 the clerk of the district court by the person receiving the
24 legal assistance not later than the date of sentencing, or if
25 the person is acquitted or the charges are dismissed, within
26 thirty days of the acquittal or dismissal.

27 5. If the case is other than a criminal case, all costs
28 and fees incurred for legal assistance shall become due and
29 payable to the clerk of the district court by the person
30 receiving the legal assistance not later than the date of any
31 hearing or trial held in the case, or if the case is
32 dismissed, within thirty days of the dismissal.

33 6. An appointed attorney shall submit a report pertaining
34 to the costs and fees for legal assistance to the court at the
35 times specified in subsections 4 and 5. If the appointed

1 attorney is a public defender, the report shall specify the
2 total hours of service plus other expenses. If the appointed
3 attorney is a private attorney, the total amount of legal
4 assistance shall be the total amount of the fees claimed by
5 the appointed attorney together with other expenses.

6 7. If the costs and fees incurred for legal assistance are
7 not paid at the times specified in subsections 4 and 5, the
8 court shall assess an installment payment fee of thirty-five
9 dollars against the person who has received legal assistance.
10 Notwithstanding anything in sections 910.1, 910.2, and 910.9
11 to the contrary, the thirty-five dollar installment payment
12 fee shall be paid prior to crediting any payments received
13 against any amounts due from the person, notwithstanding
14 anything to the contrary in section 910.2. Payment of the
15 thirty-five dollar installment payment fee shall be separately
16 accounted for by the clerk and forwarded together with any
17 other amounts collected for payment of restitution and other
18 finances, penalties, fees, court costs, and surcharges under
19 section 602.8107.

20 8. If all costs and fees incurred for legal assistance are
21 not paid at the times specified in subsections 4 and 5, the
22 court shall order payment of the fees and costs in reasonable
23 installments. Any hearings held for purposes of monitoring
24 compliance with any installment payment plan are not contempt
25 hearings, unless the court specifically designates the hearing
26 as either a contempt or a show cause hearing. A person who is
27 responsible for making payments under a court ordered
28 installment payment plan shall receive notice prior to any
29 hearing that is designated by the court as a show cause or
30 contempt hearing that the court has determined that the person
31 has failed to abide by the terms of the payment plan and
32 should be required to show cause why the person should not be
33 held in contempt.

34 9. If a person is granted an appointed attorney or is
35 receiving legal assistance in accordance with this section and

1 the person is employed, the person shall execute an assignment
2 of wages. An order for assignment of income, in a reasonable
3 amount to be determined by the court, shall also be entered by
4 the court. The state public defender shall prescribe forms
5 for use in wage assignments and court orders entered under
6 this section.

7 10. If any costs and fees are not paid at the times
8 specified under subsections 4 and 5, a judgment shall be
9 entered against the person for any unpaid amounts.

10 Sec. 13. Section 815.10, Code 1997, is amended to read as
11 follows:

12 815.10 APPOINTMENT OF COUNSEL BY COURT.

13 1. The court, for cause and upon its own motion or upon
14 application by an indigent person or a public defender, shall
15 appoint the state public defender, the state public defender's
16 designee pursuant to section 13B.4, or an attorney pursuant to
17 section 13B.9 to represent an indigent person at any stage of
18 the criminal, postconviction, contempt, or juvenile
19 proceedings or on appeal of any criminal, postconviction,
20 contempt, or juvenile action in which the indigent person is
21 entitled to legal assistance at public expense. However, in
22 juvenile cases, the court may directly appoint an existing
23 nonprofit corporation established for and engaged in the
24 provision of legal services for juveniles. An appointment
25 shall not be made unless the person is determined to be
26 indigent under section 815.9. Only one attorney shall be
27 appointed in all cases, except that in class "A" felony cases
28 the court may appoint two attorneys.

29 2. An attorney other than a public defender ~~or a contract~~
30 ~~attorney~~ who is appointed by the court under this section
31 shall apply to the district-court state public defender for
32 compensation and for reimbursement of costs incurred. The
33 amount of compensation due shall be determined in accordance
34 with any indigent defense contract or pursuant to section
35 815.7.

1 3. ~~A contract attorney appointed by the court pursuant to~~
2 ~~this section and section 13B-4 shall apply to the state public~~
3 ~~defender for compensation and for reimbursement of costs~~
4 ~~incurred in accordance with the contract. The amount of~~
5 ~~compensation due shall be determined in accordance with the~~
6 ~~contract. The state public defender shall adopt rules which~~
7 ~~specify the specific information which shall be included with~~
8 ~~all claims for compensation submitted by court-appointed~~
9 ~~attorneys under this section. If the information required~~
10 ~~under this section and the rules of the state public defender~~
11 ~~are not submitted, the claim may be denied until the~~
12 ~~information is provided. If the information required under~~
13 ~~this section and the rules of the state public defender is~~
14 ~~submitted with the claim, the state public defender may~~
15 ~~approve reasonable and proper compensation to the court-~~
16 ~~appointed attorney in the matter provided in those rules.~~

17 Sec. 14. Section 815.11, Code 1997, is amended to read as
18 follows:

19 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

20 Costs incurred under section 232.141, subsection 3,
21 paragraph "c", sections 814.9, 814.10, 814.11, 815.4, 815.5,
22 815.6, 815.7, 815.10, and 822.5, chapter 665, or the rules of
23 criminal procedure on behalf of an indigent shall be paid from
24 funds appropriated by the general assembly to the department
25 of inspections and appeals for those purposes.

26 Sec. 15. Section 822.5, subsection 2, Code 1997, is
27 amended by striking the subsection.

28 Sec. 16. EMERGENCY RULES. The office of the state public
29 defender of the department of inspections and appeals may
30 adopt administrative rules under section 17A.4, subsection 2,
31 and section 17A.5, subsection 2, paragraph "b", to implement
32 the provisions of this Act. The rules shall become effective
33 immediately upon filing, unless a later effective date is
34 specified in the rules. Any rules adopted in accordance with
35 this section shall not take effect before the rules are

1 reviewed by the administrative rules review committee. Any
2 rules adopted in accordance with the provisions of this
3 section shall also be published as notice of intended action
4 as provided in section 17A.4.

5 Sec. 17. Sections 815.9A and 815.10A, Code 1997, are
6 repealed.

7 EXPLANATION

8 This bill makes changes pertaining to the payment of costs
9 for the defense of indigent persons in criminal, juvenile,
10 postconviction, contempt actions, and certain other civil
11 actions. The duties and authority of the state public
12 defender are amended to add postconviction relief and contempt
13 actions to the kinds of cases which are to be handled by that
14 office. The state public defender is given the direct
15 authority to approve, reduce, and modify claims made for
16 payment of indigent defense costs. Procedures are added in
17 the bill which permit the state public defender to set and
18 exceed limitations on indigent defense costs which are
19 submitted for payment by court-appointed attorneys.
20 References are eliminated which make the appointment of
21 counsel on appeals subject to supreme court rules. Instead,
22 the bill substitutes a procedure which provides for the
23 appointment of the state appellate defender, unless the
24 appellate defender has a conflict of interest or a temporary
25 overload of cases. In the latter two situations, the bill
26 provides for the appointment of an attorney who has entered
27 into a contract with the state public defender to handle
28 appeals. If no contract attorney is available, the court may
29 appoint a noncontract attorney on a rotational or equalization
30 basis, considering the experience of the attorney and the
31 difficulty of the case. The appointment must, however,
32 include specific findings that no contract attorney was
33 available. Noncontract attorneys will be paid directly
34 through the state public defender's office and are to submit
35 such reports and information relating to their fees and

1 expenses as are required by the state public defender. A
 2 reference to the indigency determination threshold is
 3 eliminated in the mental illness civil commitment Code chapter
 4 to conform the language to the changes made in the indigency
 5 determination thresholds in Code chapter 815.

6 The bill also changes the procedures for determination of
 7 an individual's indigence and consequent eligibility for
 8 court-appointed counsel at state expense. The requirement
 9 that the state public defender's office make an initial
 10 determination of indigence prior to the initial arraignment or
 11 other initial court appearance is eliminated and all
 12 references to determinations of indigency are transferred to
 13 Code chapter 815. A person is indigent and entitled to court-
 14 appointed counsel if the person has an income level at or
 15 below 125 percent of poverty level. This is below the current
 16 150 percent of poverty level ceiling. In determining
 17 eligibility, the court is to consider not only the person's
 18 income, but assets not subject to execution and any other
 19 property which may be applied to the satisfaction of
 20 judgments. Those persons whose income falls above the new
 21 threshold are not entitled to court-appointed counsel unless
 22 the court makes a written determination that not appointing
 23 counsel on the pending charges would cause the person
 24 substantial hardship. Like the original determination of
 25 eligibility, the determination of substantial hardship is to
 26 be based not only on the person's income, but also on assets
 27 not subject to execution and any other property which may be
 28 applied to the satisfaction of judgments. A person who
 29 receives court-appointed counsel and is employed is required
 30 to execute an assignment of wages and the court is to enter an
 31 order for assignment of income on forms prescribed by the
 32 state public defender. If a person is not able to pay the
 33 costs of court-appointed counsel when the costs are due, the
 34 court may provide for payment on an installment basis. A \$35
 35 installment payment fee will be assessed, however, against the

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1 person and will be paid before any other charges owed are
2 paid.

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10 court in which the judgment or order was issued, and may
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12 instituted pursuant to chapter 908. The state public defender
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16 a designation of which local public defender office shall
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19 files such designation, the state public defender or its
20 designee shall be appointed by the court to represent all
21 eligible indigents, ~~whether-the-case-is-criminal-or-juvenile~~
22 ~~in-nature~~ in all of the cases and proceedings specified under
23 subsection 1. The appointment shall not be made if the state
24 public defender notifies the court that the local public
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28 3. The state public defender may contract with persons
29 admitted to practice law in this state for the provision of
30 legal services to indigent ~~or-partially-indigent~~ persons.

31 4. The state public defender ~~is-authorized-to~~ shall review
32 any claim made for payment of indigent defense costs and to
33 ~~may take the following action-if-the-state-public-defender~~
34 ~~believes-a-claim-is-excessive~~ actions:

35 a. ~~If-the-claim-is-from-a-noncontract-attorney,-the-state~~

1 ~~public defender shall request a review by the court granting~~
2 ~~the claim as to the reasonableness of the claim within thirty~~
3 ~~days of receipt of the claim. If all of the charges are~~
4 ~~appropriate and reasonable, approve the claim for payment.~~

5 b. ~~if the claim is from a contract attorney, the state~~
6 ~~public defender shall request a review by the appointing court~~
7 ~~as to the reasonableness of the claim within thirty days of~~
8 ~~receipt of the claim. If any portion of the claim is~~
9 ~~excessive, reduce the claim to an amount which is not~~
10 ~~excessive and approve the reduced claim.~~

11 c. ~~if any portion of the claim is not payable under the~~
12 ~~attorney's appointment, delete those portions of the claim~~
13 ~~that are not payable and approve the remainder of the claim.~~

14 Actions of the state public defender in modifying and
15 approving claims shall be deemed final agency action.

16 5. The state public defender may establish fee limitations
17 for the provision of legal services by private attorneys for
18 various classes of cases to which attorneys may be appointed.

19 6. The state public defender may establish procedures and
20 circumstances under which requests to exceed the limitations
21 may be submitted. A denial of a request to exceed the
22 limitations shall not serve as a basis for withdrawal of
23 representation by counsel in the case. The action of the
24 state public defender in denying or granting a request to
25 exceed the limitations shall be deemed final agency action.

26 5 7. ~~The state public defender is authorized to may~~
27 ~~contract with county attorneys to provide collection services~~
28 ~~related to court-ordered indigent defense restitution of~~
29 ~~court-appointed attorney fees or the expense of a public~~
30 ~~defender.~~

31 6 8. ~~The state public defender shall report in writing to~~
32 ~~the general assembly by January 20 of each year regarding any~~
33 ~~funds recouped or collected for court-appointed attorney fees~~
34 ~~or expenses of a public defender pursuant to section 331.756,~~
35 ~~subsection 5, or section 602.8107 during the previous calendar~~

1 year.

2 7 9. The state public defender shall adopt rules, as
3 necessary, pursuant to chapter 17A to administer this chapter
4 and section 815.9.

5 Sec. 2. Section 13B.9, subsection 1, paragraph c, Code
6 1997, is amended by striking the paragraph.

7 Sec. 3. Section 13B.10, subsections 2 through 4, Code
8 1997, are amended by striking the subsections.

9 Sec. 4. Section 229.19, unnumbered paragraph 3, Code 1997,
10 is amended to read as follows:

11 The court or, if the advocate is appointed by the county
12 board of supervisors, the board shall prescribe reasonable
13 compensation for the services of the advocate. The
14 compensation shall be based upon the reports filed by the
15 advocate with the court. The advocate's compensation shall be
16 paid by the county in which the court is located, either on
17 order of the court or, if the advocate is appointed by the
18 county board of supervisors, on the direction of the board.
19 If the advocate is appointed by the court, the advocate is an
20 employee of the state for purposes of chapter 669. If the
21 advocate is appointed by the county board of supervisors, the
22 advocate is an employee of the county for purposes of chapter
23 670. If the patient or the person who is legally liable for
24 the patient's support is not indigent, the board shall recover
25 the costs of compensating the advocate from that person. If
26 ~~that person has an income level as determined pursuant to~~
27 ~~section 815.9 greater than one hundred percent but not more~~
28 ~~than one hundred fifty percent of the poverty guidelines, at~~
29 ~~least one hundred dollars of the advocate's compensation shall~~
30 ~~be recovered in accordance with rules adopted by the state~~
31 ~~public defender. If that person has an income level as~~
32 ~~determined pursuant to section 815.9 greater than one hundred~~
33 ~~fifty percent of the poverty guidelines, at least two hundred~~
34 ~~dollars of the advocate's compensation shall be recovered in~~
35 ~~accordance with rules adopted by the state public defender.~~

1 Sec. 5. Section 602.8106, subsection 1, Code 1997, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. g. The thirty-five dollar installment
4 payment fee assessed in the manner provided in section 815.9.

5 Sec. 6. Section 602.8107, subsection 2, unnumbered
6 paragraph 1, Code Supplement 1997, is amended to read as
7 follows:

8 If the clerk receives payment from a person who is an
9 inmate of a state institution or who is under the supervision
10 of a judicial district department of correctional services,
11 the payment shall be applied to the balance owed under the
12 identified case number of the case which has resulted in the
13 placement of the person in a state institution or under the
14 supervision of the judicial district department of
15 correctional services. If a case number is not identified,
16 the clerk shall apply the payment to the balance owed in the
17 criminal case with the oldest judgment against the person.

18 Payments After payment of a thirty-five dollar installment
19 payment fee under section 815.9, payments received under this
20 section shall be applied in the following priority order:

21 Sec. 7. Section 602.8108, subsection 2, Code 1997, is
22 amended to read as follows:

23 2. Except as otherwise provided, the clerk of the district
24 court shall report and submit to the state court
25 administrator, not later than the fifteenth day of each month,
26 the fines and fees received during the preceding calendar
27 month. Except as provided in subsections 4 and 5, the state
28 court administrator shall deposit the amounts received with
29 the treasurer of state for deposit in the general fund of the
30 state. The state court administrator shall report to the
31 legislative fiscal bureau within thirty days of the beginning
32 of each fiscal quarter the amount received during the previous
33 quarter in the account established under this section. The
34 report shall contain a separate accounting for any amounts
35 received for payment of the thirty-five dollar installment

1 payment fees assessed under section 815.9.

2 Sec. 8. Section 814.11, Code 1997, is amended to read as
3 follows:

4 814.11 INDIGENT'S RIGHT TO COUNSEL.

5 An indigent defendant is entitled to appointed counsel on
6 the appeal of all indictable offenses. Such The appointment
7 is-subject-to-rules-of-the-supreme-court shall be made to the
8 state appellate defender unless the state appellate defender
9 is unable to handle the case due to a conflict of interest or
10 because of a temporary overload of cases. If the state
11 appellate defender is unable to handle the case, the court
12 shall appoint an attorney who has a contract with the state
13 public defender to handle such an appeal. If the court
14 determines that no contract attorney is available to handle
15 the appeal, the court may appoint a noncontract attorney who
16 has agreed to handle the case, but the order of appointment
17 shall include a specific finding that no contract attorney was
18 available. The appointment of noncontract attorneys shall be
19 on a rotational or equalization basis, considering the
20 experience of the attorney and the difficulty of the case.

21 Sec. 9. Section 815.4, Code 1997, is amended to read as
22 follows:

23 815.4 SPECIAL WITNESSES FOR INDIGENTS.

24 Witnesses secured for indigent ~~or-partially-indigent~~
25 defendants under R.Cr.P. 19 must file a claim for compensation
26 supported by an affidavit specifying the time expended,
27 services rendered, and expenses incurred on behalf of the
28 defendant.

29 Sec. 10. Section 815.5, Code 1997, is amended to read as
30 follows:

31 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

32 Notwithstanding the provisions of section 622.72,
33 reasonable compensation as determined by the court shall be
34 awarded expert witnesses, expert witnesses for an indigent or
35 ~~partially-indigent~~ person referred to in section 815.4, or