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SENATE FILE

344

BY DVORSKY, DELUHERY, GRONSTAL,
and HORN

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the payment of the legal defense costs of
2 indigent persons, expanding the duties of the state public
3 defender, and providing for the appointment and removal of
4 certain state public defender personnel.

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

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SF 344

JUDICIARY

1 Section 1. Section 8.59, Code 1999, is amended to read as
2 follows:

3 8.59 APPROPRIATIONS FREEZE.

4 Notwithstanding contrary provisions of the Code, the
5 amounts appropriated under the applicable sections of the Code
6 for fiscal years commencing on or after July 1, 1993, are
7 limited to those amounts expended under those sections for the
8 fiscal year commencing July 1, 1992. If an applicable section
9 appropriates moneys to be distributed to different recipients
10 and the operation of this section reduces the total amount to
11 be distributed under the applicable section, the moneys shall
12 be prorated among the recipients. As used in this section,
13 "applicable sections" means the following sections: 53.50,
14 229.35, 230.8, 230.11, 405A.8, 411.20, and 663.44, -and-822-5.

15 Sec. 2. Section 13B.4, subsections 1 through 3, Code 1999,
16 are amended to read as follows:

17 1. The state public defender shall coordinate the
18 provision of legal representation of all indigents under
19 arrest or charged with a crime, seeking postconviction relief,
20 against whom a contempt action is pending, in proceedings
21 under chapter 229A, on appeal in criminal cases, and on appeal
22 in proceedings to obtain postconviction relief when ordered to
23 do so by the district court in which the judgment or order was
24 issued, and may provide for the representation of indigents in
25 proceedings instituted pursuant to chapter 908. The state
26 public defender shall not engage in the private practice of
27 law.

28 2. The state public defender shall file with the clerk of
29 the district court in each county served by a public defender
30 a designation of which local public defender office shall
31 receive notice of appointment of cases. Except as otherwise
32 provided, in each county in which the state public defender
33 files such designation, the state public defender or its
34 designee shall be appointed by the court to represent all
35 eligible indigents, ~~whether-the-case-is-criminal-or-juvenile~~

1 ~~in-nature~~ in all of the cases and proceedings specified under
2 subsection 1. The appointment shall not be made if the state
3 public defender notifies the court that the local public
4 defender will not provide legal representation in cases
5 ~~involving-offenses~~ as identified in the designation by the
6 state public defender.

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

10 Sec. 3. Section 13B.4, subsection 7, Code 1999, is amended
11 to read as follows:

12 7. The state public defender shall adopt rules, as
13 necessary, pursuant to chapter 17A to administer this chapter
14 and ~~section-815-9~~ chapter 815.

15 Sec. 4. Section 13B.8, subsection 2, Code 1999, is amended
16 to read as follows:

17 2. The state public defender may appoint a local public
18 defender and may remove the local public defender, assistant
19 local public defenders, clerks, investigators, secretaries, or
20 other employees for cause. ~~The~~ Each local public defender,
21 and any assistant local public defender, must be an attorney
22 admitted to the practice of law before the Iowa supreme court.

23 Sec. 5. Section 13B.9, subsection 1, paragraph c, Code
24 1999, is amended by striking the paragraph.

25 Sec. 6. Section 13B.9, subsection 3, Code 1999, is amended
26 by striking the subsection.

27 Sec. 7. Section 13B.10, subsections 2 through 4, Code
28 1999, are amended by striking the subsections.

29 Sec. 8. Section 815.4, Code 1999, is amended to read as
30 follows:

31 815.4 SPECIAL WITNESSES FOR INDIGENTS.

32 Witnesses secured for indigent ~~or-partially-indigent~~
33 def ndants under R.Cr.P. 19 must file a claim for compensation
34 supported by an affidavit specifying the time expended,
35 services rendered, and expenses incurred on behalf of the

1 defendant.

2 Sec. 9. Section 815.5, Code 1999, is amended to read as
3 follows:

4 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

5 Notwithstanding the provisions of section 622.72,
6 reasonable compensation as determined by the court shall be
7 awarded expert witnesses, expert witnesses for an indigent or
8 ~~partially-indigent~~ person referred to in section 815.4, or
9 called by the state in criminal cases.

10 Sec. 10. Section 815.7, Code 1999, is amended to read as
11 follows:

12 815.7 FEES TO ATTORNEYS.

13 An attorney who has not entered into a contract authorized
14 under section 13B.4 and who is appointed by the court to
15 represent any person charged with a crime in this state,
16 seeking postconviction relief, against whom a contempt action
17 is pending, appealing a criminal conviction, appealing a
18 denial of postconviction relief, or subject to a proceeding
19 under chapter 229A, or to serve as counsel for any person or
20 guardian ad litem to-a-person for any child in juvenile court,
21 ~~in-this-state~~ shall be entitled to a reasonable compensation
22 which shall be the ordinary and customary charges for like
23 services in the community to be decided in each case by a
24 judge of the district court or of the juvenile court, as
25 applicable, including such sum or sums as the court may
26 determine are necessary for investigation in the interests of
27 justice and in the event of appeal the cost of obtaining the
28 transcript of the trial and the printing of the trial record
29 and necessary briefs in behalf of the defendant. However, the
30 reasonable compensation awarded an attorney shall not be
31 calculated based upon an hourly rate that exceeds the rate a
32 contract attorney as provided in section 13B.4 would receive
33 in a similar case. Such attorney need not follow the case
34 into another county or into the appellate court unless so
35 directed by the court at the request of the defendant, where

1 grounds for further litigation are not capricious or
2 unreasonable, but if such attorney does so, the attorney's fee
3 shall be determined accordingly. Only one attorney fee shall
4 be so awarded in any one case except that in class "A" felony
5 cases, two may be authorized.

6 Sec. 11. Section 815.9, Code 1999, is amended to read as
7 follows:

8 815.9 INDIGENCY DETERMINED -- PENALTY.

9 1. For purposes of this chapter, ~~section-68-87-section~~
10 ~~222-22~~ chapter 13B, chapter 229A, chapter 232, chapter 665,
11 chapter 814, chapter 822, and the rules of criminal procedure,
12 ~~the-following-apply~~ a person is indigent if the person is
13 entitled to an attorney appointed by the court as follows:

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

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

33 c b. A person with an income level greater than one
34 hundred fifty twenty-five percent, but ~~less-than~~ at or below
35 two hundred percent, of the most recently revised poverty

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

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

31 2. A determination of ~~the-indigent-status-of~~ whether a
32 person is entitled to an appointed attorney shall be made on
33 the basis of an affidavit of financial status submitted at the
34 time of the person's initial appearance before-a-court or at
35 such later time as a request for court appointment of counsel

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

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

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

33 5. If the case is other than a criminal case, all costs
34 and fees incurred for legal assistance shall become due and
35 payable to the clerk of the district court by the person

1 receiving the legal assistance not later than ten days from
2 the date of any court ruling or trial held in the case, or if
3 the case is dismissed, within ten days of the dismissal.

4 6. An appointed attorney shall submit a report pertaining
5 to the costs and fees for legal assistance to the court at the
6 times specified in subsections 4 and 5. If the appointed
7 attorney is a public defender, the report shall specify the
8 total hours of service plus other expenses. If the appointed
9 attorney is a private attorney, the total amount of legal
10 assistance shall be the total amount of the fees claimed by
11 the appointed attorney together with other expenses.

12 7. If all costs and fees incurred for legal assistance are
13 not paid at the times specified in subsections 4 and 5, the
14 court shall order payment of the costs and fees in reasonable
15 installments.

16 8. If a person is granted an appointed attorney or is
17 receiving legal assistance in accordance with this section and
18 the person is employed, the person shall execute an assignment
19 of wages. An order for assignment of income, in a reasonable
20 amount to be determined by the court, shall also be entered by
21 the court. The state public defender shall prescribe forms
22 for use in wage assignments and court orders entered under
23 this section.

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

27 Sec. 12. Section 815.10, Code 1999, is amended to read as
28 follows:

29 815.10 APPOINTMENT OF COUNSEL BY COURT.

30 1. The court, for cause and upon its own motion or upon
31 application by an indigent person or a public defender, shall
32 appoint the state public defender, the state public defender's
33 designee pursuant to section 13B.4, or an attorney pursuant to
34 section 13B.9 to represent an indigent person at any stage of
35 the criminal, postconviction, contempt, commitment under

1 chapter 229A, or juvenile proceedings or on appeal of any
2 criminal, postconviction, contempt, commitment under chapter
3 229A, or juvenile action in which the indigent person is
4 entitled to legal assistance at public expense. However, in
5 juvenile cases, the court may directly appoint an existing
6 nonprofit corporation established for and engaged in the
7 provision of legal services for juveniles. An appointment
8 shall not be made unless the person is determined to be
9 indigent under section 815.9. Only one attorney shall be
10 appointed in all cases, except that in class "A" felony cases
11 the court may appoint two attorneys.

12 2. An attorney other than a public defender ~~or a contract~~
13 ~~attorney~~ who is appointed by the court under this section
14 shall apply to the district-court state public defender for
15 compensation and for reimbursement of costs incurred. The
16 amount of compensation due shall be determined in accordance
17 with any indigent defense contract or pursuant to section
18 815.7.

19 3. ~~A contract attorney appointed by the court pursuant to~~
20 ~~this section and section 13B-4 shall apply to the state public~~
21 ~~defender for compensation and for reimbursement of costs~~
22 ~~incurred in accordance with the contract. The amount of~~
23 ~~compensation due shall be determined in accordance with the~~
24 ~~contract. The state public defender shall adopt rules which~~
25 specify the information which shall be included with all
26 claims for compensation submitted by court-appointed attorneys
27 under this section. If the information required under this
28 section and the rules of the state public defender is not
29 submitted, the claim may be denied until the information is
30 provided. If the information required under this section and
31 the rules of the state public defender is submitted with the
32 claim, the state public defender may approve reasonable and
33 proper compensation to the court-appointed attorney in the
34 manner provided in the rules.

35 Sec. 13. Section 815.11, Code 1999, is amended to read as

1 follows:

2 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

3 Costs incurred under chapter 229A, 665, or 822, or section
4 232.141, subsection 3, paragraph "c", or sections 814.9,
5 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10, or the
6 rules of criminal procedure on behalf of an indigent shall be
7 paid from funds appropriated by the general assembly to the
8 department of inspections and appeals for those purposes.

9 Sec. 14. EMERGENCY RULES. The office of the state public
10 defender of the department of inspections and appeals may
11 adopt administrative rules under section 17A.4, subsection 2,
12 and section 17A.5, subsection 2, paragraph "b", to implement
13 the provisions of this Act. The rules shall become effective
14 immediately upon filing, unless a later effective date is
15 specified in the rules. Any rules adopted in accordance with
16 this section shall not take effect before the rules are
17 reviewed by the administrative rules review committee. Any
18 rules adopted in accordance with the provisions of this
19 section shall also be published as notice of intended action
20 as provided in section 17A.4.

21 Sec. 15. Sections 815.9A and 815.10A, Code 1999, are
22 repealed.

23

EXPLANATION

24 This bill makes changes pertaining to the payment of costs
25 for the defense of indigent persons in criminal, juvenile,
26 postconviction, contempt actions, and certain other civil
27 actions. The duties and authority of the state public
28 defender are amended to add postconviction relief and contempt
29 actions and civil commitments of sexually violent predators to
30 the kinds of cases which are to be handled by that office.

31 The state public defender is given the authority to appoint or
32 remove for cause assistant local public defenders,
33 secretaries, and investigators. Existing law only permits the
34 appointment or removal of the managing local public defender.

35 The bill also changes the procedures for determination of

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

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