

Maddox  
Fraise  
McKibben

Succeeded By  
SF/HF 451

SSB-1194  
Judiciary

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 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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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~~7~~-~~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 defendants 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 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 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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REPRINTED

FILED MAR 16 1999

SENATE FILE 451  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1194)

Passed Senate, Date <sup>(P. 838)</sup> 3/29/99 Passed House, Date <sup>(P. 1756)</sup> 4-27-99  
Vote: Ayes 48 Nays 0 Vote: Ayes 96 Nays 0  
Approved May 18, 1999

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

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SF 451

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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 663.447-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 4, Code 1999, is amended  
11 by striking the subsection and inserting in lieu thereof the  
12 following:

13 4. a. The state public defender shall establish fee  
14 limitations for particular categories of cases. The fee  
15 limitations shall be reviewed at least every three years. In  
16 establishing and reviewing the fee limitations, the state  
17 public defender shall consider public input during the  
18 establishment and review process, and any available  
19 information regarding ordinary and customary charges for like  
20 services; the number of cases in which legal services to  
21 indigents are anticipated; the seriousness of the charge; an  
22 appropriate allocation of resources among the types of cases;  
23 experience with existing hourly rates, claims, and fee  
24 limitations; and any other factors determined to be relevant.

25 b. The state public defender shall establish a procedure  
26 for the submission of all claims for payment of indigent  
27 defense costs, including the submission of interim claims in  
28 appropriate cases.

29 c. The state public defender may review any claim for  
30 payment of indigent defense costs and may take any of the  
31 following actions:

32 (1) If the charges are appropriate and reasonable, approve  
33 the claim for payment.

34 (2) Deny the claim, if the claim is not timely filed.

35 (3) Request additional information or return the claim to

1 the attorney, if the claim is incomplete.

2 (4) If any portion of the claim is excessive, notify the  
3 attorney that the claim is excessive and will be reduced to an  
4 amount which is not excessive, and reduce and approve the  
5 balance of the claim.

6 Notwithstanding chapter 17A, the attorney may seek review  
7 of any action or intended action taken pursuant to paragraph  
8 "d" by filing a motion with the court with jurisdiction over  
9 the original appointment for review. The motion must be filed  
10 within twenty days of any action taken by the state public  
11 defender. The attorney shall have the burden to establish by  
12 a preponderance of the evidence that the amount of  
13 compensation and expenses is reasonable and necessary to  
14 competently represent the client. The filing of a motion  
15 shall not delay the payment of the amount specified by the  
16 state public defender pursuant to this subsection.

17 Sec. 4. Section 13B.4, Code 1999, is amended by adding the  
18 following new subsection:

19 NEW SUBSECTION. 4A. If any portion of the claim is not  
20 payable under the attorney's appointment, the state public  
21 defender shall deny those portions of the claim that are not  
22 payable and approve the remainder of the claim.

23 Notwithstanding chapter 17A, an attorney whose claim for  
24 compensation is denied may seek review of the action of the  
25 state public defender by filing a motion with the court with  
26 jurisdiction over the original appointment. The motion must  
27 be filed within thirty days of the action of the state public  
28 defender. The type of review and relief the court may provide  
29 shall be limited to the review and relief specified in chapter  
30 17A. The filing of a motion shall not delay the payment of  
31 the amount approved by the state public defender.

32 Sec. 5. Section 13B.4, subsection 7, Code 1999, is amended  
33 to read as follows:

34 7. The state public defender shall adopt rules, as  
35 necessary, pursuant to chapter 17A to administer this chapter

1 and ~~section-815-9~~ chapter 815.

2 Sec. 6. Section 13B.8, subsection 2, Code 1999, is amended  
3 to read as follows:

4 2. The state public defender may appoint a local public  
5 defender and may remove the local public defender, assistant  
6 local public defenders, clerks, investigators, secretaries, or  
7 other employees for cause. The Each local public defender,  
8 and any assistant local public defender, must be an attorney  
9 admitted to the practice of law before the Iowa supreme court.

10 Sec. 7. Section 13B.9, subsection 1, paragraph b, Code  
11 1999, is amended to read as follows:

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

26 Sec. 8. Section 13B.9, subsection 1, paragraph c, Code  
27 1999, is amended by striking the paragraph.

28 Sec. 9. Section 13B.9, subsection 3, Code 1999, is amended  
29 by striking the subsection.

30 Sec. 10. Section 13B.10, subsections 2 through 4, Code  
31 1999, are amended by striking the subsections.

32 Sec. 11. Section 28E.19, Code 1999, is amended to read as  
33 follows:

34 28E.19 JOINT COUNTY INDIGENT DEFENSE FUND.

35 Two or more counties may execute an agreement under this

1 chapter to create a joint county indigent defense fund to be  
2 used to compensate attorneys appointed to represent indigents  
3 ~~under section 815.10 when funds budgeted for that purpose are~~  
4 ~~exhausted.~~ In addition to other requirements of an agreement  
5 under this chapter, the agreement shall provide for the amount  
6 to be paid by each county based on its population to establish  
7 and maintain an appropriate balance in the joint fund, and for  
8 a method of repayment if a county withdraws more funds than it  
9 has contributed.

10 Sec. 12. Section 124.407, unnumbered paragraphs 2 and 7,  
11 Code 1999, are amended by striking the unnumbered paragraphs.

12 Sec. 13. Section 125.78, subsections 1 and 2, Code 1999,  
13 are amended to read as follows:

14 1. Determine whether the respondent has an attorney who is  
15 able and willing to represent the respondent in the commitment  
16 proceeding, and if not, whether the respondent is financially  
17 able to employ an attorney and capable of meaningfully  
18 assisting in selecting an attorney. In accordance with those  
19 determinations, the court shall allow the respondent to select  
20 an attorney or shall assign an attorney to the respondent. If  
21 the respondent is financially unable to pay an attorney, the  
22 ~~attorney shall be compensated in substantially the same manner~~  
23 ~~as provided by section 815.7, except that if the county has a~~  
24 ~~public defender, the court may assign the public defender or~~  
25 ~~an attorney on the public defender's staff as the respondent's~~  
26 attorney the county shall compensate the attorney at an hourly  
27 rate to be established by the county board of supervisors.

28 2. If the application includes a request for a court-  
29 appointed attorney for the applicant and the court is  
30 satisfied that a court-appointed attorney is necessary to  
31 assist the applicant in a meaningful presentation of the  
32 evidence, and that the applicant is financially unable to  
33 employ an attorney, the court shall appoint an attorney to  
34 represent the applicant. ~~The attorney shall be compensated in~~  
35 ~~substantially the same manner as provided by section 815.7 and~~

1 the county shall compensate the attorney at an hourly rate to  
2 be established by the county board of supervisors.

3 Sec. 14. Section 222.13A, subsection 4, Code 1999, is  
4 amended to read as follows:

5 4. As soon as practicable after the filing of a petition  
6 for approval of the voluntary admission, the court shall  
7 determine whether the minor has an attorney to represent the  
8 minor in the proceeding. If the minor does not have an  
9 attorney, the court shall assign to the minor an attorney. If  
10 the minor is unable to pay for an attorney, the attorney shall  
11 be compensated ~~in-substantially-the-same-manner-as-provided-in~~  
12 section-815-7 by the county at an hourly rate to be  
13 established by the county board of supervisors.

14 Sec. 15. Section 222.22, Code 1999, is amended to read as  
15 follows:

16 222.22 TIME OF APPEARANCE.

17 The time of appearance shall not be less than five days  
18 after completed service unless the court orders otherwise.  
19 Appearance on behalf of the person who is alleged to have  
20 mental retardation may be made by any citizen of the county or  
21 by any relative. The district court shall assign counsel for  
22 the person who is alleged to have mental retardation. Counsel  
23 shall prior to proceedings personally consult with the person  
24 who is alleged to have mental retardation unless the judge  
25 appointing counsel certifies that in the judge's opinion,  
26 consultation shall serve no useful purpose. The certification  
27 shall be made a part of the record. An attorney assigned by  
28 the court shall ~~receive-compensation-as-the-district-court~~  
29 ~~shall-fix-to-be-paid-in-the-first-instance-by-the-county~~ be  
30 compensated by the county at an hourly rate to be established  
31 by the county board of supervisors.

32 Sec. 16. Section 229.2, subsection 1, paragraph c, Code  
33 1999, is amended to read as follows:

34 c. As soon as is practicable after the filing of a  
35 petition for juvenile court approval of the admission of the

1 minor, the juvenile court shall determine whether the minor  
2 has an attorney to represent the minor in the hospitalization  
3 proceeding, and if not, the court shall assign to the minor an  
4 attorney. If the minor is financially unable to pay for an  
5 attorney, the attorney shall be compensated ~~in-substantially~~  
6 ~~the-manner-provided-by-section-815-7~~ by the county at an  
7 hourly rate to be established by the county board of  
8 supervisors.

9 Sec. 17. Section 229.8, subsection 1, Code 1999, is  
10 amended to read as follows:

11 1. Determine whether the respondent has an attorney who is  
12 able and willing to represent the respondent in the  
13 hospitalization proceeding, and if not, whether the respondent  
14 is financially able to employ an attorney and capable of  
15 meaningfully assisting in selecting one. In accordance with  
16 those determinations, the court shall if necessary allow the  
17 respondent to select, or shall assign to the respondent, an  
18 attorney. If the respondent is financially unable to pay an  
19 attorney, the attorney shall be compensated ~~in-substantially~~  
20 ~~the-manner-provided-by-section-815-7, except that if the~~  
21 ~~county has a public defender the court may designate the~~  
22 ~~public defender or an attorney on the public defender's staff~~  
23 ~~to act as the respondent's attorney~~ by the county at an hourly  
24 rate to be established by the county board of supervisors.

25 Sec. 18. Section 229.19, unnumbered paragraph 3, Code  
26 1999, is amended to read as follows:

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

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

19 Sec. 19. Section 232.141, subsection 2, Code 1999, is  
20 amended to read as follows:

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

24 a. The fees and mileage of witnesses and the expenses of  
25 officers serving notices and subpoenas which are incurred in  
26 connection with the appointment of an attorney by the court to  
27 serve as counsel to any party or to serve as a guardian ad  
28 litem for any child.

29 b. Reasonable compensation for an attorney appointed by  
30 the court to serve as counsel to any party or as guardian ad  
31 litem for any child. However, the amount of compensation paid  
32 shall be paid in accordance with section 815.7.

33 Sec. 20. Section 232.141, subsection 3, paragraph c, Code  
34 1999, is amended to read as follows:

35 c. Costs incurred under subsection 2 which are not paid by

1 the county under paragraphs "a" and "b" shall be reimbursed by  
2 the state. ~~Reimbursement-for-the-costs-of-compensation-of-an~~  
3 ~~attorney-appointed-by-the-court-to-serve-as-counsel-or~~  
4 ~~guardian-ad-litem-shall-be-made-as-provided-in-section-815.7.~~  
5 ~~A-county-shall-apply-for-reimbursement-to-the-department-of~~  
6 ~~inspections-and-appeals-which~~ However, before any costs are  
7 paid, a claim must be submitted to and approved by the state  
8 public defender who shall prescribe rules and forms to  
9 implement this subsection.

10 Sec. 21. Section 237.20, subsection 4, paragraph e, Code  
11 1999, is amended to read as follows:

12 e. The guardian ad litem of the foster child. ~~The An~~  
13 attorney appointed as guardian ad litem shall be eligible for  
14 compensation through under section 232.141, subsection 17  
15 paragraph-"b" 2.

16 Sec. 22. Section 814.11, Code 1999, is amended to read as  
17 follows:

18 814.11 INDIGENT'S RIGHT TO COUNSEL.

19 An indigent defendant is entitled to appointed counsel on  
20 the appeal of all indictable offenses. ~~Such The~~ appointment  
21 is-subject-to-rules-of-the-supreme-court shall be made to the  
22 state appellate defender unless the state appellate defender  
23 is unable to handle the case due to a conflict of interest or  
24 because of a temporary overload of cases. If the state  
25 appellate defender is unable to handle the case, the court  
26 shall appoint an attorney who has a contract with the state  
27 public defender to handle such an appeal. If the court  
28 determines that no contract attorney is available to handle  
29 the appeal, the court may appoint a noncontract attorney who  
30 has agreed to handle the case, but the order of appointment  
31 shall include a specific finding that no contract attorney was  
32 available. The appointment of noncontract attorneys shall be  
33 on a rotational or equalization basis, considering the  
34 experience of the attorney and the difficulty of the case.

35 Sec. 23. Section 815.4, Code 1999, is amended to read as

1 follows:

2 815.4 SPECIAL WITNESSES FOR INDIGENTS.

3 Witnesses secured for indigent ~~or partially-indigent~~  
4 defendants under R.Cr.P. 19 must file a claim for compensation  
5 supported by an affidavit specifying the time expended,  
6 services rendered, and expenses incurred on behalf of the  
7 defendant.

8 Sec. 24. Section 815.5, Code 1999, is amended to read as  
9 follows:

10 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

11 Notwithstanding the provisions of section 622.72,  
12 reasonable compensation as determined by the court shall be  
13 awarded expert witnesses, expert witnesses for an indigent ~~or~~  
14 ~~partially-indigent~~ person referred to in section 815.4, or  
15 called by the state in criminal cases.

16 Sec. 25. Section 815.7, Code 1999, is amended to read as  
17 follows:

18 815.7 FEES TO ATTORNEYS.

19 An attorney who has not entered into a contract authorized  
20 under section 13B.4 and who is appointed by the court to  
21 represent any person charged with a crime in this state,  
22 seeking postconviction relief, against whom a contempt action  
23 is pending, appealing a criminal conviction, appealing a  
24 denial of postconviction relief, or subject to a proceeding  
25 under chapter 229A, or to serve as counsel for any person or  
26 guardian ad litem to-a-person for any child in juvenile court,  
27 ~~in-this-state~~ shall be entitled to a reasonable compensation  
28 ~~and expenses which shall be the ordinary and customary charges~~  
29 ~~for like services in the community to be decided in each case~~  
30 ~~by a judge of the district court or of the juvenile court, as~~  
31 ~~applicable, including such sum or sums as the court may~~  
32 ~~determine are necessary for investigation in the interests of~~  
33 ~~justice and in the event of appeal the cost of obtaining the~~  
34 ~~transcript of the trial and the printing of the trial record~~  
35 ~~and necessary briefs in behalf of the defendant. However, the~~

1 reasonable-compensation-awarded-an-attorney-shall-not-be  
2 calculated-based-upon-an-hourly-rate-that-exceeds-the-rate-a  
3 contract-attorney-as-provided-in-section-13B-4-would-receive  
4 in-a-similar-case. For appointments made on or after July 1,  
5 1999, the reasonable compensation shall be calculated on the  
6 basis of sixty dollars per hour for class "A" felonies, fifty-  
7 five dollars per hour for class "B" felonies, and fifty  
8 dollars per hour for all other offenses. The expenses shall  
9 include any sums as are necessary for investigations in the  
10 interest of justice, and the cost of obtaining the transcript  
11 of the trial record and briefs if an appeal is filed. Such  
12 The attorney need not follow the case into another county or  
13 into the appellate court unless so directed by the court at  
14 the request of the defendant, where grounds for further  
15 litigation are not capricious or unreasonable, but if such  
16 attorney does so, the attorney's fee shall be determined  
17 accordingly. If the attorney follows the case into another  
18 county or into the appellate court, the attorney shall be  
19 entitled to compensation as provided in this section. Only  
20 one attorney fee shall be so awarded in any one case except  
21 that in class "A" felony cases, two may be authorized.

22 Sec. 26. Section 815.9, Code 1999, is amended to read as  
23 follows:

24 815.9 INDIGENCY DETERMINED -- PENALTY.

25 1. For purposes of this chapter, ~~section 68-87-section~~  
26 ~~222-22~~ chapter 13B, chapter 229A, chapter 232, chapter 665,  
27 chapter 814, chapter 822, and the rules of criminal procedure,  
28 the following apply a person is indigent if the person is  
29 entitled to an attorney appointed by the court as follows:

30 a. A person is indigent entitled to an attorney appointed  
31 by the court to represent the person if the person has an  
32 income level at or below one hundred fifty twenty-five percent  
33 of the United States poverty level as defined by the most  
34 recently revised poverty income guidelines published by the  
35 United States department of health and human services, unless

1 the court determines that the person is able to pay for the  
2 cost of an attorney to represent the person on the pending  
3 charges. In making the determination of a person's ability to  
4 pay for the cost of an attorney, the court shall consider not  
5 only the person's income, but also the availability of any  
6 assets subject to execution, including but not limited to  
7 cash, stocks, bonds, and any other property which may be  
8 applied to the satisfaction of judgments.

9 ~~b. A person is not indigent if the person has an income~~  
10 ~~level greater than one hundred fifty percent of the United~~  
11 ~~States poverty level as defined by the most recently revised~~  
12 ~~poverty income guidelines published by the United States~~  
13 ~~department of health and human services.~~

14 e b. A person with an income level greater than one  
15 hundred fifty twenty-five percent, but less than at or below  
16 two hundred percent, of the most recently revised poverty  
17 income guidelines published by the United States department of  
18 health and human services ~~may be deemed partially indigent by~~  
19 shall not be entitled to an attorney appointed by the court,  
20 unless the court pursuant to makes a written finding that,  
21 ~~given the person's circumstances,~~ not appointing counsel on  
22 the pending charges 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 d c. A person with an income level greater than two  
32 hundred percent of the most recently revised poverty income  
33 guidelines published by the United States department of health  
34 and human services shall not be ~~deemed indigent or partially~~  
35 ~~indigent~~ entitled to an attorney appointed by the court,

1 unless the person is charged with a felony and the court makes  
2 a written finding that, ~~given the person's circumstances,~~ not  
3 appointing counsel would cause the person substantial  
4 hardship. ~~However, the court shall require a person appointed~~  
5 ~~counsel to contribute to the cost of representation in~~  
6 ~~accordance with rules adopted by the state public defender.~~  
7 In determining whether substantial hardship would result, the  
8 court shall consider not only the person's income, but also  
9 the availability of any assets subject to execution, including  
10 but not limited to cash, stocks, bonds, and any other property  
11 which may be applied to the satisfaction of judgments.

12 2. A determination of ~~the indigent status of~~ whether a  
13 person is entitled to an appointed attorney shall be made on  
14 the basis of an affidavit of financial status submitted at the  
15 time of the person's initial appearance before a court or at  
16 such later time as a request for court appointment of counsel  
17 is made. If a person is granted legal assistance as an  
18 indigent or partial indigent, the financial statement shall be  
19 filed and permanently retained in the person's court file.  
20 The state public defender shall adopt rules prescribing the  
21 form and content of the affidavit of financial statement and  
22 the criteria by which a determination of indigency shall be  
23 based status. The affidavit of financial statement status  
24 shall be signed under penalty of perjury and shall contain  
25 sufficient information to allow the determination to be made  
26 of whether the person ~~meets the guidelines set out in~~  
27 ~~subsection 1 and shall be accompanied by the person's most~~  
28 ~~recent pay slip, if employed~~ is entitled to an appointed  
29 attorney under this section. If the person is granted an  
30 appointed attorney, the affidavit of financial status shall be  
31 filed and permanently retained in the person's court file.

32 3. ~~A person who knowingly submits a false financial~~  
33 ~~statement for the purpose of obtaining legal assistance by~~  
34 ~~appointed counsel commits a fraudulent practice.~~ If a person  
35 is granted an appointed attorney, the person shall be required

1 to reimburse the state for the total cost of legal assistance  
2 provided to the person. As-used-in-this-subsection, "legal  
3 assistance" includes legal counsel "Legal assistance" as used  
4 in this section shall include not only an appointed attorney,  
5 but also transcripts, witness fees and, expenses, and any  
6 other goods or services required by law to be provided to an  
7 indigent person entitled to an appointed attorney.

8 4. If the case is a criminal case, all costs and fees  
9 incurred for legal assistance shall become due and payable to  
10 the clerk of the district court by the person receiving the  
11 legal assistance not later than the date of sentencing, or if  
12 the person is acquitted or the charges are dismissed, within  
13 thirty days of the acquittal or dismissal.

14 5. If the case is other than a criminal case, all costs  
15 and fees incurred for legal assistance shall become due and  
16 payable to the clerk of the district court by the person  
17 receiving the legal assistance not later than ten days from  
18 the date of any court ruling or trial held in the case, or if  
19 the case is dismissed, within ten days of the dismissal.

20 6. An appointed attorney shall submit a report pertaining  
21 to the costs and fees for legal assistance to the court at the  
22 times specified in subsections 4 and 5. If the appointed  
23 attorney is a public defender, the report shall specify the  
24 total hours of service plus other expenses. If the appointed  
25 attorney is a private attorney, the total amount of legal  
26 assistance shall be the total amount of the fees claimed by  
27 the appointed attorney together with other expenses.

28 7. If all costs and fees incurred for legal assistance are  
29 not paid at the times specified in subsections 4 and 5, the  
30 court shall order payment of the costs and fees in reasonable  
31 installments.

32 8. If a person is granted an appointed attorney or is  
33 receiving legal assistance in accordance with this section and  
34 the person is employed, the person shall execute an assignment  
35 of wages. An order for assignment of income, in a reasonable

1 amount to be determined by the court, shall also be entered by  
2 the court. The state public defender shall prescribe forms  
3 for use in wage assignments and court orders entered under  
4 this section.

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

8 Sec. 27. Section 815.10, Code 1999, is amended to read as  
9 follows:

10 815.10 APPOINTMENT OF COUNSEL BY COURT.

11 1. The court, for cause and upon its own motion or upon  
12 application by an indigent person or a public defender, shall  
13 appoint the state public defender, the state public defender's  
14 designee pursuant to section 13B.4, or an attorney pursuant to  
15 section 13B.9 to represent an indigent person at any stage of  
16 the criminal, postconviction, contempt, commitment under  
17 chapter 229A, or juvenile proceedings or on appeal of any  
18 criminal, postconviction, contempt, commitment under chapter  
19 229A, or juvenile action in which the indigent person is  
20 entitled to legal assistance at public expense. However, in  
21 juvenile cases, the court may directly appoint an existing  
22 nonprofit corporation established for and engaged in the  
23 provision of legal services for juveniles. An appointment  
24 shall not be made unless the person is determined to be  
25 indigent under section 815.9. Only one attorney shall be  
26 appointed in all cases, except that in class "A" felony cases  
27 the court may appoint two attorneys.

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

35 3. ~~A contract attorney appointed by the court pursuant to~~

1 ~~this section and section 13B.4 shall apply to the state public~~  
2 ~~defender for compensation and for reimbursement of costs~~  
3 ~~incurred in accordance with the contract. The amount of~~  
4 ~~compensation due shall be determined in accordance with the~~  
5 ~~contract. The state public defender shall adopt rules which~~  
6 ~~specify the information which shall be included with all~~  
7 ~~claims for compensation submitted by court-appointed attorneys~~  
8 ~~under this section. The rules shall require that a court-~~  
9 ~~appointed attorney shall obtain court approval of a claim~~  
10 ~~prior to exceeding the fee limitations established pursuant to~~  
11 ~~section 13B.4. However, a court-appointed attorney may~~  
12 ~~request court approval after exceeding a fee limitation if~~  
13 ~~good cause is shown. The order approving a claim that exceeds~~  
14 ~~the fee limitation shall be included in the information~~  
15 ~~submitted under this section. If the information required~~  
16 ~~under this section and the rules of the state public defender~~  
17 ~~is not submitted, the claim may be denied until the~~  
18 ~~information is provided. If the information required under~~  
19 ~~this section and the rules of the state public defender is~~  
20 ~~submitted with the claim, the state public defender may~~  
21 ~~approve reasonable and proper compensation to the court-~~  
22 ~~appointed attorney in the manner provided in the rules.~~

23 Sec. 28. Section 815.11, Code 1999, is amended to read as  
24 follows:

25 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

26 Costs incurred under chapter 229A, 665, or 822, or section  
27 232.141, subsection 3, paragraph "c", or sections 814.9,  
28 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10, or the  
29 rules of criminal procedure on behalf of an indigent shall be  
30 paid from funds appropriated by the general assembly to the  
31 department of inspections and appeals for those purposes.

32 Sec. 29. EMERGENCY RULES. The office of the state public  
33 defender of the department of inspections and appeals may  
34 adopt administrative rules under section 17A.4, subsection 2,  
35 and section 17A.5, subsection 2, paragraph "b", to implement

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

9 Sec. 30. Sections 815.9A and 815.10A, Code 1999, are  
10 repealed.

11 EXPLANATION

12 This bill makes changes pertaining to the payment of costs  
13 for the defense of indigent persons in criminal, juvenile,  
14 postconviction, contempt actions, and certain other civil  
15 actions. The duties and authority of the state public  
16 defender are amended to add postconviction relief and contempt  
17 actions and civil commitments of sexually violent predators to  
18 the kinds of cases which are to be handled by that office.

19 The state public defender is given the authority to appoint or  
20 remove for cause assistant local public defenders,  
21 secretaries, and investigators. Existing law only permits the  
22 appointment or removal of the managing local public defender.

23 This bill provides for a county to negotiate the rate of  
24 compensation with noncontract attorneys or attorneys who are  
25 not public defenders representing indigents in certain court-  
26 appointed cases under Code chapters 125, 222, and 229. Under  
27 current law, the rate of compensation attorneys charge a  
28 county for representing indigents in certain court-appointed  
29 cases is set in accordance with Code section 815.7.

30 The bill also provides that the court is not required to  
31 certify indigent defense costs under Code chapter 232 before  
32 the costs are submitted to the state.

33 This bill makes changes pertaining to the payment of costs  
34 for the defense of indigent persons in criminal, juvenile,  
35 postconviction, contempt actions, and certain other civil

1 actions. The bill establishes the hourly rates for  
2 representation by noncontract court-appointed attorneys of  
3 class "A" felons at \$60 per hour and of class "B" felons at  
4 \$55 per hour. For all other offenses, the rate is \$50 per  
5 hour. The bill provides that the state public defender shall  
6 establish the fee limitations for various categories of cases.  
7 The state public defender is given the direct authority to  
8 approve or reduce claims made for payment of indigent defense  
9 costs. Procedures are added in the bill which permit the  
10 state public defender to set and exceed limitations on  
11 indigent defense costs which are submitted for payment by  
12 court-appointed attorneys. References are eliminated which  
13 make the appointment of counsel on appeals subject to supreme  
14 court rules. Instead, the bill substitutes a procedure which  
15 provides for the appointment of the state appellate defender,  
16 unless the appellate defender has a conflict of interest or a  
17 temporary overload of cases. In the latter two situations,  
18 the bill provides for the appointment of an attorney who has  
19 entered into a contract with the state public defender to  
20 handle appeals. If no contract attorney is available, the  
21 court may appoint a noncontract attorney on a rotational or  
22 equalization basis, considering the experience of the attorney  
23 and the difficulty of the case. The appointment must,  
24 however, include specific findings that no contract attorney  
25 was available. Noncontract attorneys will be paid directly  
26 through the state public defender's office and are to submit  
27 such reports and information relating to their fees and  
28 expenses as are required by the state public defender.

29 The bill also changes the procedures for determination of  
30 an individual's indigence and consequent eligibility for  
31 court-appointed counsel at state expense. The requirement  
32 that the state public defender's office make an initial  
33 determination of indigence prior to the initial arraignment or  
34 other initial court appearance is eliminated and all  
35 references to determinations of indigency are transferred to

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

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**SENATE FILE 451  
FISCAL NOTE**

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A fiscal note for Senate File 451 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.

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**SUMMARY**

Senate File 451 raises the hourly rate paid for legal defense of indigent persons by \$5.00, expands the duties of the State Public Defender, excludes partially-indigent persons from being qualified for services, and provides for the State to pay juvenile claims over the county base.

**ASSUMPTIONS**

1. The estimated number of hours billed for FY 1999 are 372,000.
2. Rate of growth in claims will remain at 7.0%
3. There will be an increase of approximately 26,000 hours billed for Indigent Defense costs in FY 2000, and a 28,000 hour increase for FY 2001 over the total hours billed in FY 1999.
4. Rate of Attorney compensation will remain constant throughout the two-year period.
5. There will be a lag effect of approximately four months between the date of enactment and the time claims will be paid at the new rate.
6. There will be no significant reclassification of crimes.
7. The cost of depositions, expert witnesses, and other expenses will remain unchanged.

**FISCAL IMPACT**

Senate File 451 increases the General Fund expenditures for the Indigent Defense Program by approximately \$1.3 million in FY 2000 and \$2.1 million in FY 2001.

(LSB 2192SV, CRS)

FILED MARCH 29, 1999

BY DENNIS PROUTY, FISCAL DIRECTOR

## SENATE FILE 451

S-3173

Amend Senate File 451 as follows:

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

"Sec. \_\_\_\_ . NEW SECTION. 13B.2A INDIGENT DEFENSE ADVISORY COMMISSION.

An indigent defense advisory commission is established within the department to advise and make recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

The advisory commission shall consist of five members. The governor shall appoint three members, including one member from nominations by the Iowa state bar association and one member from nominations by the supreme court. Two members, one from each chamber of the general assembly, shall be appointed, with no more than one appointed from the same political party. Each member shall serve a three-year term, with initial terms to be staggered. No more than three members shall be licensed to practice law in Iowa. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.

The members of the commission are entitled to receive reimbursement for actual expenses incurred as provided for in section 7E.6, subsection 2 while engaged in the performance of the duties of the commission.

The advisory commission shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due regarding the recommendations and activities of the commission. The first such report shall be due on January 1, 2003."

2. Page 9, line 1, by striking the word "reimbursed" and inserting the following: "reimbursed paid".

3. By renumbering as necessary.

By O. GENE MADDOX

S-3173 FILED MARCH 29, 1999

WITHDRAWN

(P. 837)

## SENATE FILE 451

-3178

Amend Senate File 451 as follows:

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

"Sec. \_\_\_\_ . NEW SECTION. 13B.2A INDIGENT DEFENSE  
ADVISORY COMMISSION.

An indigent defense advisory commission is established within the department to advise and make recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

The advisory commission shall consist of five members. The governor shall appoint three members, including one member from nominations by the Iowa state bar association and one member from nominations by the supreme court. Two members, one from each chamber of the general assembly, shall be appointed, with no more than one appointed from the same political party. Each member shall serve a three-year term, with initial terms to be staggered. No more than three members shall be licensed to practice law in Iowa. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.

The members of the commission are entitled to receive reimbursement for actual expenses incurred as provided for in section 7E.6, subsection 2 while engaged in the performance of the duties of the commission.

The advisory commission shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due regarding the recommendations and activities of the commission. The first such report shall be due on January 1, 2003."

2. Page 5, line 27, by inserting after the word "supervisors" the following: "in substantially the same manner as provided in section 815.7".

3. Page 6, line 2, by inserting after the word "supervisors" the following: "in substantially the same manner as provided in section 815.7".

4. Page 6, line 13, by inserting after the word "supervisors" the following: "in substantially the same manner as provided in section 815.7".

5. Page 6, line 31, by inserting after the word "supervisors" the following: "in substantially the same manner as provided in section 815.7".

-3178

-1-

S-3178

Page 2

- 1 6. Page 7, line 8, by inserting after the word  
2 "supervisors" the following: "in substantially the  
3 same manner as provided in section 815.7".
- 4 7. Page 7, line 24, by inserting after the word  
5 "supervisors" the following: "in substantially the  
6 same manner as provided in section 815.7".
- 7 8. Page 8, lines 17 and 18, by striking the words  
8 "in the" and inserting the following: "in  
9 substantially the same".
- 10 9. Page 8, line 18, by inserting after the word  
11 "supervisors" the following: "as provided in section  
12 815.7".
- 13 10. Page 9, line 1, by striking the word  
14 "reimbursed" and inserting the following: "reimbursed  
15 paid".
- 16 11. Page 12, line 8, by inserting after the word  
17 "judgments" the following: "and the seriousness of  
18 the charge".
- 19 12. Page 12, line 30, by inserting after the word  
20 "judgments" the following: "and the seriousness of  
21 the charge".
- 22 13. Page 13, line 11, by inserting after the word  
23 "judgments" the following: "and the seriousness of  
24 the charge".

By O. GENE MADDOX

S-3178 FILED MARCH 29, 1999  
ADOPTED

(p. 837)



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 663.447-and-822-5.

15 Sec. 2. NEW SECTION. 13B.2A INDIGENT DEFENSE ADVISORY  
16 COMMISSION.

17 An indigent defense advisory commission is established  
18 within the department to advise and make recommendations to  
19 the legislature and the state public defender regarding the  
20 hourly rates paid to court-appointed counsel and per case fee  
21 limitations. These recommendations shall be consistent with  
22 the constitutional requirement to provide effective assistance  
23 of counsel to those indigent persons for whom the state is  
24 required to provide counsel.

25 The advisory commission shall consist of five members. The  
26 governor shall appoint three members, including one member  
27 from nominations by the Iowa state bar association and one  
28 member from nominations by the supreme court. Two members,  
29 one from each chamber of the general assembly, shall be  
30 appointed, with no more than one appointed from the same  
31 political party. Each member shall serve a three-year term,  
32 with initial terms to be staggered. No more than three  
33 members shall be licensed to practice law in Iowa. The state  
34 public defender shall serve as an ex officio member of the  
35 commission and shall serve as the nonvoting chair of the

1 commission.

2 The members of the commission are entitled to receive  
3 reimbursement for actual expenses incurred as provided for in  
4 section 7E.6, subsection 2 while engaged in the performance of  
5 the duties of the commission.

6 The advisory commission shall file a written report every  
7 three years with the governor and the general assembly by  
8 January 1 of a year in which a report is due regarding the  
9 recommendations and activities of the commission. The first  
10 such report shall be due on January 1, 2003.

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

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

24 2. The state public defender shall file with the clerk of  
25 the district court in each county served by a public defender  
26 a designation of which local public defender office shall  
27 receive notice of appointment of cases. Except as otherwise  
28 provided, in each county in which the state public defender  
29 files such designation, the state public defender or its  
30 designee shall be appointed by the court to represent all  
31 eligible indigents, ~~whether-the-case-is-criminal-or-juvenile~~  
32 in-nature in all of the cases and proceedings specified under  
33 subsection 1. The appointment shall not be made if the state  
34 public defender notifies the court that the local public  
35 defender will not provide legal representation in cases

1 ~~involving-offenses~~ as identified in the designation by the  
2 state public defender.

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

6 Sec. 4. Section 13B.4, subsection 4, Code 1999, is amended  
7 by striking the subsection and inserting in lieu thereof the  
8 following:

9 4. a. The state public defender shall establish fee  
10 limitations for particular categories of cases. The fee  
11 limitations shall be reviewed at least every three years. In  
12 establishing and reviewing the fee limitations, the state  
13 public defender shall consider public input during the  
14 establishment and review process, and any available  
15 information regarding ordinary and customary charges for like  
16 services; the number of cases in which legal services to  
17 indigents are anticipated; the seriousness of the charge; an  
18 appropriate allocation of resources among the types of cases;  
19 experience with existing hourly rates, claims, and fee  
20 limitations; and any other factors determined to be relevant.

21 b. The state public defender shall establish a procedure  
22 for the submission of all claims for payment of indigent  
23 defense costs, including the submission of interim claims in  
24 appropriate cases.

25 c. The state public defender may review any claim for  
26 payment of indigent defense costs and may take any of the  
27 following actions:

28 (1) If the charges are appropriate and reasonable, approve  
29 the claim for payment.

30 (2) Deny the claim, if the claim is not timely filed.

31 (3) Request additional information or return the claim to  
32 the attorney, if the claim is incomplete.

33 (4) If any portion of the claim is excessive, notify the  
34 attorney that the claim is excessive and will be reduced to an  
35 amount which is not excessive, and reduce and approve the

1 balance of the claim.

2 Notwithstanding chapter 17A, the attorney may seek review  
3 of any action or intended action taken pursuant to paragraph  
4 "d" by filing a motion with the court with jurisdiction over  
5 the original appointment for review. The motion must be filed  
6 within twenty days of any action taken by the state public  
7 defender. The attorney shall have the burden to establish by  
8 a preponderance of the evidence that the amount of  
9 compensation and expenses is reasonable and necessary to  
10 competently represent the client. The filing of a motion  
11 shall not delay the payment of the amount specified by the  
12 state public defender pursuant to this subsection.

13 Sec. 5. Section 13B.4, Code 1999, is amended by adding the  
14 following new subsection:

15 NEW SUBSECTION. 4A. If any portion of the claim is not  
16 payable under the attorney's appointment, the state public  
17 defender shall deny those portions of the claim that are not  
18 payable and approve the remainder of the claim.

19 Notwithstanding chapter 17A, an attorney whose claim for  
20 compensation is denied may seek review of the action of the  
21 state public defender by filing a motion with the court with  
22 jurisdiction over the original appointment. The motion must  
23 be filed within thirty days of the action of the state public  
24 defender. The type of review and relief the court may provide  
25 shall be limited to the review and relief specified in chapter  
26 17A. The filing of a motion shall not delay the payment of  
27 the amount approved by the state public defender.

28 Sec. 6. Section 13B.4, subsection 7, Code 1999, is amended  
29 to read as follows:

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

33 Sec. 7. Section 13B.8, subsection 2, Code 1999, is amended  
34 to read as follows:

35 2. The state public defender may appoint a local public

1 defender and may remove the local public defender, assistant  
2 local public defenders, clerks, investigators, secretaries, or  
3 other employees for cause. The Each local public defender,  
4 and any assistant local public defender, must be an attorney  
5 admitted to the practice of law before the Iowa supreme court.

6 Sec. 8. Section 13B.9, subsection 1, paragraph b, Code  
7 1999, is amended to read as follows:

8 b. Represent an indigent party, without fee and upon an  
9 order of the court, in child in need of assistance, family in  
10 need of assistance, delinquency, and termination of parental  
11 rights proceedings pursuant to chapter 232 in a county served  
12 by a public defender. The local public defender shall counsel  
13 and represent an indigent party in all proceedings pursuant to  
14 chapter 232 in a county served by a public defender and  
15 prosecute before or after judgment any appeals or other  
16 remedies which the local public defender considers to be in  
17 the interest of justice unless other counsel is appointed to  
18 the case. ~~The state public defender shall be reimbursed by~~  
19 ~~the counties for services rendered by employees of the local~~  
20 ~~public defenders' offices under this subsection, pursuant to~~  
21 ~~section 232:141.~~

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

24 Sec. 10. Section 13B.9, subsection 3, Code 1999, is  
25 amended by striking the subsection.

26 Sec. 11. Section 13B.10, subsections 2 through 4, Code  
27 1999, are amended by striking the subsections.

28 Sec. 12. Section 28E.19, Code 1999, is amended to read as  
29 follows:

30 28E.19 JOINT COUNTY INDIGENT DEFENSE FUND.

31 Two or more counties may execute an agreement under this  
32 chapter to create a joint county indigent defense fund to be  
33 used to compensate attorneys appointed to represent indigents  
34 ~~under section 815:10 when funds budgeted for that purpose are~~  
35 exhausted. In addition to other requirements of an agreement

1 under this chapter, the agreement shall provide for the amount  
2 to be paid by each county based on its population to establish  
3 and maintain an appropriate balance in the joint fund, and for  
4 a method of repayment if a county withdraws more funds than it  
5 has contributed.

6 Sec. 13. Section 124.407, unnumbered paragraphs 2 and 7,  
7 Code 1999, are amended by striking the unnumbered paragraphs.

8 Sec. 14. Section 125.78, subsections 1 and 2, Code 1999,  
9 are amended to read as follows:

10 1. Determine whether the respondent has an attorney who is  
11 able and willing to represent the respondent in the commitment  
12 proceeding, and if not, whether the respondent is financially  
13 able to employ an attorney and capable of meaningfully  
14 assisting in selecting an attorney. In accordance with those  
15 determinations, the court shall allow the respondent to select  
16 an attorney or shall assign an attorney to the respondent. If  
17 the respondent is financially unable to pay an attorney, the  
18 ~~attorney shall be compensated in substantially the same manner~~  
19 ~~as provided by section 815.7, except that if the county has a~~  
20 ~~public defender, the court may assign the public defender or~~  
21 ~~an attorney on the public defender's staff as the respondent's~~  
22 attorney the county shall compensate the attorney at an hourly  
23 rate to be established by the county board of supervisors in  
24 substantially the same manner as provided in section 815.7.

25 2. If the application includes a request for a court-  
26 appointed attorney for the applicant and the court is  
27 satisfied that a court-appointed attorney is necessary to  
28 assist the applicant in a meaningful presentation of the  
29 evidence, and that the applicant is financially unable to  
30 employ an attorney, the court shall appoint an attorney to  
31 represent the applicant. ~~The attorney shall be compensated in~~  
32 ~~substantially the same manner as provided by section 815.7 and~~  
33 the county shall compensate the attorney at an hourly rate to  
34 be established by the county board of supervisors in  
35 substantially the same manner as provided in section 815.7.

1 Sec. 15. Section 222.13A, subsection 4, Code 1999, is  
2 amended to read as follows:

3 4. As soon as practicable after the filing of a petition  
4 for approval of the voluntary admission, the court shall  
5 determine whether the minor has an attorney to represent the  
6 minor in the proceeding. If the minor does not have an  
7 attorney, the court shall assign to the minor an attorney. If  
8 the minor is unable to pay for an attorney, the attorney shall  
9 be compensated ~~in-substantially-the-same-manner-as-provided-in~~  
10 section-815.7 by the county at an hourly rate to be  
11 established by the county board of supervisors in  
12 substantially the same manner as provided in section 815.7.

13 Sec. 16. Section 222.22, Code 1999, is amended to read as  
14 follows:

15 222.22 TIME OF APPEARANCE.

16 The time of appearance shall not be less than five days  
17 after completed service unless the court orders otherwise.  
18 Appearance on behalf of the person who is alleged to have  
19 mental retardation may be made by any citizen of the county or  
20 by any relative. The district court shall assign counsel for  
21 the person who is alleged to have mental retardation. Counsel  
22 shall prior to proceedings personally consult with the person  
23 who is alleged to have mental retardation unless the judge  
24 appointing counsel certifies that in the judge's opinion,  
25 consultation shall serve no useful purpose. The certification  
26 shall be made a part of the record. An attorney assigned by  
27 the court shall ~~receive-compensation-as-the-district-court~~  
28 ~~shall-fix-to-be-paid-in-the-first-instance-by-the-county~~ be  
29 compensated by the county at an hourly rate to be established  
30 by the county board of supervisors in substantially the same  
31 manner as provided in section 815.7.

32 Sec. 17. Section 229.2, subsection 1, paragraph c, Code  
33 1999, is amended to read as follows:

34 c. As soon as is practicable after the filing of a  
35 petition for juvenile court approval of the admission of the

1 minor, the juvenile court shall determine whether the minor  
2 has an attorney to represent the minor in the hospitalization  
3 proceeding, and if not, the court shall assign to the minor an  
4 attorney. If the minor is financially unable to pay for an  
5 attorney, the attorney shall be compensated ~~in-substantially~~  
6 the-manner-provided-by-section-815.7 by the county at an  
7 hourly rate to be established by the county board of  
8 supervisors in substantially the same manner as provided in  
9 section 815.7.

10 Sec. 18. Section 229.8, subsection 1, Code 1999, is  
11 amended to read as follows:

12 1. Determine whether the respondent has an attorney who is  
13 able and willing to represent the respondent in the  
14 hospitalization proceeding, and if not, whether the respondent  
15 is financially able to employ an attorney and capable of  
16 meaningfully assisting in selecting one. In accordance with  
17 those determinations, the court shall if necessary allow the  
18 respondent to select, or shall assign to the respondent, an  
19 attorney. If the respondent is financially unable to pay an  
20 attorney, the attorney shall be compensated ~~in-substantially~~  
21 ~~the-manner-provided-by-section-815.7, except that if the~~  
22 ~~county has a public defender the court may designate the~~  
23 ~~public defender or an attorney on the public defender's staff~~  
24 ~~to act as the respondent's attorney~~ by the county at an hourly  
25 rate to be established by the county board of supervisors in  
26 substantially the same manner as provided in section 815.7.

27 Sec. 19. Section 229.19, unnumbered paragraph 3, Code  
28 1999, is amended to read as follows:

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

1 county board of supervisors, on the direction of the board.  
2 If the advocate is appointed by the court, the advocate is an  
3 employee of the state for purposes of chapter 669. If the  
4 advocate is appointed by the county board of supervisors, the  
5 advocate is an employee of the county for purposes of chapter  
6 670. If the patient or the person who is legally liable for  
7 the patient's support is not indigent, the board shall recover  
8 the costs of compensating the advocate from that person. If  
9 that person has an income level as determined pursuant to  
10 section 815.9 greater than one hundred percent but not more  
11 than one hundred fifty percent of the poverty guidelines, at  
12 least one hundred dollars of the advocate's compensation shall  
13 be recovered ~~in accordance with rules adopted by the state~~  
14 public defender in the manner prescribed by the county board  
15 of supervisors. If that person has an income level as  
16 determined pursuant to section 815.9 greater than one hundred  
17 fifty percent of the poverty guidelines, at least two hundred  
18 dollars of the advocate's compensation shall be recovered in  
19 ~~accordance with rules adopted by the state public defender in~~  
20 substantially the same manner prescribed by the county board  
21 of supervisors as provided in section 815.7.

22 Sec. 20. Section 232.141, subsection 2, Code 1999, is  
23 amended to read as follows:

24 2. ~~Upon certification of the court, all~~ All of the  
25 following expenses are a charge upon the county in which the  
26 proceedings are held, to the extent provided in subsection 3:

27 a. The fees and mileage of witnesses and the expenses of  
28 officers serving notices and subpoenas which are incurred in  
29 connection with the appointment of an attorney by the court to  
30 serve as counsel to any party or to serve as a guardian ad  
31 litem for any child.

32 b. Reasonable compensation for an attorney appointed by  
33 the court to serve as counsel to any party or as guardian ad  
34 litem for any child. However, the amount of compensation paid  
35 shall be paid in accordance with section 815.7.

1 Sec. 21. Section 232.141, subsection 3, paragraph c, Code  
2 1999, is amended to read as follows:

3 c. Costs incurred under subsection 2 which are not paid by  
4 the county under paragraphs "a" and "b" shall be reimbursed  
5 paid by the state. ~~Reimbursement-for-the-costs-of~~  
6 ~~compensation-of-an-attorney-appointed-by-the-court-to-serve-as~~  
7 ~~counsel-or-guardian-ad-litem-shall-be-made-as-provided-in~~  
8 ~~section-815.7--A-county-shall-apply-for-reimbursement-to-the~~  
9 ~~department-of-inspections-and-appeals-which~~ However, before  
10 any costs are paid, a claim must be submitted to and approved  
11 by the state public defender who shall prescribe rules and  
12 forms to implement this subsection.

13 Sec. 22. Section 237.20, subsection 4, paragraph e, Code  
14 1999, is amended to read as follows:

15 e. The guardian ad litem of the foster child. ~~The An~~  
16 attorney appointed as guardian ad litem shall be eligible for  
17 compensation through under section 232.141, subsection 1,  
18 paragraph-"b" 2.

19 Sec. 23. Section 814.11, Code 1999, is amended to read as  
20 follows:

21 814.11 INDIGENT'S RIGHT TO COUNSEL.

22 An indigent defendant is entitled to appointed counsel on  
23 the appeal of all indictable offenses. ~~Such~~ The appointment  
24 is-subject-to-rules-of-the-supreme-court shall be made to the  
25 state appellate defender unless the state appellate defender  
26 is unable to handle the case due to a conflict of interest or  
27 because of a temporary overload of cases. If the state  
28 appellate defender is unable to handle the case, the court  
29 shall appoint an attorney who has a contract with the state  
30 public defender to handle such an appeal. If the court  
31 determines that no contract attorney is available to handle  
32 the appeal, the court may appoint a noncontract attorney who  
33 has agreed to handle the case, but the order of appointment  
34 shall include a specific finding that no contract attorney was  
35 available. The appointment of noncontract attorneys shall be

1 on a rotational or equalization basis, considering the  
2 experience of the attorney and the difficulty of the case.

3 Sec. 24. Section 815.4, Code 1999, is amended to read as  
4 follows:

5 815.4 SPECIAL WITNESSES FOR INDIGENTS.

6 Witnesses secured for indigent ~~or-partially-indigent~~  
7 defendants under R.Cr.P. 19 must file a claim for compensation  
8 supported by an affidavit specifying the time expended,  
9 services rendered, and expenses incurred on behalf of the  
10 defendant.

11 Sec. 25. Section 815.5, Code 1999, is amended to read as  
12 follows:

13 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

14 Notwithstanding the provisions of section 622.72,  
15 reasonable compensation as determined by the court shall be  
16 awarded expert witnesses, expert witnesses for an indigent ~~or~~  
17 ~~partially-indigent~~ person referred to in section 815.4, or  
18 called by the state in criminal cases.

19 Sec. 26. Section 815.7, Code 1999, is amended to read as  
20 follows:

21 815.7 FEES TO ATTORNEYS.

22 An attorney who has not entered into a contract authorized  
23 under section 13B.4 and who is appointed by the court to  
24 represent any person charged with a crime in this state,  
25 seeking postconviction relief, against whom a contempt action  
26 is pending, appealing a criminal conviction, appealing a  
27 denial of postconviction relief, or subject to a proceeding  
28 under chapter 229A, or to serve as counsel for any person or  
29 guardian ad litem to-a-person for any child in juvenile court,  
30 in-this-state shall be entitled to a reasonable compensation  
31 and expenses which-shall-be-the-ordinary-and-customary-charges  
32 for-like-services-in-the-community-to-be-decided-in-each-case  
33 by-a-judge-of-the-district-court-or-of-the-juvenile-court, as  
34 applicable, including such sum or sums as the court may  
35 determine-are-necessary-for-investigation-in-the-interests-of

1 justice-and-in-the-event-of-appeal-the-cost-of-obtaining-the  
2 transcript-of-the-trial-and-the-printing-of-the-trial-record  
3 and-necessary-briefs-in-behalf-of-the-defendant. However,-the  
4 reasonable-compensation-awarded-an-attorney-shall-not-be  
5 calculated-based-upon-an-hourly-rate-that-exceeds-the-rate-a  
6 contract-attorney-as-provided-in-section-13B.4-would-receive  
7 in-a-similar-case. For appointments made on or after July 1,  
8 1999, the reasonable compensation shall be calculated on the  
9 basis of sixty dollars per hour for class "A" felonies, fifty-  
10 five dollars per hour for class "B" felonies, and fifty  
11 dollars per hour for all other offenses. The expenses shall  
12 include any sums as are necessary for investigations in the  
13 interest of justice, and the cost of obtaining the transcript  
14 of the trial record and briefs if an appeal is filed. Such  
15 The attorney need not follow the case into another county or  
16 into the appellate court unless so directed by the court at  
17 the-request-of-the-defendant,-where-grounds-for-further  
18 litigation-are-not-capricious-or-unreasonable,-but-if-such  
19 attorney-does-so,-the-attorney's-fee-shall-be-determined  
20 accordingly. If the attorney follows the case into another  
21 county or into the appellate court, the attorney shall be  
22 entitled to compensation as provided in this section. Only  
23 one attorney fee shall be so awarded in any one case except  
24 that in class "A" felony cases, two may be authorized.

25 Sec. 27. Section 815.9, Code 1999, is amended to read as  
26 follows:

27 815.9 INDIGENCY DETERMINED -- PENALTY.

28 1. For purposes of this chapter, ~~section-68-8,-section~~  
29 ~~222-22~~ chapter 13B, chapter 229A, chapter 232, chapter 665,  
30 chapter 814, chapter 822, and the rules of criminal procedure,  
31 the-following-apply a person is indigent if the person is  
32 entitled to an attorney appointed by the court as follows:

33 a. A person is indigent entitled to an attorney appointed  
34 by the court to represent the person if the person has an  
35 income level at or below one hundred fifty twenty-five percent

1 of the United States poverty level as defined by the most  
2 recently revised poverty income guidelines published by the  
3 United States department of health and human services, unless  
4 the court determines that the person is able to pay for the  
5 cost of an attorney to represent the person on the pending  
6 charges. In making the determination of a person's ability to  
7 pay for the cost of an attorney, the court shall consider not  
8 only the person's income, but also the availability of any  
9 assets subject to execution, including but not limited to  
10 cash, stocks, bonds, and any other property which may be  
11 applied to the satisfaction of judgments and the seriousness  
12 of the charge.

13 ~~b.---A-person-is-not-indigent-if-the-person-has-an-income~~  
14 ~~level-greater-than-one-hundred-fifty-percent-of-the-United~~  
15 ~~States-poverty-level-as-defined-by-the-most-recently-revised~~  
16 ~~poverty-income-guidelines-published-by-the-United-States~~  
17 ~~department-of-health-and-human-services.~~

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

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

18 2. A determination of ~~the-indigent-status-of~~ whether a  
19 person is entitled to an appointed attorney shall be made on  
20 the basis of an affidavit of financial status submitted at the  
21 time of the person's initial appearance before a court or at  
22 such later time as a request for court appointment of counsel  
23 is made. ~~if a person is granted legal assistance as an~~  
24 ~~indigent or partial indigent, the financial statement shall be~~  
25 ~~filed and permanently retained in the person's court file.~~  
26 The state public defender shall adopt rules prescribing the  
27 form and content of the affidavit of financial statement and  
28 ~~the criteria by which a determination of indigency shall be~~  
29 based status. The affidavit of financial statement status  
30 shall be signed under penalty of perjury and shall contain  
31 sufficient information to allow the determination to be made  
32 of whether the person meets ~~the guidelines set out in~~  
33 ~~subsection 1 and shall be accompanied by the person's most~~  
34 recent pay slip, if employed is entitled to an appointed  
35 attorney under this section. If the person is granted an

1 appointed attorney, the affidavit of financial status shall be  
2 filed and permanently retained in the person's court file.

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

14 4. If the case is a criminal case, all costs and fees  
15 incurred for legal assistance shall become due and payable to  
16 the clerk of the district court by the person receiving the  
17 legal assistance not later than the date of sentencing, or if  
18 the person is acquitted or the charges are dismissed, within  
19 thirty days of the acquittal or dismissal.

20 5. If the case is other than a criminal case, all costs  
21 and fees incurred for legal assistance shall become due and  
22 payable to the clerk of the district court by the person  
23 receiving the legal assistance not later than ten days from  
24 the date of any court ruling or trial held in the case, or if  
25 the case is dismissed, within ten days of the dismissal.

26 6. An appointed attorney shall submit a report pertaining  
27 to the costs and fees for legal assistance to the court at the  
28 times specified in subsections 4 and 5. If the appointed  
29 attorney is a public defender, the report shall specify the  
30 total hours of service plus other expenses. If the appointed  
31 attorney is a private attorney, the total amount of legal  
32 assistance shall be the total amount of the fees claimed by  
33 the appointed attorney together with other expenses.

34 7. If all costs and fees incurred for legal assistance are  
35 not paid at the times specified in subsections 4 and 5, the

1 court shall order payment of the costs and fees in reasonable  
2 installments.

3 8. 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 for use in wage assignments and court orders entered under  
10 this section.

11 9. 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. 28. Section 815.10, Code 1999, 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, commitment under  
23 chapter 229A, or juvenile proceedings or on appeal of any  
24 criminal, postconviction, contempt, commitment under chapter  
25 229A, or juvenile action in which the indigent person is  
26 entitled to legal assistance at public expense. However, in  
27 juvenile cases, the court may directly appoint an existing  
28 nonprofit corporation established for and engaged in the  
29 provision of legal services for juveniles. An appointment  
30 shall not be made unless the person is determined to be  
31 indigent under section 815.9. Only one attorney shall be  
32 appointed in all cases, except that in class "A" felony cases  
33 the court may appoint two attorneys.

34 2. An attorney other than a public defender ~~or-a-contract~~  
35 ~~attorney~~ who is appointed by the court under this section

1 shall apply to the district-court state public defender for  
2 compensation and for reimbursement of costs incurred. The  
3 amount of compensation due shall be determined in accordance  
4 with any indigent defense contract or pursuant to section  
5 815.7.

6 ~~3. A contract attorney appointed by the court pursuant to~~  
7 ~~this section and section 13B.4 shall apply to the state public~~  
8 ~~defender for compensation and for reimbursement of costs~~  
9 ~~incurred in accordance with the contract. The amount of~~  
10 ~~compensation due shall be determined in accordance with the~~  
11 ~~contract. The state public defender shall adopt rules which~~  
12 specify the information which shall be included with all  
13 claims for compensation submitted by court-appointed attorneys  
14 under this section. The rules shall require that a court-  
15 appointed attorney shall obtain court approval of a claim  
16 prior to exceeding the fee limitations established pursuant to  
17 section 13B.4. However, a court-appointed attorney may  
18 request court approval after exceeding a fee limitation if  
19 good cause is shown. The order approving a claim that exceeds  
20 the fee limitation shall be included in the information  
21 submitted under this section. If the information required  
22 under this section and the rules of the state public defender  
23 is not submitted, the claim may be denied until the  
24 information is provided. If the information required under  
25 this section and the rules of the state public defender is  
26 submitted with the claim, the state public defender may  
27 approve reasonable and proper compensation to the court-  
28 appointed attorney in the manner provided in the rules.

29 Sec. 29. Section 815.11, Code 1999, is amended to read as  
30 follows:

31 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

32 Costs incurred under chapter 229A, 665, or 822, or section  
33 232.141, subsection 3, paragraph "c", or sections 814.9,  
34 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10, or the  
35 rules of criminal procedure on behalf of an indigent shall be

1 paid from funds appropriated by the general assembly to the  
2 department of inspections and appeals for those purposes.

3 Sec. 30. EMERGENCY RULES. The office of the state public  
4 defender of the department of inspections and appeals may  
5 adopt administrative rules under section 17A.4, subsection 2,  
6 and section 17A.5, subsection 2, paragraph "b", to implement  
7 the provisions of this Act. The rules shall become effective  
8 immediately upon filing, unless a later effective date is  
9 specified in the rules. Any rules adopted in accordance with  
10 this section shall not take effect before the rules are  
11 reviewed by the administrative rules review committee. Any  
12 rules adopted in accordance with the provisions of this  
13 section shall also be published as notice of intended action  
14 as provided in section 17A.4.

15 Sec. 31. Sections 815.9A and 815.10A, Code 1999, are  
16 repealed.

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## AN ACT

RELATING TO THE PAYMENT OF THE LEGAL DEFENSE COSTS OF INDIGENT PERSONS, EXPANDING THE DUTIES OF THE STATE PUBLIC DEFENDER, AND PROVIDING FOR THE APPOINTMENT AND REMOVAL OF CERTAIN STATE PUBLIC DEFENDER PERSONNEL.

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

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

8.59 APPROPRIATIONS FREEZE.

Notwithstanding contrary provisions of the Code, the amounts appropriated under the applicable sections of the Code for fiscal years commencing on or after July 1, 1993, are limited to those amounts expended under those sections for the fiscal year commencing July 1, 1992. If an applicable section appropriates moneys to be distributed to different recipients and the operation of this section reduces the total amount to be distributed under the applicable section, the moneys shall be prorated among the recipients. As used in this section, "applicable sections" means the following sections: 53.50, 229.35, 230.8, 230.11, 405A.8, 411.20, and 663.44--and-82275.

Sec. 2. NEW SECTION. 13B.2A INDIGENT DEFENSE ADVISORY COMMISSION.

An indigent defense advisory commission is established within the department to advise and make recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations. These recommendations shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel.

The advisory commission shall consist of five members. The governor shall appoint three members, including one member from nominations by the Iowa state bar association and one member from nominations by the supreme court. Two members, one from each chamber of the general assembly, shall be appointed, with no more than one appointed from the same political party. Each member shall serve a three-year term, with initial terms to be staggered. No more than three members shall be licensed to practice law in Iowa. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.

The members of the commission are entitled to receive reimbursement for actual expenses incurred as provided for in section 7E.5, subsection 2, while engaged in the performance of the duties of the commission.

The advisory commission shall file a written report every three years with the governor and the general assembly by January 1 of a year in which a report is due regarding the recommendations and activities of the commission. The first such report shall be due on January 1, 2003.

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

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

2. The state public defender shall file with the clerk of the district court in each county served by a public defender

a designation of which local public defender office shall receive notice of appointment of cases. Except as otherwise provided, in each county in which the state public defender files such designation, the state public defender or its designee shall be appointed by the court to represent all eligible indigents, ~~whether the case is criminal or juvenile in nature~~ in all of the cases and proceedings specified under subsection 1. The appointment shall not be made if the state public defender notifies the court that the local public defender will not provide legal representation in cases ~~involving offenses~~ as identified in the designation by the state public defender.

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

Sec. 4. Section 13B.4, subsection 4, Code 1999, is amended by striking the subsection and inserting in lieu thereof the following:

4. a. The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal services to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

b. The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

c. The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim, if the claim is not timely filed.

(3) Request additional information or return the claim to the attorney, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the attorney that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

Notwithstanding chapter 17A, the attorney may seek review of any action or intended action taken pursuant to paragraph "d" by filing a motion with the court with jurisdiction over the original appointment for review. The motion must be filed within twenty days of any action taken by the state public defender. The attorney shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary to competently represent the client. The filing of a motion shall not delay the payment of the amount specified by the state public defender pursuant to this subsection.

Sec. 5. Section 13B.4, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 4A. If any portion of the claim is not payable under the attorney's appointment, the state public defender shall deny those portions of the claim that are not payable and approve the remainder of the claim.

Notwithstanding chapter 17A, an attorney whose claim for compensation is denied may seek review of the action of the state public defender by filing a motion with the court with jurisdiction over the original appointment. The motion must be filed within thirty days of the action of the state public defender. The type of review and relief the court may provide shall be limited to the review and relief specified in chapter 17A. The filing of a motion shall not delay the payment of the amount approved by the state public defender.

Sec. 6. Section 13B.4, subsection 7, Code 1999, is amended to read as follows:

7. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and ~~section-815-9~~ chapter 915.

Sec. 7. Section 13B.8, subsection 2, Code 1999, is amended to read as follows:

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

Sec. 8. Section 13B.9, subsection 1, paragraph b, Code 1999, is amended to read as follows:

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

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

Sec. 10. Section 13B.9, subsection 3, Code 1999, is amended by striking the subsection.

Sec. 11. Section 13B.10, subsections 2 through 4, Code 1999, are amended by striking the subsections.

Sec. 12. Section 28E.19, Code 1999, is amended to read as follows:

28E.19 JOINT COUNTY INDIGENT DEFENSE FUND.

Two or more counties may execute an agreement under this chapter to create a joint county indigent defense fund to be used to compensate attorneys appointed to represent indigents ~~under section 815.10 when funds budgeted for that purpose are exhausted~~. In addition to other requirements of an agreement under this chapter, the agreement shall provide for the amount to be paid by each county based on its population to establish and maintain an appropriate balance in the joint fund, and for a method of repayment if a county withdraws more funds than it has contributed.

Sec. 13. Section 124.407, unnumbered paragraphs 2 and 7, Code 1999, are amended by striking the unnumbered paragraphs.

Sec. 14. Section 125.78, subsections 1 and 2, Code 1999, are amended to read as follows:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the commitment proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting an attorney. In accordance with those determinations, the court shall allow the respondent to select an attorney or shall assign an attorney to the respondent. If the respondent is financially unable to pay an attorney, ~~the attorney shall be compensated in substantially the same manner as provided by section 815.77 except that if the county has a public defender, the court may assign the public defender or an attorney on the public defender's staff as the respondent's attorney~~ the county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

2. If the application includes a request for a court-appointed attorney for the applicant and the court is satisfied that a court-appointed attorney is necessary to assist the applicant in a meaningful presentation of the

evidence, and that the applicant is financially unable to employ an attorney, the court shall appoint an attorney to represent the applicant. ~~The attorney shall be compensated in substantially the same manner as provided by section 815.7 and the county shall compensate the attorney at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.~~

Sec. 15. Section 222.13A, subsection 4, Code 1999, is amended to read as follows:

4. As soon as practicable after the filing of a petition for approval of the voluntary admission, the court shall determine whether the minor has an attorney to represent the minor in the proceeding. If the minor does not have an attorney, the court shall assign to the minor an attorney. If the minor is unable to pay for an attorney, the attorney shall be compensated ~~in substantially the same manner as provided in section 815.7~~ by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

Sec. 16. Section 222.22, Code 1999, is amended to read as follows:

222.22 TIME OF APPEARANCE.

The time of appearance shall not be less than five days after completed service unless the court orders otherwise. Appearance on behalf of the person who is alleged to have mental retardation may be made by any citizen of the county or by any relative. The district court shall assign counsel for the person who is alleged to have mental retardation. Counsel shall prior to proceedings personally consult with the person who is alleged to have mental retardation unless the judge appointing counsel certifies that in the judge's opinion, consultation shall serve no useful purpose. The certification shall be made a part of the record. An attorney assigned by the court shall receive compensation as the district court shall fix to be paid in the first instance by the county be compensated by the county at an hourly rate to be established

by the county board of supervisors in substantially the same manner as provided in section 815.7.

Sec. 17. Section 229.2, subsection 1, paragraph c, Code 1999, is amended to read as follows:

c. As soon as is practicable after the filing of a petition for juvenile court approval of the admission of the minor, the juvenile court shall determine whether the minor has an attorney to represent the minor in the hospitalization proceeding, and if not, the court shall assign to the minor an attorney. If the minor is financially unable to pay for an attorney, the attorney shall be compensated ~~in substantially the manner provided by section 815.7~~ by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

Sec. 18. Section 229.8, subsection 1, Code 1999, is amended to read as follows:

1. Determine whether the respondent has an attorney who is able and willing to represent the respondent in the hospitalization proceeding, and if not, whether the respondent is financially able to employ an attorney and capable of meaningfully assisting in selecting one. In accordance with those determinations, the court shall if necessary allow the respondent to select, or shall assign to the respondent, an attorney. If the respondent is financially unable to pay an attorney, the attorney shall be compensated ~~in substantially the manner provided by section 815.7, except that if the county has a public defender the court may designate the public defender or an attorney on the public defender's staff to act as the respondent's attorney~~ by the county at an hourly rate to be established by the county board of supervisors in substantially the same manner as provided in section 815.7.

Sec. 19. Section 229.19, unnumbered paragraph 3, Code 1999, is amended to read as follows:

The court or, if the advocate is appointed by the county board of supervisors, the board shall prescribe reasonable

compensation for the services of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid by the county in which the court is located, either on order of the court or, if the advocate is appointed by the county board of supervisors, on the direction of the board. If the advocate is appointed by the court, the advocate is an employee of the state for purposes of chapter 669. If the advocate is appointed by the county board of supervisors, the advocate is an employee of the county for purposes of chapter 670. If the patient or the person who is legally liable for the patient's support is not indigent, the board shall recover the costs of compensating the advocate from that person. If that person has an income level as determined pursuant to section 815.9 greater than one hundred percent but not more than one hundred fifty percent of the poverty guidelines, at least one hundred dollars of the advocate's compensation shall be recovered ~~in accordance with rules adopted by the state public defender in the manner prescribed by the county board of supervisors.~~ If that person has an income level as determined pursuant to section 815.9 greater than one hundred fifty percent of the poverty guidelines, at least two hundred dollars of the advocate's compensation shall be recovered ~~in accordance with rules adopted by the state public defender in substantially the same manner prescribed by the county board of supervisors as provided in section 815.7.~~

Sec. 20. Section 232.141, subsection 2, Code 1999, is amended to read as follows:

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

a. The fees and mileage of witnesses and the expenses of officers serving notices and subpoenas which are incurred in connection with the appointment of an attorney by the court to serve as counsel to any party or to serve as a guardian ad litem for any child.

b. Reasonable compensation for an attorney appointed by the court to serve as counsel to any party or as guardian ad litem for any child. However, the amount of compensation paid shall be paid in accordance with section 815.7.

Sec. 21. Section 232.141, subsection 3, paragraph c, Code 1999, is amended to read as follows:

c. Costs incurred under subsection 2 which are not paid by the county under paragraphs "a" and "b" shall be ~~reimbursed~~ paid by the state. ~~Reimbursement for the costs of compensation of an attorney appointed by the court to serve as counsel or guardian ad litem shall be made as provided in section 815.7. A county shall apply for reimbursement to the department of inspections and appeals which~~ However, before any costs are paid, a claim must be submitted to and approved by the state public defender who shall prescribe rules and forms to implement this subsection.

Sec. 22. Section 237.20, subsection 4, paragraph e, Code 1999, is amended to read as follows:

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

Sec. 23. Section 814.11, Code 1999, is amended to read as follows:

#### 814.11 INDIGENT'S RIGHT TO COUNSEL.

An indigent defendant is entitled to appointed counsel on the appeal of all indictable offenses. ~~Such~~ The appointment ~~is subject to rules of the supreme court shall be made to the state appellate defender unless the state appellate defender is unable to handle the case due to a conflict of interest or because of a temporary overload of cases.~~ If the state appellate defender is unable to handle the case, the court shall appoint an attorney who has a contract with the state public defender to handle such an appeal. If the court determines that no contract attorney is available to handle the appeal, the court may appoint a noncontract attorney who

has agreed to handle the case, but the order of appointment shall include a specific finding that no contract attorney was available. The appointment of noncontract attorneys shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

Sec. 24. Section 815.4, Code 1999, is amended to read as follows:

815.4 SPECIAL WITNESSES FOR INDIGENTS.

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

Sec. 25. Section 815.5, Code 1999, is amended to read as follows:

815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

Notwithstanding the provisions of section 522.72, reasonable compensation as determined by the court shall be awarded expert witnesses, expert witnesses for an indigent or partially-indigent person referred to in section 815.4, or called by the state in criminal cases.

Sec. 26. Section 815.7, Code 1999, is amended to read as follows:

815.7 FEES TO ATTORNEYS.

An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person charged with a crime in this state, seeking postconviction relief, against whom a contempt action is pending, appealing a criminal conviction, appealing a denial of postconviction relief, or subject to a proceeding under chapter 229A, or to serve as counsel for any person or guardian ad litem to a person for any child in juvenile court, in this state shall be entitled to a reasonable compensation and expenses which shall be the ordinary and customary charges for like services in the community to be decided in each case by a judge of the district court or of the juvenile court, as

applicable, including such sum or sums as the court may determine are necessary for investigation in the interests of justice and in the event of appeal the cost of obtaining the transcript of the trial and the printing of the total record and necessary briefs in behalf of the defendant. However, the reasonable compensation awarded an attorney shall not be calculated based upon an hourly rate that exceeds the rate a contract attorney as provided in section 13B.4 would receive in a similar case. For appointments made on or after July 1, 1999, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class "A" felonies, fifty-five dollars per hour for class "B" felonies, and fifty dollars per hour for all other offenses. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. Such The attorney need not follow the case into another county or into the appellate court unless so directed by the court at the request of the defendant where grounds for further litigation are not capricious or unreasonable, but if such attorney does so, the attorney's fee shall be determined accordingly. If the attorney follows the case into another county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class "A" felony cases, two may be authorized.

Sec. 27. Section 815.9, Code 1999, is amended to read as follows:

815.9 INDIGENCY DETERMINED -- PENALTY.

1. For purposes of this chapter, section 6087, section 222-22 chapter 13B, chapter 229A, chapter 232, chapter 565, chapter 314, chapter 322, and the rules of criminal procedure, the following apply a person is indigent if the person is entitled to an attorney appointed by the court as follows:

a. A person is indigent entitled to an attorney appointed by the court to represent the person if the person has an

income level at or below one hundred fifty ~~twenty-five~~ percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending charges. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments and the seriousness of the charge.

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

e b. A person with an income level greater than one hundred fifty ~~twenty-five~~ percent, but less than at or below two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human services ~~may be deemed partially indigent by~~ shall not be entitled to an attorney appointed by the court, unless the court pursuant to makes a written finding that, given the person's circumstances, not appointing counsel on the pending charges would cause the person substantial hardship. However, the court shall require a person appointed counsel to contribute to the cost of representation in accordance with rules adopted by the state public defender. In determining whether substantial hardship would result, the court shall consider not only the person's income, but also the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments and the seriousness of the charge.

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

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

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

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

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

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

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

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

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

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

#### 815.10 APPOINTMENT OF COUNSEL BY COURT.

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender, the state public defender's designee pursuant to section 13B.4, or an attorney pursuant to section 13B.9 to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class "A" felony cases the court may appoint two attorneys.

2. An attorney other than a public defender or a contract attorney who is appointed by the court under this section shall apply to the district court state public defender for compensation and for reimbursement of costs incurred. The amount of compensation due shall be determined in accordance

with any indigent defense contract or pursuant to section 815.7.

~~3. A contract attorney appointed by the court pursuant to this section and section 13B.4 shall apply to the state public defender for compensation and for reimbursement of costs incurred in accordance with the contract. The amount of compensation due shall be determined in accordance with the contract. The state public defender shall adopt rules which specify the information which shall be included with all claims for compensation submitted by court-appointed attorneys under this section. The rules shall require that a court-appointed attorney shall obtain court approval of a claim prior to exceeding the fee limitations established pursuant to section 13B.4. However, a court-appointed attorney may request court approval after exceeding a fee limitation if good cause is shown. The order approving a claim that exceeds the fee limitation shall be included in the information submitted under this section. If the information required under this section and the rules of the state public defender is not submitted, the claim may be denied until the information is provided. If the information required under this section and the rules of the state public defender is submitted with the claim, the state public defender may approve reasonable and proper compensation to the court-appointed attorney in the manner provided in the rules.~~

Sec. 29. Section 815.11, Code 1999, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, ~~655~~, or 922, or section 232.141, subsection 3, paragraph "c", or sections 814.9, 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10, or the rules of criminal procedure on behalf of an indigent shall be paid from funds appropriated by the general assembly to the department of inspections and appeals for those purposes.

Sec. 30. EMERGENCY RULES. The office of the state public defender of the department of inspections and appeals may

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

Sec. 31. Sections 815.9A and 815.10A, Code 1999, are repealed.

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MARY E. KRAMER

President of the Senate

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BRENT SIEGRIST

Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 451, Seventy-eighth General Assembly.

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MICHAEL E. MARSHALL

Secretary of the Senate

Approved May 18, 1999

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THOMAS J. VILSACK

Governor