

CHAPTER 1067

INDIGENT DEFENSE

S.F. 2301

AN ACT relating to representation of indigent persons and the duties of the state public defender.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 13B.4, subsection 1, Code 2001, is 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, 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 on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to ~~chapter 908 section 908.11~~. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 13B.4, subsection 4, paragraph c, Code 2001, is amended to read as follows:

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.~~ under any of the following circumstances:
 - (a) If it is not timely.
 - (b) If it is not payable as an indigent defense claim under chapter 815.
 - (c) If it is not payable under the contract between the claimant and the state public defender.
 - (d) If the appointment of the claimant was obtained without complying with section 814.11, subsection 6, or section 815.10, subsection 5.
- (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.
- (5) If any portion of the claim is not payable within the scope of appointment of the attorney, notify the attorney that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

Sec. 3. Section 13B.4, subsection 4, paragraph d, Code 2001, is amended by striking the paragraph and inserting in lieu thereof the following:

d. Notwithstanding chapter 17A, the attorney may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

- (1) The motion must be filed within twenty days of any action taken by the state public defender.
- (2) The state public defender shall be provided with at least ten days' notice of any hearing on the motion.
- (3) The state public defender or the attorney may participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.
- (4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with an administrative rule or the law.

(6) If the claim is reduced for being excessive, 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.

Sec. 4. Section 13B.4, subsection 5, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

Sec. 5. Section 13B.4, subsection 7, Code 2001, is amended by striking the subsection.

Sec. 6. Section 13B.8, subsection 1, unnumbered paragraph 2, Code 2001, is amended by striking the unnumbered paragraph.

Sec. 7. Section 13B.8, subsection 4, Code 2001, is amended to read as follows:

4. The state public defender shall provide separate and suitable office space, furniture, equipment, computers, computer networks, support staff, and supplies for the each office of the local public defender out of funds appropriated to the ~~department~~ state public defender for this purpose.

Sec. 8. Section 13B.8, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 5. An employee of a local public defender office shall not have access to any confidential client information in any other local public defender office, and the state public defender shall not have access to such confidential information.

Sec. 9. Section 13B.9, subsection 2, Code 2001, is amended to read as follows:

2. An appointed attorney appointed under this section is not liable to a person represented by the attorney ~~pursuant to this chapter~~ for damages as a result of a conviction in a criminal case unless the court determines in a postconviction appeal proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 10. Section 13B.9, subsection 3, Code 2001, is amended to read as follows:

3. The local public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case. The local public defender shall be responsible for assigning cases to individual attorneys within the local public defender office and for making decisions concerning cases in which the local public defender has been appointed.

Sec. 11. Section 13B.9, subsection 4, Code 2001, is amended to read as follows:

4. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. The court shall first appoint a contract attorney. Appointments by the court shall be on a rotational or equalization basis considering the experience of the attorney and the difficulty of the case. If the case is returned and the state public defender has filed a successor

designation, the court shall appoint the successor designee. If there is no successor designee on file, the court shall make the appointment pursuant to section 815.10.

Sec. 12. Section 13B.9, subsection 5, Code 2001, is amended by striking the subsection.

Sec. 13. Section 22.7, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 43. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5.

Sec. 14. Section 814.11, Code 2001, is amended to read as follows:

814.11 INDIGENT'S RIGHT TO COUNSEL.

1. An indigent defendant person is entitled to appointed counsel on the appeal of all indictable offenses cases if the person is entitled to appointment of counsel under section 815.9.

2. The If the appeal involves an indictable offense or denial of postconviction relief, the appointment 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.

3. If the appeal is other than an indictable offense or denial of postconviction relief or 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.

4. 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. The order of appointment shall include a specific finding that no contract attorney was available.

5. The appointment of noncontract attorneys an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

6. An attorney who has been retained or has agreed to represent a person on appeal and subsequently applies to the court for appointment to represent that person on appeal because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

7. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 15. Section 815.9, subsection 8, Code 2001, is amended to read as follows:

8. If a person is granted an appointed attorney or is receiving has received 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 subsection.

Sec. 16. Section 815.10, Code 2001, 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'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 who is appointed by the court under this section shall apply to the 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. If the state public defender or the state public defender's designee is unable to represent an indigent person, the court shall appoint an attorney who has a contract with the state public defender to represent the person.

3. 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. If the court determines that no contract attorney is available to represent the person, the court may appoint a noncontract attorney. The order of appointment shall include a specific finding that no contract attorney was available.

4. The appointment of an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

5. An attorney who has been retained or has agreed to represent a person and subsequently applies to the court for appointment to represent that person because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel, and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 17. NEW SECTION. 815.10A CLAIMS FOR COMPENSATION.

1. An attorney other than a public defender who has been appointed by the court under this chapter must apply to the state public defender for compensation and reimbursement of expenses incurred in the representation of an indigent person.

2. An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations, if good cause is shown. An attorney may obtain court approval after exceeding the fee limitations, if good cause is shown. The order approving an application to exceed the fee limi-

tations shall be effective from the date of filing the application unless the court order provides an alternative effective date. Failure to timely file an application to exceed a fee limitation after exceeding the fees shall not constitute good cause. The application and the court order approving the application to exceed fee limitations shall be submitted with any claim for compensation.

3. If the information is not submitted as required under this section and under the rules of the state public defender, the claim for compensation may be denied until the information is provided. Upon submitting the required information, the state public defender may approve reasonable and necessary compensation, as provided for in the administrative rules and the law.

Sec. 18. Section 815.11, Code 2001, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, 665, or 822, 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 or 908.11~~ on behalf of an indigent shall be paid from funds appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals for those purposes. Costs incurred under other provisions of the Code or administrative rules are not payable from these funds.

Sec. 19. NEW SECTION. 815.14 FEE FOR PUBLIC DEFENDER.

When determining the amount of restitution for each case under section 910.3, the expense of the public defender shall be calculated at the same hourly rate of compensation specified under section 815.7. However, the expense of the public defender shall not exceed the fee limitations established in section 13B.4.

Sec. 20. Section 908.2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

An officer making an arrest of an alleged parole violator shall take the arrested person before a magistrate without unnecessary delay for an initial appearance. At that time the alleged parole violator shall be furnished with a written notice of the claimed violation, ~~shall be advised of the right to appointed counsel under rule 26 of the rules of criminal procedure,~~ and shall be given notice that a parole revocation hearing will take place and that its purpose is to determine whether the alleged parole violation occurred and whether the alleged violator's parole should be revoked.

Sec. 21. Section 908.4, Code 2001, is amended to read as follows:

908.4 PAROLE REVOCATION HEARING.

1. The parole revocation hearing shall be conducted by an administrative parole and probation judge who is an attorney. The revocation hearing shall determine the following:

1. a. Whether the alleged parole violation occurred.

2. b. Whether the violator's parole should be revoked.

2. The administrative parole and probation judge shall make a verbatim record of the proceedings. The alleged violator shall not have the right to appointed counsel, shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness's identity were disclosed. The revocation hearing may be conducted electronically.

Approved April 4, 2002