

## PUBLIC DEFENDERS

### **13B.1 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Appointed attorney*" means an attorney appointed by the court and compensated by the state to represent an indigent defendant.
2. "*Department*" means the department of inspections and appeals.
3. "*Financial statement*" means a full written disclosure of all assets, liabilities, current income, dependents, and other information required to determine if a client qualifies for legal assistance by an appointed attorney.
4. "*State public defender*" means the state public defender appointed pursuant to this chapter.

[81 Acts, ch 23, § 1, 8]

88 Acts, ch 1161, § 1; 91 Acts, ch 268, §408, 439; 96 Acts, ch 1040, § 1; 96 Acts, ch 1193, §1

### **13B.2 Position established.**

The position of state public defender is established within the department of inspections and appeals. The governor shall appoint the state public defender, who shall serve at the pleasure of the governor, subject to confirmation by the senate, no less frequently than once every four years, whether or not there has been a new state public defender appointed during that time, and shall establish the state public defender's salary.

[81 Acts, ch 23, § 2, 8]

86 Acts, ch 1245, § 516; 88 Acts, ch 1161, § 2

### **Footnotes**

Confirmation, see § 2.32

### **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.

99 Acts, ch 135, §2

**13B.2B Duties and powers of the indigent defense advisory commission.** Repealed by 91 Acts, ch 268, § 439.

### **13B.3 Qualifications of state public defender.**

Only persons admitted to practice law in this state shall be appointed state public defender or assistant state public defender.

[81 Acts, ch 23, § 3, 8]

88 Acts, ch 1161, § 3

### **13B.4 Duties and powers of state public defender.**

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 section 811.1A or chapter 229A or 812, in juvenile proceedings, 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 a notice with the clerk of the district court in each county served by a public defender designating which public defender office shall receive notice of appointment of cases. The state public defender may also designate a nonprofit organization which has a contract with the state public defender to provide legal services to eligible indigent persons prior to July 1, 2004. Except as otherwise provided, in each county in which the state public defender files a designation, the state public defender's designee shall be appointed by the court to represent all eligible indigents in all of the cases and proceedings specified in the designation. The appointment shall not be made if the state public defender notifies the court that the public defender designee will not provide legal representation in certain cases 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 and nonprofit organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons.

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 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 claimant was appointed contrary to section 814.11, or the claimant failed to comply with 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.

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 motion shall be set for hearing by the court and the state public defender shall be provided with at least ten days' notice of the hearing. The state public defender shall not be required to file a resistance to the motion filed under this paragraph "d".
- (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.
- (7) Any court order entered after the state public defender has taken action on a claim, which affects that claim, without first notifying the state public defender and permitting the state public defender an opportunity to be heard, is void.

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.

6. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution of court-appointed attorney fees or the expense of a public defender.

7. The state public defender shall not revise the allocations to the office of the state public defender and the allocations for fees of court-appointed attorneys for indigent adults and juveniles, unless notice of the revisions is given prior to their effective date to the legislative services agency, the cochairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the cochairpersons and ranking members of the house and senate committees on appropriations.

8. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

9. Executing the duties of this section shall not be deemed a violation of section 68B.6.

[81 Acts, ch 23, § 4, 8]

85 Acts, ch 36, §1; 88 Acts, ch 1161, §4; 89 Acts, ch 51, §1; 91 Acts, ch 268, §411, 439; 92 Acts, ch 1242, §18; 93 Acts, ch 175, §15; 94 Acts, ch 1107, §20; 94 Acts, ch 1187, §17; 96 Acts, ch 1040, §2; 99 Acts, ch 12, §1; 99 Acts, ch 135, §36; 99 Acts, ch 208, §46; 2000 Acts, ch 1154, §3; 2002 Acts, ch 1067, §15; 2002 Acts, ch 1119, §116; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 51, §13; 2004 Acts, ch 1040, §13; 2004 Acts, ch 1084, §1; 2004 Acts, ch 1091, §2; 2004 Acts, ch 1175, §195; 2005 Acts, ch 107, §1, 14

## **Footnotes**

Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis; 91 Acts, ch 268, § 440

Authority of state public defender in termination of parental rights proceedings under chapter 600A, see §600A.6B

### **13B.5 Staff.**

The state public defender may appoint assistant state public defenders who, subject to the direction of the state public defender, shall have the same duties as the state public defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the state public defender. The state public defender and the state public defender's staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 8A.363.

[81 Acts, ch 23, § 5, 8]

88 Acts, ch 1161, § 5; 2003 Acts, ch 145, §136

### **13B.6 Account established.**

1. There is established in the state general fund an account to be known as the state public defender operating account. The state public defender may bill a county for services rendered to the county by the office of the

state public defender. Receipts shall be deposited in the operating account established under this section. There is appropriated from the state general fund all amounts deposited in the state public defender operating account for use in maintaining the operations of the office of state public defender.

2. The department of inspections and appeals shall provide internal accounting and related fiscal services for the state public defender.

[81 Acts, ch 23, § 6, 8]

83 Acts, ch 200, § 10; 86 Acts, ch 1245, § 517; 88 Acts, ch 1161, § 6

### **13B.7 Legal services to inmates.**

The state public defender may supervise the provision of legal services, funded by an appropriation to the Iowa department of corrections, to inmates of adult correctional institutions in civil cases involving prison litigation.

83 Acts, ch 96, § 160; 83 Acts, ch 203, § 12; 88 Acts, ch 1161, § 7

### **13B.8 Office of local public defender.**

1. The state public defender may establish or abolish local public defender offices. In determining whether to establish or abolish a local public defender office, the state public defender shall consider the following:

*a.* The number of cases or potential cases where a local public defender is or would be involved.

*b.* The population of the area served or to be served.

*c.* The willingness of the local private bar to participate in cases where a public defender is or would be involved.

*d.* Other factors which the state public defender deems to be important.

2. The state public defender may appoint and may, for cause, remove the local public defender, assistant local public defenders, clerks, investigators, secretaries, or other employees. 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.

3. The compensation of the local public defender and staff of the local public defender offices shall be fixed by the state public defender.

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

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.

88 Acts, ch 1161, §8; 91 Acts, ch 268, §412, 439; 95 Acts, ch 67, §3; 99 Acts, ch 135, §7; 2000 Acts, ch 1115, §1; 2000 Acts, ch 1154, §4; 2002 Acts, ch 1067, §68; 2002 Acts, ch 1119, §117

### **13B.8A Public defender property.**

1. Notwithstanding section 13B.8, subsection 4, public property referred to in subsection 2 in the custody of a person or agency referred to in subsection 3 shall not be property of the department of inspections and appeals, but shall be devoted for the use of the department of inspections and appeals in its course of business. The department of inspections and appeals shall only be responsible for maintenance contracts or contracts for purchase entered into by the department of inspections and appeals. Upon replacement of the property by the department of inspections and appeals, the property shall revert to the use of the appropriate county.

2. This section applies to the following property:

- a.* Books, accounts, and records that pertain to the operation of the public defender's offices.
- b.* Forms, materials, and supplies that are consumed in the usual course of business.
- c.* Tables, chairs, desks, lamps, curtains, window blinds, rugs and carpeting, flags and flag standards, pictures and other wall decorations, and other similar furnishings.
- d.* Typewriters, adding machines, desk calculators, cash registers and similar business machines, reproduction machines and equipment, microfiche projectors, tape recorders and associated equipment, microphones, amplifiers and speakers, film projectors and screens, overhead projectors, and similar personal property.
- e.* Filing cabinets, shelving, storage cabinets, and other property used for storage.
- f.* Books of statutes, books of ordinances, books of judicial decisions, and reference books, except those that are customarily held in a law library for use by the public.
- g.* All other personal property that is in use in the operation of the offices of the public defender.

3. This section applies to the following persons and agencies:

- a.* Offices of the public defender.
- b.* Persons who are employed by an office of the public defender.

4. Subsections 1 through 3 and 5 do not apply to electronic data storage equipment, commonly referred to as computers, or to computer terminals or any machinery, equipment, or supplies used in the operation of computers. Those counties providing computer services to the public defender shall continue to provide these services until the general assembly provides otherwise. The state shall reimburse these counties for the cost of providing these services. Each county providing computer services to an office of the public defender shall submit a bill for these services to the department of inspections and appeals at the end of each calendar quarter. Reimbursement shall be payable from funds appropriated to the department for operating expenses of the offices of the public defender and shall be paid within thirty days after receipt by the department of inspections and appeals of the quarterly billing.

5. Personal property of a type that is subject to subsections 1 through 3 shall be subject to the control of the offices of the public defender. The offices of the public defender may issue necessary orders to preserve the use of the property by the public defender. The offices of the public defender shall establish and maintain an inventory of property used by the offices of the public defender.

89 Acts, ch 321, § 23

**13B.9 Powers and duties of local public defenders referrals to outside counsel.**

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

*a.* Represent without fee an indigent person who is under arrest or charged with a crime if the indigent person requests representation or the court orders representation. The local public defender shall counsel and defend an indigent defendant at every stage of the criminal proceedings and prosecute before or after conviction 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.

*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.

*c.* Make an annual report to the state public defender. The report shall include all cases handled by the local public defender during the preceding calendar year.

2. 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 or on direct appeal 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 is the proximate cause of the damage.

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.

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. 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. As used in this subsection, "*successor designee*" may include another local public defender office or a nonprofit organization that has contracted with the state public defender under section 13B.4, subsection 3.

88 Acts, ch 1161, § 9; 89 Acts, ch 83, § 4; 91 Acts, ch 268, §413, 439; 94 Acts, ch 1187, §18, 19; 96 Acts, ch 1040, § 3, 4; 99 Acts, ch 135, §810; 2002 Acts, ch 1067, §912; 2003 Acts, ch 51, §4; 2004 Acts, ch 1017, §1; 2004 Acts, ch 1040, §4; 2005 Acts, ch 19, §13

### **13B.10 Determination of indigence.**

For purposes of this chapter, a determination of indigence shall be made pursuant to section 815.9.

88 Acts, ch 1161, § 10; 89 Acts, ch 83, § 5; 93 Acts, ch 175, §16; 96 Acts, ch 1193, § 2; 99 Acts, ch 135, §11

### **13B.11 State appellate defender.**

The state public defender shall appoint a state appellate defender who shall represent indigents on appeal in criminal cases and on appeal in proceedings to obtain postconviction relief when appointed to do so by the district court in which the judgment or order was issued, and may represent indigents in proceedings

instituted pursuant to chapter 908 when required to do so by the state public defender, and shall not engage in the private practice of law.

89 Acts, ch 51, § 2