

CHAPTER 13B

PUBLIC DEFENDERS

Referred to in §23B.5, 600A.6B, 815.9

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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. “*Claimant*” means an attorney or other person seeking reimbursement of costs or fees payable from the appropriations under section 815.11.
3. “*Department*” means the department of inspections and appeals.
4. “*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.
5. “*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; 2006 Acts, ch 1041, §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

[P] Confirmation, see §2.32

13B.2A Indigent defense — report — court-appointed counsel fees.

1. The state public defender 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 relating to the recommendations and activities of the state public defender relating to the state indigent defense system. The first such report shall be due on January 1, 2012.

2. The report shall contain recommendations to the general assembly 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.

99 Acts, ch 135, §2; 2008 Acts, ch 1156, §15, 58; 2010 Acts, ch 1031, §414

13B.2B Repealed by 91 Acts, ch 268, § 439.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 person admitted to practice law in this state or a nonprofit organization employing persons admitted to practice law in this state to be appointed by the court as a designee of the state public defender. 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 persons or to serve as guardian ad litem for eligible children in juvenile court in all cases and proceedings specified in the designation. The appointment shall not be made if the state public defender or the state public defender's designee notifies the court that the state public defender's designee will not provide services 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. The contract may incorporate administrative rules into the terms of the contract or expressly provide that payments may be paid that are other than on an hourly rate basis for legal services provided, including but not limited to a fixed rate per case or per month.

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 815.10, or the claimant failed to comply with section 814.11, subsection 7, or section 815.10, subsection 5.

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

(4) If any portion of the claim is excessive, notify the claimant 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 claimant, notify the claimant 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 claimant 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 claimant 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 a statute or an administrative rule.

(6) If the claim is reduced for being excessive, the claimant shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary.

(7) The decision of the court following a hearing on the motion is a final judgment appealable by the state public defender or the claimant.

(8) If the state public defender is not first notified and given an opportunity to be heard, any court order entered after the state public defender has taken action on a claim, which affects that claim, 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.

7. The state public defender shall not revise the allocations to the office of the state public defender and the allocations for indigent defense of adults and juveniles, unless prior notice of the revisions is given to the legislative services agency, the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the co-chairpersons 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, §3 - 6; 99 Acts, ch 208, §46; 2000 Acts, ch 1154, §3; 2002 Acts, ch 1067, §1 - 5; 2002 Acts, ch 1119, §116; 2003 Acts, ch 35, §46, 49; 2003 Acts, ch 51, §1 - 3; 2004 Acts, ch 1040, §1 - 3; 2004 Acts, ch 1084, §1; 2004 Acts, ch 1091, §2;

2004 Acts, ch 1175, §195; 2005 Acts, ch 107, §1, 14; 2006 Acts, ch 1041, §2 – 4; 2007 Acts, ch 22, §7; 2008 Acts, ch 1061, §1; 2009 Acts, ch 178, §23, 24; 2012 Acts, ch 1063, §1

Referred to in §13B.9, 22.7, 815.7, 815.10, 815.10A, 815.14

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

[T] Subsections 2 and 3 amended

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, §6 – 8; 2002 Acts, ch 1119, §117

13B.8A Public defender property. Repealed by 2007 Acts, ch 126, § 113.

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 an indigent person who is under arrest or charged with a crime if the indigent person requests representation or the court orders representation when the type of case, the county, and the court have been designated for such representation by the state public defender. 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, upon 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 when designated by the state public defender to represent the indigent party in the type of case for that county. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 to which the local public defender is appointed 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. Serve as guardian ad litem for each child in all cases in which the local public defender office is the state public defender's designee. The local public defender shall be responsible for determining who shall perform the duties of the guardian ad litem as defined in section 232.2 and shall be responsible for assuring the court that the duties of the guardian ad litem have been fulfilled.

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. a. 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 or a person admitted to practice law in this state that has contracted with the state public defender under section 13B.4, subsection 3.

b. If a conflict of interest arises in any case, subsection 1 does not affect the local public defender's obligation to withdraw as counsel or as guardian ad litem.

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, §8 – 10; 2002 Acts, ch 1067, §9 – 12; 2003 Acts,

ch 51, §4; 2004 Acts, ch 1017, §1; 2004 Acts, ch 1040, §4; 2005 Acts, ch 19, §13; 2008 Acts, ch 1061, §2, 3; 2012 Acts, ch 1063, §2, 3

[T] Subsection 1, paragraphs a and b amended

[T] Subsection 4, paragraph a amended

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