



SF 590 – Indigent Defense Fund, Privately Retained Attorneys (LSB1191SV)
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Fiscal Note Version – New

Description

[Senate File 590](#) relates to payments from the Indigent Defense Fund by the State Public Defender for costs incurred by a privately retained attorney representing an indigent person. The Bill establishes a process for the payment of State funds to a privately retained attorney for the costs incurred in the legal representation of a person who is later determined to be indigent.

[Senate File 590](#) also prohibits the payment of State funds to a privately retained attorney unless the district court determines that the represented person is indigent and counsel could have been appointed, and the moneys paid or to be paid by or on behalf of the indigent person to the private attorney are insufficient to pay all or a portion of the expenses sought to be paid from State funds. The Bill specifies how the court determines whether the moneys paid or to be paid to the attorney are insufficient.

Background

In the Iowa Supreme Court case *English v. Missildine*,¹ the Court required, as a matter of constitutional law, that the Office of the State Public Defender pay for the costs incurred by privately retained attorneys who represent indigent clients. The case does not specify the procedures to be followed by the attorney in applying for reimbursement of or getting approval of those costs. The Indigent Defense Fund currently provides the funds for these types of cases and the district court reviews the application for payment from the Fund for these cases.

Assumptions

- In FY 2018, the Office of the State Public Defender paid \$179,793 from the Indigent Defense Fund for *Missildine* cases. The analysis assumes that the costs would remain consistent in future fiscal years.
- The analysis assumes that private attorneys being paid by private third parties will secure payment from the private third parties rather than accepting payment at the statutory rate for indigent defense work under the procedure established in this Bill.

Fiscal Impact

[Senate File 590](#) is estimated to result in savings to the Indigent Defense Fund of approximately \$150,000 per year. The new procedures established in this Bill would allow for the review of requests made by a privately retained attorney for the payment of expert witnesses, investigators, deposition expenses, and any other related litigation expenses. The Bill also provides that the Office of the State Public Defender receive a copy of the application, allowing the Office the opportunity to request a hearing and provide input on the payout of the application.

¹ 311 N.W.2d 292 (1981).

Sources

Office of the State Public Defender
LSA calculations

/s/ Holly M. Lyons

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The fiscal note for this Bill was prepared pursuant to Joint Rule 17 and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.
