

House File 683 - Enrolled

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AN ACT

AUTHORIZING THE APPOINTMENT OF AN ATTORNEY TO REPRESENT AN INDIGENT PERSON DURING A TERMINATION OF PARENTAL RIGHTS PROCEEDING OR AN INDIGENT PAROLE VIOLATOR, AND PROVIDING EFFECTIVE AND RETROACTIVE APPLICABILITY DATE PROVISIONS.

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

Section 1. Section 13B.4, subsection 1, Code 2005, 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 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 on a reopening of a sentence proceeding,~~ and may provide for the representation of indigents in proceedings instituted pursuant to ~~section 908.11~~ chapter 908. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 600A.2, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 10A. "Indigent" means a person has an income level at or below one hundred 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 in the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the court shall consider the person's income and 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 nature and complexity of the case.

Sec. 3. Section 600A.6, subsection 3, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. A statement that the person against whom a proceeding for termination of parental rights is brought shall have the right to counsel pursuant to section 600A.6A.

Sec. 4. NEW SECTION. 600A.6A RIGHT TO AND APPOINTMENT OF COUNSEL.

1. Upon the filing of a petition for termination of parental rights under this chapter, the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings.

2. If the parent against whom the petition is filed desires but is financially unable to employ counsel, the court, following an in-court colloquy, shall appoint counsel for the person if all of the following criteria are met:

a. The person requests appointment of counsel.

b. The person is indigent.

c. The court determines both of the following:

(1) The person, because of lack of skill or education, would have difficulty in presenting the person's version of the facts in dispute, particularly where the presentation of the facts requires the examination or cross-examination of witnesses or the presentation of complex documentary evidence.

(2) The person has a colorable defense to the termination of parental rights, or there are substantial reasons that make termination of parental rights inappropriate.

Sec. 5. NEW SECTION. 600A.6B PAYMENT OF ATTORNEY FEES.

1. A person filing a petition for termination of parental rights under this chapter or the person on whose behalf the petition is filed shall be responsible for the payment of reasonable attorney fees for counsel appointed pursuant to section 600A.6A unless the court determines that the person filing the petition or the person on whose behalf the petition is filed is indigent.

3 6 2. If the person filing the petition or the person on
3 7 whose behalf the petition is filed is indigent, the appointed
3 8 attorney shall be paid reasonable attorney fees as determined
3 9 by the state public defender.

3 10 3. The state public defender shall review all the claims
3 11 submitted under this section and shall have the same authority
3 12 with regard to the payment of these claims as the state public
3 13 defender has with regard to claims submitted under chapters
3 14 13B and 815, including the authority to adopt rules concerning
3 15 the review and payment of claims submitted.

3 16 Sec. 6. Section 602.1302, subsection 3, Code 2005, is
3 17 amended to read as follows:

3 18 3. A revolving fund is created in the state treasury for
3 19 the payment of jury and witness fees, mileage, ~~and~~ costs
3 20 related to summoning jurors by the judicial branch, ~~and~~
3 21 attorney fees paid by the state public defender for counsel

3 22 appointed pursuant to section 600A.6A. The judicial branch
3 23 shall deposit any reimbursements to the state for the payment
3 24 of jury and witness fees and mileage in the revolving fund.

3 25 In each calendar quarter the judicial branch shall reimburse
3 26 the state public defender for attorney fees paid pursuant to
3 27 section 600A.6B. Notwithstanding section 8.33, unencumbered

3 28 and unobligated receipts in the revolving fund at the end of a
3 29 fiscal year do not revert to the general fund of the state.

3 30 The judicial branch shall on or before February 1 file a
3 31 financial accounting of the moneys in the revolving fund with
3 32 the legislative services agency. The accounting shall include
3 33 an estimate of disbursements from the revolving fund for the
3 34 remainder of the fiscal year and for the next fiscal year.

3 35 Sec. 7. Section 602.8102, subsection 133, Code 2005, is
4 1 amended by striking the subsection.

4 2 Sec. 8. Section 815.10, subsection 1, Code 2005, is
4 3 amended to read as follows:

4 4 1. The court, for cause and upon its own motion or upon
4 5 application by an indigent person or a public defender, shall
4 6 appoint the state public defender's designee pursuant to
4 7 section 13B.4 to represent an indigent person at any stage of
4 8 the criminal, postconviction, contempt, commitment under
4 9 chapter 229A, termination under chapter 600A, detention under
4 10 section 811.1A, competency under chapter 812, parole

4 11 revocation if applicable under section 908.2A, or juvenile
4 12 proceedings or on appeal of any criminal, postconviction,
4 13 contempt, commitment under chapter 229A, termination under
4 14 chapter 600A, detention under section 811.1A, competency under

4 15 chapter 812, parole revocation under chapter 908, or juvenile
4 16 action in which the indigent person is entitled to legal
4 17 assistance at public expense. However, in juvenile cases, the
4 18 court may directly appoint an existing nonprofit corporation
4 19 established for and engaged in the provision of legal services
4 20 for juveniles. An appointment shall not be made unless the
4 21 person is determined to be indigent under section 815.9. Only
4 22 one attorney shall be appointed in all cases, except that in
4 23 class "A" felony cases the court may appoint two attorneys.

4 24 Sec. 9. Section 815.11, Code 2005, is amended to read as
4 25 follows:

4 26 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

4 27 Costs incurred under chapter 229A, 665, ~~or~~ 822, ~~or~~ 908, or
4 28 section 232.141, subsection 3, paragraph "c", or section
4 29 598.23A, 600A.6B, 814.9, 814.10, 814.11, 815.4, 815.7, ~~or~~
4 30 815.10, ~~or~~ ~~908.11~~ on behalf of an indigent shall be paid from
4 31 funds appropriated by the general assembly to the office of
4 32 the state public defender in the department of inspections and
4 33 appeals for those purposes. Costs incurred representing an
4 34 indigent defendant in a contempt action, or representing an
4 35 indigent juvenile in a juvenile court proceeding under chapter
5 1 600, are also payable from these funds. However, costs
5 2 incurred in any administrative proceeding or in any other
5 3 proceeding under chapter 598, 600, 600A, 633, or 915 or other
5 4 provisions of the Code or administrative rules are not payable
5 5 from these funds.

5 6 Sec. 10. Section 908.2, Code 2005, is amended to read as
5 7 follows:

5 8 908.2 INITIAL APPEARANCE == BAIL.

5 9 1. An officer making an arrest of an alleged parole
5 10 violator shall take the arrested person before a magistrate
5 11 without unnecessary delay for an initial appearance. ~~At that~~
5 12 ~~time the alleged parole violator shall be furnished with a the~~
5 13 initial appearance the magistrate shall do all of the
5 14 following:

5 15 a. Provide written notice of the claimed violation ~~and~~
5 16 ~~shall be given.~~

5 17 b. Provide notice that a parole revocation hearing will
5 18 take place and that its purpose is to determine whether the
5 19 alleged parole violation occurred and whether the alleged
5 20 violator's parole should be revoked.

5 21 c. Advise the alleged parole violator of the right to
5 22 request an appointed attorney.

5 23 2. The magistrate may order the alleged parole violator
5 24 confined in the county jail or may order the alleged parole
5 25 violator released on bail under terms and conditions as the
5 26 magistrate may require. Admittance to bail is discretionary
5 27 with the magistrate and is not a matter of right. A person
5 28 for whom bail is set may make application for amendment of
5 29 bail to a district judge or district associate judge having
5 30 jurisdiction to amend the order. The motion shall be promptly
5 31 set for hearing and a record shall be made of the hearing.

5 32 Sec. 11. NEW SECTION. 908.2A APPOINTMENT OF AN ATTORNEY.

5 33 1. An attorney may be appointed to represent an alleged
5 34 parole violator in a parole revocation proceeding only if all
5 35 of the following criteria apply:

6 1 a. The alleged parole violator requests appointment of an
6 2 attorney.

6 3 b. The alleged parole violator is determined to be
6 4 indigent as defined in section 815.9.

6 5 c. The appointing authority determines each of the
6 6 following:

6 7 (1) The alleged parole violator lacks skill or education
6 8 and would have difficulty presenting the alleged parole
6 9 violator's case, particularly if the proceeding would require
6 10 the cross-examination of witnesses or would require the
6 11 submission or examination of complex documentary evidence.

6 12 (2) The alleged parole violator has a colorable claim the
6 13 alleged violation did not occur, or there are substantial
6 14 reasons that justify or mitigate the violation and make any
6 15 revocation inappropriate under the circumstances.

6 16 2. If all of the criteria apply in subsection 1, a
6 17 contract attorney with the state public defender may be
6 18 appointed to represent the alleged parole violator. If a
6 19 contract attorney is unavailable, an attorney who has agreed
6 20 to provide these services may be appointed. The appointed
6 21 attorney shall apply to the state public defender for payment
6 22 in the manner prescribed by the state public defender.

6 23 Sec. 12. Section 908.4, subsection 2, Code 2005, is
6 24 amended to read as follows:

6 25 2. The administrative parole judge shall make a verbatim
6 26 record of the proceedings. The alleged violator ~~shall not~~
6 27 ~~have the right to appointed counsel,~~ shall be informed of the
6 28 evidence against the violator, shall be given an opportunity
6 29 to be heard, shall have the right to present witnesses and
6 30 other evidence, and shall have the right to cross-examine
6 31 adverse witnesses, except if the judge finds that a witness
6 32 would be subjected to risk or harm if the witness's identity
6 33 were disclosed. The revocation hearing may be conducted
6 34 electronically.

6 35 Sec. 13. Section 815.1, Code 2005, is repealed.

7 1 Sec. 14. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.
7 2 This Act, being deemed of immediate importance, takes effect
7 3 upon enactment. The sections of this Act amending chapter
7 4 600A and section 602.1302, and the portions of this Act
7 5 amending sections 815.10 and 815.11 relating to chapter 600A
7 6 apply retroactively to May 12, 2004, and the remaining
7 7 sections of this Act, including the portions of this Act
7 8 amending sections 815.10 and 815.11 relating to chapter 908,
7 9 apply retroactively to November 10, 2004.

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CHRISTOPHER C. RANTS
Speaker of the House

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JOHN P. KIBBIE
President of the Senate

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7 21 I hereby certify that this bill originated in the House and
7 22 is known as House File 683, Eighty-first General Assembly.

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MARGARET THOMSON
Chief Clerk of the House

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7 28 Approved _____, 2005
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7 31 _____
7 32 THOMAS J. VILSACK
7 33 Governor