

then State Court 2/18/81  
Dr. Pass 4/7/81 (p. 1120)  
then Appropriation 4/16/81  
Amend per 40107 Dr. Pass 5/6/81 (p. 1712)

FILED MAR 3 1981

SENATE FILE 332

BY COMMITTEE ON STATE GOVERNMENT  
Approved 2/3 (p. 635)  
(FORMER SSB 95)

Passed Senate, Date 3-13-81 (p. 777) Passed House, Date 5-19-81 (p. 2043)

Vote: Ayes 43 Nays 1 Vote: Ayes 93 Nays 1

Approved June 14, 1981

Referred to Senate as amended by House  
5-22-81 (p. 1523)

45-0

## A BILL FOR

- 1 An Act relating to the office of appellate defender.
- 2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
- 3

SENATE FILE 332  
FISCAL NOTE

REQUESTED BY SENATOR NYSTROM

In compliance with a written request there is hereby submitted a Fiscal Note for Senate File 332 pursuant to Joint Rule 16.

S.F. 332, An Act relating to the office of appellate defender.

S.F. 332 makes permanent the office which was established as a pilot project in 1980 session. This current fiscal year the office is operating with eight full-time equivalent positions and approximately \$225,000.

FILED  
MARCH 11, 1981

BY GERRY RANKIN, DIRECTOR  
LEGISLATIVE FISCAL BUREAU

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1 Section 1. Acts of the Sixty-eighth General Assembly,  
2 1980 Session, chapter 1187, section 3, is amended to read  
3 as follows:

4 SEC. 3. CREATION OF OFFICE. The office of state appellate  
5 defender is established ~~as-a-pilot-program-for-the-fiscal~~  
6 ~~year-beginning-July-17-1980~~. The governor shall appoint the  
7 state appellate defender and establish the appellate defender's  
8 salary.

9 Sec. 2. Section 19A.3, subsection 5, Code 1981, is amended  
10 to read as follows:

11 5. All employees under the supervision of the attorney  
12 general ~~ex-his-assistants~~ or assistant attorneys general,  
13 and all employees under the supervision of the appellate  
14 defender or assistant appellate defenders.

15 Sec. 3. Acts of the Sixty-eighth General Assembly, 1980  
16 Session, chapter 1187, section 7, is repealed.

17 Sec. 4. The Code editor shall codify Acts of the Sixty-  
18 eighth General Assembly, 1980 Session, chapter 1187, sections  
19 2 through 6 as permanent law.

20 Sec. 5. This Act, being deemed of immediate importance,  
21 takes effect from and after its publication in The Council  
22 Bluffs Nonpareil, a newspaper published in Council Bluffs,  
23 Iowa, and in the Muscatine Journal, a newspaper published  
24 in Muscatine, Iowa.

25 EXPLANATION

26 This bill makes permanent the office of state appellate  
27 defender that was established as a pilot project in the 1980  
28 Session by S.F. 2229. The bill also adds language to exempt  
29 the personnel of the office from chapter 19A, relating to  
30 merit employment.

31 The bill would take effect upon publication. This is  
32 necessary to prevent the taking effect of the June 30, 1981,  
33 repeal provision contained in section 7 of the 1980 Act.

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SENATE FILE 332

H-4010

1 Amend Senate File 332 as passed by the Senate as  
2 follows:  
3 1. By striking everything after the enacting  
4 clause and inserting in lieu thereof the following:  
5 "Section 1. NEW SECTION. DEFINITIONS. As used  
6 in this Act unless the context otherwise requires:  
7 1. "Appellate defender" means the state appellate  
8 defender.  
9 2. "Indigent" means a person found by the trial  
10 court to be unable to retain legal counsel without  
11 prejudicing the person's financial ability to provide  
12 economic necessities for the person and the person's  
13 dependents.  
14. Sec. 2. NEW SECTION. CREATION OF OFFICE. The  
15 office of state appellate defender is established.  
16 The governor shall appoint the state appellate defender  
17 and establish the appellate defender's salary.  
18 Sec. 3. NEW SECTION. QUALIFICATIONS OF APPELLATE  
19 DEFENDER. Only persons admitted to practice law in  
20 this state shall be appointed appellate defender or  
21 assistant appellate defender.  
22 Sec. 4. NEW SECTION. DUTIES OF APPELLATE DEFENDER.  
23 The appellate defender shall represent indigents on  
24 appeal in criminal cases and on appeal in proceedings  
25 to obtain postconviction relief when appointed to  
26 do so by the district court in which the judgment  
27 or order was issued and shall not engage in the private  
28 practice of law. The court may, upon the application  
29 of the indigent or the indigent's trial attorney,  
30 or on its own motion, appoint the appellate defender  
31 to represent the indigent on appeal or on appeal in  
32 postconviction proceedings.  
33 Sec. 5. NEW SECTION. STAFF. The appellate  
34 defender may appoint assistant appellate defenders  
35 who, subject to the direction of the appellate  
36 defender, shall have the same duties as the appellate  
37 defender and shall not engage in the private practice  
38 of law. The salaries of the staff shall be fixed  
39 by the appellate defender. The appellate defender  
40 and his or her staff shall receive actual and necessary  
41 expenses, including travel at the state rate set forth  
42 in section 18.117.  
43 Sec. 6. NEW SECTION. ACCOUNT ESTABLISHED. There  
44 is established in the state general fund an account  
45 to be known as the appellate defender operating  
46 account. The appellate defender is authorized to  
47 bill a county for services rendered to the county  
48 by the office of the appellate defender. Receipts  
49 shall be deposited in the operating account established  
50 under this section. There is appropriated from the

Page 6

May 7, 1981

Page Two

H-4010

1 state general fund all amounts deposited in the  
2 appellate defender operating account for use in  
3 maintaining the operations of the office of appellate  
4 defender. Expenditures by the office of the appellate  
5 defender in excess of the amount appropriated to the  
6 office by the general assembly for the fiscal year  
7 beginning July 1, 1981 and ending June 30, 1982 shall  
8 be only from funds collected for services provided  
9 by the office.

10 Sec. 7. Section 19A.3, subsection 5, Code 1981,  
11 is amended to read as follows:

12 5. All employees under the supervision of the  
13 attorney general ~~or his assistants~~ or assistant  
14 attorneys general, and all employees under the  
15 supervision of the appellate defender or assistant  
4217 16 appellate defenders."

H-4010 FILED

MAY 6, 1981

*Adopted as amended by 4217  
5/19/81 (p. 2042)*

BY COMMITTEE ON APPROPRIATIONS

WELDEN, Chair

SENATE FILE 332

H-4217

1 Amend committee amendment H-4010 to Senate File  
2 332 as passed by the Senate, as follows:

3 1. Page 2, by striking line 16 and inserting in  
4 lieu thereof the following: "appellate defenders.

5 Sec. 8. Sections 1 through 6 of this Act are  
6 repealed effective four years from the effective date  
7 of this Act."

H-4217 FILED

MAY 15, 1981

*Adopted 5/19/81 (p. 2042)*

BY MILLER of Buchanan

LAGESCHULTE of Bremer

HOUSE AMENDMENT TO SENATE FILE 332

S-3837

1 Amend Senate File 332 as passed by the Senate as  
2 follows:

3 1. By striking everything after the enacting  
4 clause and inserting in lieu thereof the following:

5 "Section 1. NEW SECTION. DEFINITIONS. As used  
6 in this Act unless the context otherwise requires:

7 1. "Appellate defender" means the state appellate  
8 defender.

9 2. "Indigent" means a person found by the trial  
10 court to be unable to retain legal counsel without  
11 prejudicing the person's financial ability to provide  
12 economic necessities for the person and the person's  
13 dependents.

14 Sec. 2. NEW SECTION. CREATION OF OFFICE. The  
15 office of state appellate defender is established.  
16 The governor shall appoint the state appellate defender  
17 and establish the appellate defender's salary.

18 Sec. 3. NEW SECTION. QUALIFICATIONS OF APPELLATE  
19 DEFENDER. Only persons admitted to practice law in  
20 this state shall be appointed appellate defender or  
21 assistant appellate defender.

22 Sec. 4. NEW SECTION. DUTIES OF APPELLATE DEFENDER.  
23 The appellate defender shall represent indigents on  
24 appeal in criminal cases and on appeal in proceedings  
25 to obtain postconviction relief when appointed to  
26 do so by the district court in which the judgment  
27 or order was issued and shall not engage in the private  
28 practice of law. The court may, upon the application  
29 of the indigent or the indigent's trial attorney,  
30 or on its own motion, appoint the appellate defender  
31 to represent the indigent on appeal or on appeal in  
32 postconviction proceedings.

33 Sec. 5. NEW SECTION. STAFF. The appellate  
34 defender may appoint assistant appellate defenders  
35 who, subject to the direction of the appellate  
36 defender, shall have the same duties as the appellate  
37 defender and shall not engage in the private practice  
38 of law. The salaries of the staff shall be fixed  
39 by the appellate defender. The appellate defender  
40 and his or her staff shall receive actual and necessary  
41 expenses, including travel at the state rate set forth  
42 in section 18.117.

43 Sec. 6. NEW SECTION. ACCOUNT ESTABLISHED. There  
44 is established in the state general fund an account  
45 to be known as the appellate defender operating  
46 account. The appellate defender is authorized to  
47 bill a county for services rendered to the county  
48 by the office of the appellate defender. Receipts  
49 shall be deposited in the operating account established  
50 under this section. There is appropriated from the

SENATE 3  
MAY 22, 1981

S-3837

PAGE 2

1 state general fund all amounts deposited in the  
2 appellate defender operating account for use in  
3 maintaining the operations of the office of appellate  
4 defender. Expenditures by the office of the appellate  
5 defender in excess of the amount appropriated to the  
6 office by the general assembly for the fiscal year  
7 beginning July 1, 1981 and ending June 30, 1982 shall  
8 be only from funds collected for services provided  
9 by the office.

10 Sec. 7. Section 19A.3, subsection 5, Code 1981,  
11 is amended to read as follows:

12 5. All employees under the supervision of the  
13 attorney general or his assistants or assistant  
14 attorneys general, and all employees under the  
15 supervision of the appellate defender or assistant  
16 appellate defenders.

17 Sec. 8. Sections 1 through 6 of this Act are  
18 repealed effective four years from the effective date  
19 of this Act."

S-3837 FILED  
MAY 21, 1981

RECEIVED FROM THE HOUSE

*Senate concurred 5/22/81 (p. 1823)*

SENATE FILE 332

AN ACT

RELATING TO THE OFFICE OF APPELLATE DEFENDER.

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

Section 1. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. "Appellate defender" means the state appellate defender.
2. "Indigent" means a person found by the trial court to be unable to retain legal counsel without prejudicing the person's financial ability to provide economic necessities for the person and the person's dependents.

Sec. 2. NEW SECTION. CREATION OF OFFICE. The office of state appellate defender is established. The governor shall appoint the state appellate defender and establish the appellate defender's salary.

Sec. 3. NEW SECTION. QUALIFICATIONS OF APPELLATE DEFENDER. Only persons admitted to practice law in this state shall be appointed appellate defender or assistant appellate defender.

Sec. 4. NEW SECTION. DUTIES OF APPELLATE DEFENDER. The appellate defender 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 shall

not engage in the private practice of law. The court may, upon the application of the indigent or the indigent's trial attorney, or on its own motion, appoint the appellate defender to represent the indigent on appeal or on appeal in postconviction proceedings.

Sec. 5. NEW SECTION. STAFF. The appellate defender may appoint assistant appellate defenders who, subject to the direction of the appellate defender, shall have the same duties as the appellate defender and shall not engage in the private practice of law. The salaries of the staff shall be fixed by the appellate defender. The appellate defender and his or her staff shall receive actual and necessary expenses, including travel at the state rate set forth in section 18.117.

Sec. 6. NEW SECTION. ACCOUNT ESTABLISHED. There is established in the state general fund an account to be known as the appellate defender operating account. The appellate defender is authorized to bill a county for services rendered to the county by the office of the appellate 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 appellate defender operating account for use in maintaining the operations of the office of appellate defender. Expenditures by the office of the appellate defender in excess of the amount appropriated to the office by the general assembly for the fiscal year beginning July 1, 1981 and ending June 30, 1982 shall be only from funds collected for services provided by the office.

Sec. 7. Section 19A.3, subsection 5, Code 1981, is amended to read as follows:

5. All employees under the supervision of the attorney general ~~or his associates~~ or assistant attorneys general, and all employees under the supervision of the appellate defender or assistant appellate defenders.

Sec. 8. Sections 1 through 6 of this Act are repealed effective four years from the effective date of this Act.

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TERRY E. BRANSTAD  
President of the Senate

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DELWYN STROMER  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 332, Sixty-ninth General Assembly.

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LINDA HOWARTH MACKAY  
Secretary of the Senate

Approved June 14, 1981

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ROBERT D. RAY  
Governor