

5- 3/29/96 Judiciary  
5- 3/29/96 No Pass

MAR 5 1996  
Place On Calendar

HOUSE FILE 2429  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 713)

Passed House, <sup>(P. 635)</sup> Date 3/12/96 Passed Senate, <sup>(P. 1006)</sup> Date 3-25-96  
Vote: Ayes 97 Nays 0 Vote: Ayes 46 Nays 0  
Approved April 2, 1996

A BILL FOR

1 An Act relating to the representation of indigents and other  
2 court appointments in criminal and juvenile proceedings and  
3 providing effective and retroactive applicability dates.

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

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HF 2429

1 Section 1. Section 13B.1, subsection 1, Code Supplement  
2 1995, is amended to read as follows:

3 1. "Appointed attorney" means an attorney appointed by the  
4 court and compensated by the state to represent an indigent  
5 defendant.

6 Sec. 2. Section 13B.4, Code Supplement 1995, is amended to  
7 read as follows:

8 13B.4 DUTIES AND POWERS OF STATE PUBLIC DEFENDER.

9 1. The state public defender shall coordinate the  
10 provision of legal representation of all indigents under  
11 arrest or charged with a crime, on appeal in criminal cases,  
12 and on appeal in proceedings to obtain postconviction relief  
13 when ordered to do so by the district court in which the  
14 judgment or order was issued, and may provide for the  
15 representation of indigents in proceedings instituted pursuant  
16 to chapter 908~~7~~-and. The state public defender shall not  
17 engage in the private practice of law. The state public  
18 defender may represent an indigent under arrest or charged  
19 with a crime at the discretion of the state public defender or  
20 upon the request of a local public defender.

21 2. The state public defender shall file with the clerk of  
22 the district court in each county served by a public defender  
23 a designation of which local public defender office shall  
24 receive notice of appointment of cases. Except as otherwise  
25 provided, in each county in which the state public defender  
26 files such designation, the state public defender or its  
27 designee shall be appointed by the court to represent all  
28 eligible indigents, whether the case is criminal or juvenile  
29 in nature. The appointment shall not be made if the state  
30 public defender notifies the court that the local public  
31 defender will not provide legal representation in cases  
32 involving offenses as identified in the designation by the  
33 state public defender.

34 2- 3. The state public defender may contract with persons  
35 admitted to practice law in this state for the provision of

1 legal services to indigents-where-there-is-no-local-public  
2 defender-office-in-the-area indigent or partially indigent  
3 persons.

4 4. The state public defender is authorized to review any  
5 claim made for payment of indigent defense costs and to take  
6 the following action if the state public defender believes a  
7 claim is excessive.

8 a. If the claim is from a noncontract attorney, the state  
9 public defender shall request a review by the court granting  
10 the claim as to the reasonableness of the claim within thirty  
11 days of receipt of the claim.

12 b. If the claim is from a contract attorney, the state  
13 public defender shall request a review by the appointing court  
14 as to the reasonableness of the claim within thirty days of  
15 receipt of the claim.

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

20 6. The state public defender shall report in writing to  
21 the general assembly by January 20 of each year regarding any  
22 funds recouped or collected for court-appointed attorney fees  
23 or expenses of a public defender pursuant to section 331.756,  
24 subsection 5, or section 602.8107 during the previous calendar  
25 year.

26 7. The state public defender shall adopt rules, as  
27 necessary, pursuant to chapter 17A to administer this chapter  
28 and section 815.9.

29 Sec. 3. Section 13B.9, subsection 1, paragraphs a and b,  
30 Code Supplement 1995, are amended to read as follows:

31 a. Represent without fee an indigent person who is under  
32 arrest or charged with a crime if the indigent person requests  
33 it representation or the court orders it representation. The  
34 local public defender shall counsel and defend an indigent  
35 defendant at every stage of the criminal proceedings and

1 prosecute before or after conviction any appeals or other  
2 remedies which the local public defender considers to be in  
3 the interest of justice unless ~~the court appoints~~ other  
4 counsel is appointed to the case.

5 b. Represent an indigent party, without fee and upon an  
6 order of the court, in child in need of assistance, family in  
7 need of assistance, delinquency, and termination of parental  
8 rights proceedings pursuant to chapter 232 in a county served  
9 by a public defender. The local public defender shall counsel  
10 and represent an indigent party in all proceedings pursuant to  
11 chapter 232 in a county served by a public defender and  
12 prosecute before or after judgment any appeals or other  
13 remedies which the local public defender considers to be in  
14 the interest of justice unless ~~the court appoints~~ other  
15 counsel is appointed to the case. The state public defender  
16 shall be reimbursed by the counties for services rendered by  
17 employees of the local public defenders' offices under this  
18 subsection, pursuant to section 232.141.

19 Sec. 4. Section 13B.9, Code Supplement 1995, is amended by  
20 adding the following new subsections:

21 NEW SUBSECTION. 4. The local public defender shall handle  
22 every case to which the local public defender is appointed if  
23 the local public defender can reasonably handle the case.

24 NEW SUBSECTION. 5. If a conflict of interest arises or if  
25 the local public defender is unable to handle a case because  
26 of a temporary overload of cases, the local public defender  
27 shall return the case to the court. The court shall first  
28 appoint a contract attorney. Appointments by the court shall  
29 be on a rotational or equalization basis considering the  
30 experience of the attorney and the difficulty of the case.

31 NEW SUBSECTION. 6. If a contract attorney is not  
32 available, or if a conflict of interest or overload of cases  
33 prevents a contract attorney from handling a case, the court  
34 shall appoint a private noncontract attorney who has agreed to  
35 take the case. The appointment shall be on a rotational or

1 equalization basis, considering the experience of the attorney  
2 and the difficulty of the case.

3 Sec. 5. Section 815.10, Code Supplement 1995, is amended  
4 to read as follows:

5 815.10 APPOINTMENT OF COUNSEL BY COURT.

6 1. The court, for cause and upon its own motion or upon  
7 application by an indigent person or a public defender, ~~may~~  
8 shall appoint a the state public defender, the state public  
9 defender's designee pursuant to section 13B.4, or any an  
10 attorney who-is-admitted-to-the-practice-of-law-in-this-state  
11 pursuant to section 13B.9 to represent an indigent person at  
12 any ~~state~~ stage of the criminal or juvenile proceedings or on  
13 appeal of any criminal or juvenile action in which the  
14 indigent person is entitled to legal assistance at public  
15 expense. However, in juvenile cases, the court may directly  
16 appoint an existing nonprofit corporation established for and  
17 engaged in the provision of legal services for juveniles. An  
18 appointment shall not be made unless the person is determined  
19 to be indigent under section 815.9.

20 ~~2. If a court finds that a person desires legal assistance~~  
21 ~~and is not indigent, but refuses to employ an attorney, the~~  
22 ~~court shall appoint a public defender or another attorney to~~  
23 ~~represent the person at public expense. If an attorney other~~  
24 ~~than a public defender is appointed, the fee paid to the~~  
25 ~~attorney shall be taxed as a court cost against the person.~~

26 3. 2. An attorney other than a public defender or a  
27 contract attorney who is appointed by the court under  
28 subsection 1 or 2 this section shall apply to the district  
29 court for compensation and for reimbursement of costs  
30 incurred. The amount of compensation due shall be determined  
31 in accordance with section 815.7.

32 3. A contract attorney appointed by the court pursuant to  
33 this section and section 13B.4 shall apply to the state public  
34 defender for compensation and for reimbursement of costs  
35 incurred in accordance with the contract. The amount of

1 compensation due shall be determined in accordance with the  
2 contract.

3 Sec. 6. EFFECTIVE DATE. This Act, being deemed of  
4 immediate importance, takes effect upon enactment.

5 Sec. 7. RETROACTIVE APPLICABILITY. This Act is  
6 retroactively applicable to July 1, 1995, and is applicable on  
7 or after that date.

8 EXPLANATION

9 This bill primarily returns the Code provisions concerning  
10 indigent defendants and public defenders to the language in  
11 the Code prior to July 1, 1995. Most of the language in this  
12 bill was adopted in 1991 Iowa Acts, chapter 268. That bill  
13 provided for the repeal of the language on July 1, 1995, and  
14 required the Code editor to return the language as it had  
15 appeared in the 1991 Code. Due to this directive to the Code  
16 editor, the bill also restores intervening amendments to the  
17 sections since the enactment of the 1991 legislation.

18 The bill requires that the state public defender coordinate  
19 the representation of all indigents. The bill requires the  
20 state public defender to designate the local public defender  
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23 The bill permits the state public defender to review claims  
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32 when the public defender is unable to represent the clients.

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1 The bill does not restore language providing for the  
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SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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21 ~~and-is-not-indigent,-but-refuses-to-employ-an-attorney,-the~~  
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24 ~~than-a-public-defender-is-appointed,-the-fee-paid-to-the~~  
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9 This bill primarily returns the Code provisions concerning  
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HOUSE FILE 2429

AN ACT

RELATING TO THE REPRESENTATION OF INDIGENTS AND OTHER COURT APPOINTMENTS IN CRIMINAL AND JUVENILE PROCEEDINGS AND PROVIDING EFFECTIVE AND RETROACTIVE APPLICABILITY DATES.

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

Section 1. Section 13B.1, subsection 1, Code Supplement 1995, is amended to read as follows:

1. "Appointed attorney" means an attorney appointed by the court and compensated by the state to represent an indigent defendant.

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eligible indigents, whether the case is criminal or juvenile in nature. The appointment shall not be made if the state public defender notifies the court that the local public defender will not provide legal representation in cases involving offenses as identified in the designation by the state public defender.

~~2. 3.~~ 3. The state public defender may contract with persons admitted to practice law in this state for the provision of legal services to ~~indigents where there is no local public defender office in the area~~ indigent or partially indigent persons.

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RON J. CORBETT  
Speaker of the House

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LEONARD L. BOSWELL  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2429, Seventy-sixth General Assembly.

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ELIZABETH ISAACSON  
Chief Clerk of the House

Approved April 2, 1996

**HF 2429**

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TERRY E. BRANSTAD  
Governor