

# House Study Bill 713

## Conference Committee Text

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

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

1 6 Sec. 2. Section 13B.4, Code Supplement 1995, is amended to  
1 7 read as follows:

1 8 13B.4 DUTIES AND POWERS OF STATE PUBLIC DEFENDER.

1 9 1. The state public defender shall coordinate the  
1 10 provision of legal representation of all indigents under  
1 11 arrest or charged with a crime, on appeal in criminal cases,  
1 12 and on appeal in proceedings to obtain postconviction relief  
1 13 when ordered to do so by the district court in which the  
1 14 judgment or order was issued, and may provide for the  
1 15 representation of indigents in proceedings instituted pursuant  
1 16 to chapter 908

~~and~~

~~1 17 The state public defender shall not  
1 18 engage in the private practice of law.~~

~~The state public~~

~~1 19~~

~~defender may represent an indigent under arrest or charged~~

~~1 20~~

~~with a crime at the discretion of the state public defender or~~

~~1 21~~

~~upon the request of a local public defender.~~

1 22 2. The state public defender shall file with the clerk of  
1 23 the district court in each county served by a public defender  
1 24 a designation of which local public defender office shall  
1 25 receive notice of appointment of cases. Except as otherwise  
1 26 provided, in each county in which the state public defender  
1 27 files such designation, the state public defender or its  
1 28 designee shall be appointed by the court to represent all  
1 29 eligible indigents, whether the case is criminal or juvenile  
1 30 in nature. The appointment shall not be made if the state  
1 31 public defender notifies the court that the local public  
1 32 defender will not provide legal representation in cases  
1 33 involving offenses as identified in the designation by the  
1 34 state public defender.

~~2.~~

~~3. The state public defender may contract with persons  
1 35 admitted to practice law in this state for the provision of  
2 1 legal services to~~

~~indigents where there is no local public~~

~~defender office in the area~~  
~~indigent or partially indigent~~  
persons.

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

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

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

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

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

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

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

a. Represent without fee an indigent person who is under arrest or charged with a crime if the indigent person requests

~~it~~  
~~representation~~ or the court orders

~~it~~  
~~representation~~. 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

~~the court appoints~~  
~~other~~

counsel is appointed to the case.  
b. Represent an indigent party, without fee and upon an 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 in a county served by a public defender. The local public defender shall counsel and represent an indigent party in all proceedings pursuant to chapter 232 in a county served by a public defender 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

~~the court appoints~~  
~~other~~

counsel is appointed to the case. The state public defender shall be reimbursed by the counties for services rendered by employees of the local public defenders' offices under this

3 18 subsection, pursuant to section 232.141.

3 19 Sec. 4. Section 13B.9, Code Supplement 1995, is amended by  
3 20 adding the following new subsections:

3 21 NEW SUBSECTION. 4. The local public defender shall handle  
3 22 every case to which the local public defender is appointed if  
3 23 the local public defender can reasonably handle the case.

3 24 NEW SUBSECTION. 5. If a conflict of interest arises or if  
3 25 the local public defender is unable to handle a case because  
3 26 of a temporary overload of cases, the local public defender  
3 27 shall return the case to the court. The court shall first  
3 28 appoint a contract attorney. Appointments by the court shall  
3 29 be on a rotational or equalization basis considering the  
3 30 experience of the attorney and the difficulty of the case.

3 31 NEW SUBSECTION. 6. If a contract attorney is not  
3 32 available, or if a conflict of interest or overload of cases  
3 33 prevents a contract attorney from handling a case, the court  
3 34 shall appoint a private noncontract attorney who has agreed to  
3 35 take the case. The appointment shall be on a rotational or  
4 1 equalization basis, considering the experience of the attorney  
4 2 and the difficulty of the case.

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

4 5 815.10 APPOINTMENT OF COUNSEL BY COURT.

4 6 1. The court, for cause and upon its own motion or upon  
4 7 application by an indigent person or a public defender,

~~may~~

4 8 shall appoint

~~a~~

~~the state public defender, the state public~~  
4 9 defender's designee pursuant to section 13B.4, or

~~any~~

~~an~~  
4 10 attorney

~~who is admitted to the practice of law in this state~~

4 11 pursuant to section 13B.9 to represent an indigent person at  
4 12 any

~~state~~

~~stage of the criminal or juvenile proceedings or on~~  
4 13 appeal of any criminal or juvenile action in which the  
4 14 indigent person is entitled to legal assistance at public  
4 15 expense. However, in juvenile cases, the court may directly  
4 16 appoint an existing nonprofit corporation established for and  
4 17 engaged in the provision of legal services for juveniles. An  
4 18 appointment shall not be made unless the person is determined  
4 19 to be indigent under section 815.9.  
4 20

~~2. If a court finds that a person desires legal assistance~~

4 21

~~and is not indigent, but refuses to employ an attorney, the~~

4 22

~~court shall appoint a public defender or another attorney to~~

4 23

~~represent the person at public expense. If an attorney other~~

4 24

~~than a public defender is appointed, the fee paid to the~~

4 25

~~attorney shall be taxed as a court cost against the person.~~

4 26

~~3.~~

~~2.~~ An attorney other than a public defender or a  
4 27 contract attorney who is appointed by the court under  
4 28

~~subsection 1 or 2~~

~~this section~~ shall apply to the district  
4 29 court for compensation and for reimbursement of costs  
4 30 incurred. The amount of compensation due shall be determined  
4 31 in accordance with section 815.7.

4 32 3. A contract attorney appointed by the court pursuant to  
4 33 this section and section 13B.4 shall apply to the state public  
4 34 defender for compensation and for reimbursement of costs  
4 35 incurred in accordance with the contract. The amount of  
5 1 compensation due shall be determined in accordance with the  
5 2 contract.

5 3 Sec. 6. EFFECTIVE DATE. This Act, being deemed of  
5 4 immediate importance, takes effect upon enactment.

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

5 8 EXPLANATION

5 9 This bill primarily returns the Code provisions concerning  
5 10 indigent defendants and public defenders to the language in  
5 11 the Code prior to July 1, 1995. Most of the language in this  
5 12 bill was adopted in 1991 Iowa Acts, chapter 268. That bill  
5 13 provided for the repeal of the language on July 1, 1995, and  
5 14 required the Code editor to return the language as it had  
5 15 appeared in the 1991 Code. Due to this directive to the Code  
5 16 editor, the bill also restores intervening amendments to the  
5 17 sections since the enactment of the 1991 legislation.

5 18 The bill requires that the state public defender coordinate  
5 19 the representation of all indigents. The bill requires the  
5 20 state public defender to designate the local public defender  
5 21 office that will take cases in a county served by a public  
5 22 defender.

5 23 The bill permits the state public defender to review claims  
5 24 for payment of indigent defense costs by a noncontract or  
5 25 contract attorney and if the state public defender believes  
5 26 the costs to be excessive, to request a review before the  
5 27 relevant court to consider the costs. The bill allows the  
5 28 state public defender to contract with county attorneys to  
5 29 recover court-ordered attorney fees awarded.

5 30 The bill provides for the appointment of a contract or  
5 31 noncontract attorney for representation of indigent clients  
5 32 when the public defender is unable to represent the clients.

5 33 The bill also permits a court, concerning indigent  
5 34 juveniles, to appoint a nonprofit corporation established to  
5 35 provide representation to juveniles to represent the juvenile.

6 1 The bill does not restore language providing for the  
6 2 indigent defense advisory commission. In addition, the bill  
6 3 strikes section 815.10, subsection 2, which provides for  
6 4 court-appointed counsel to be taxed as court costs against a  
6 5 person who desires legal assistance, is not indigent, but  
6 6 refuses to employ an attorney.

6 7 The bill takes effect upon enactment and is retroactively

6 8 applicable to July 1, 1995.

6 9 LSB 3705XL 76

6 10 ec/sc/14.1