

Senate Study Bill 2106

Bill Text

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1 1 Section 1. Section [13B.4](#), Code 1997, is amended to read as
1 2 follows:

1 3 13B.4 DUTIES AND POWERS OF STATE PUBLIC DEFENDER.

1 4 1. The state public defender shall coordinate the
1 5 provision of legal representation of all indigents under
1 6 arrest or charged with a crime, seeking postconviction relief,
1 7 against whom a contempt action is pending, on appeal in
1 8 criminal cases, and on appeal in proceedings to obtain
1 9 postconviction relief when ordered to do so by the district
1 10 court in which the judgment or order was issued, and may
1 11 provide for the representation of indigents in proceedings
1 12 instituted pursuant to chapter 908. The state public defender
1 13 shall not engage in the private practice of law.

1 14 2. The state public defender shall file with the clerk of
1 15 the district court in each county served by a public defender
1 16 a designation of which local public defender office shall
1 17 receive notice of appointment of cases. Except as otherwise
1 18 provided, in each county in which the state public defender
1 19 files such designation, the state public defender or its
1 20 designee shall be appointed by the court to represent all
1 21 eligible indigents,

~~whether the case is criminal or juvenile~~

1 22

~~in nature~~

~~in all of the cases and proceedings specified under~~

1 23 subsection 1. The appointment shall not be made if the state
1 24 public defender notifies the court that the local public
1 25 defender will not provide legal representation in cases
1 26

~~involving offenses~~

~~as identified in the designation by the~~
1 27 state public defender.

1 28 3. The state public defender may contract with persons
1 29 admitted to practice law in this state for the provision of
1 30 legal services to indigent

~~or partially indigent~~

~~persons.~~

1 31 4. The state public defender

~~is authorized to~~

~~shall review~~

1 32 any claim made for payment of indigent defense costs and

~~to~~

1 33 may take the following

~~action if the state public defender~~

1 34

~~believes a claim is excessive~~

~~actions:~~

1 35 a.

~~If the claim is from a noncontract attorney, the state~~

2 1

~~public defender shall request a review by the court granting~~

2 2

~~the claim as to the reasonableness of the claim within thirty~~

2 3

~~days of receipt of the claim.~~

~~If all of the charges are~~

2 4 appropriate and reasonable, approve the claim for payment.

2 5 b.

~~If the claim is from a contract attorney, the state~~

2 6

~~public defender shall request a review by the appointing court~~

2 7

~~as to the reasonableness of the claim within thirty days of~~

2 8

~~receipt of the claim.~~

~~If any portion of the claim is~~

2 9 excessive, reduce the claim to an amount which is not

2 10 excessive and approve the reduced claim.

2 11 c. If any portion of the claim is not payable under the

2 12 attorney's appointment, delete those portions of the claim

2 13 that are not payable and approve the remainder of the claim.

2 14 Actions of the state public defender in modifying and

2 15 approving claims shall be deemed final agency action.

2 16 5. The state public defender may establish fee limitations

2 17 for the provision of legal services by private attorneys for

2 18 various classes of cases to which attorneys may be appointed.

2 19 6. The state public defender may establish procedures and

2 20 circumstances under which requests to exceed the limitations

2 21 may be submitted. A denial of a request to exceed the

2 22 limitations shall not serve as a basis for withdrawal of

2 23 representation by counsel in the case. The action of the

2 24 state public defender in denying or granting a request to

2 25 exceed the limitations shall be deemed final agency action.

2 26

~~5~~

~~7. The state public defender~~

~~is authorized to~~

~~may~~

2 27 contract with county attorneys to provide collection services

2 28 related to court-ordered indigent defense restitution of

2 29 court-appointed attorney fees or the expense of a public

2 30 defender.

2 31

~~6~~

~~8. The state public defender shall report in writing to~~

2 32 the general assembly by January 20 of each year regarding any
2 33 funds recouped or collected for court-appointed attorney fees
2 34 or expenses of a public defender pursuant to section 331.756,
2 35 subsection 5, or section 602.8107 during the previous calendar
3 1 year.
3 2

~~7~~

- 9. The state public defender shall adopt rules, as
3 3 necessary, pursuant to chapter 17A to administer this chapter
3 4 and section 815.9.

3 5 Sec. 2. Section [13B.9](#), subsection 1, paragraph c, Code
3 6 1997, is amended by striking the paragraph.

3 7 Sec. 3. Section [13B.10](#), subsections 2 through 4, Code
3 8 1997, are amended by striking the subsections.

3 9 Sec. 4. Section [229.19](#), unnumbered paragraph 3, Code 1997,
3 10 is amended to read as follows:

3 11 The court or, if the advocate is appointed by the county
3 12 board of supervisors, the board shall prescribe reasonable
3 13 compensation for the services of the advocate. The
3 14 compensation shall be based upon the reports filed by the
3 15 advocate with the court. The advocate's compensation shall be
3 16 paid by the county in which the court is located, either on
3 17 order of the court or, if the advocate is appointed by the
3 18 county board of supervisors, on the direction of the board.
3 19 If the advocate is appointed by the court, the advocate is an
3 20 employee of the state for purposes of chapter 669. If the
3 21 advocate is appointed by the county board of supervisors, the
3 22 advocate is an employee of the county for purposes of chapter
3 23 670. If the patient or the person who is legally liable for
3 24 the patient's support is not indigent, the board shall recover
3 25 the costs of compensating the advocate from that person.

~~If~~

3 26

~~that person has an income level as determined pursuant to~~

3 27

~~section 815.9 greater than one hundred percent but not more~~

3 28

~~than one hundred fifty percent of the poverty guidelines, at~~

3 29

~~least one hundred dollars of the advocate's compensation shall~~

3 30

~~be recovered in accordance with rules adopted by the state~~

3 31

~~public defender. If that person has an income level as~~

3 32

~~determined pursuant to section 815.9 greater than one hundred~~

3 33

~~fifty percent of the poverty guidelines, at least two hundred~~

~~dollars of the advocate's compensation shall be recovered in~~

~~accordance with rules adopted by the state public defender.~~

4 1 Sec. 5. Section [602.8106](#), subsection 1, Code 1997, is
 4 2 amended by adding the following new paragraph:
 4 3 NEW PARAGRAPH. g. The thirty-five dollar installment
 4 4 payment fee assessed in the manner provided in section 815.9.
 4 5 Sec. 6. Section [602.8107](#), subsection 2, unnumbered
 4 6 paragraph 1, Code Supplement 1997, is amended to read as
 4 7 follows:
 4 8 If the clerk receives payment from a person who is an
 4 9 inmate of a state institution or who is under the supervision
 4 10 of a judicial district department of correctional services,
 4 11 the payment shall be applied to the balance owed under the
 4 12 identified case number of the case which has resulted in the
 4 13 placement of the person in a state institution or under the
 4 14 supervision of the judicial district department of
 4 15 correctional services. If a case number is not identified,
 4 16 the clerk shall apply the payment to the balance owed in the
 4 17 criminal case with the oldest judgment against the person.
 4 18

~~Payments~~

~~After payment of a thirty-five dollar installment~~

4 19 payment fee under section 815.9, payments received under this
 4 20 section shall be applied in the following priority order:
 4 21 Sec. 7. Section [602.8108](#), subsection 2, Code 1997, is
 4 22 amended to read as follows:
 4 23 2. Except as otherwise provided, the clerk of the district
 4 24 court shall report and submit to the state court
 4 25 administrator, not later than the fifteenth day of each month,
 4 26 the fines and fees received during the preceding calendar
 4 27 month. Except as provided in subsections 4 and 5, the state
 4 28 court administrator shall deposit the amounts received with
 4 29 the treasurer of state for deposit in the general fund of the
 4 30 state. The state court administrator shall report to the
 4 31 legislative fiscal bureau within thirty days of the beginning
 4 32 of each fiscal quarter the amount received during the previous
 4 33 quarter in the account established under this section. The
 4 34 report shall contain a separate accounting for any amounts
 4 35 received for payment of the thirty-five dollar installment
 5 1 payment fees assessed under section 815.9.

5 2 Sec. 8. Section [814.11](#), Code 1997, is amended to read as
 5 3 follows:

5 4 814.11 INDIGENT'S RIGHT TO COUNSEL.
 5 5 An indigent defendant is entitled to appointed counsel on
 5 6 the appeal of all indictable offenses.

~~Such~~

~~The appointment~~

~~is subject to rules of the supreme court~~

~~shall be made to the~~

5 8 state appellate defender unless the state appellate defender
 5 9 is unable to handle the case due to a conflict of interest or
 5 10 because of a temporary overload of cases. If the state
 5 11 appellate defender is unable to handle the case, the court
 5 12 shall appoint an attorney who has a contract with the state
 5 13 public defender to handle such an appeal. If the court
 5 14 determines that no contract attorney is available to handle
 5 15 the appeal, the court may appoint a noncontract attorney who

5 16 has agreed to handle the case, but the order of appointment
5 17 shall include a specific finding that no contract attorney was
5 18 available. The appointment of noncontract attorneys shall be
5 19 on a rotational or equalization basis, considering the
5 20 experience of the attorney and the difficulty of the case.

5 21 Sec. 9. Section 815.4, Code 1997, is amended to read as
5 22 follows:

5 23 815.4 SPECIAL WITNESSES FOR INDIGENTS.

5 24 Witnesses secured for indigent

~~or partially indigent~~

5 25 defendants under R.Cr.P. 19 must file a claim for compensation
5 26 supported by an affidavit specifying the time expended,
5 27 services rendered, and expenses incurred on behalf of the
5 28 defendant.

5 29 Sec. 10. Section 815.5, Code 1997, is amended to read as
5 30 follows:

5 31 815.5 EXPERT WITNESSES FOR STATE AND DEFENSE.

5 32 Notwithstanding the provisions of section 622.72,
5 33 reasonable compensation as determined by the court shall be
5 34 awarded expert witnesses, expert witnesses for an indigent

~~or~~

5 35

~~partially indigent~~

~~person referred to in section 815.4, or~~

6 1 called by the state in criminal cases.

6 2 Sec. 11. Section 815.7, Code Supplement 1997, is amended
6 3 to read as follows:

6 4 815.7 FEES TO ATTORNEYS.

6 5 An attorney who has not entered into a contract authorized
6 6 under section 13B.4 and who is appointed by the court to
6 7 represent any person charged with a crime in this state,
6 8 seeking postconviction relief, against whom a contempt action
6 9 is pending, appealing a criminal conviction, appealing a
6 10 denial of postconviction relief, or to serve as counsel for
6 11 any person or guardian ad litem

~~to a person~~

~~for any child in~~

6 12 juvenile court

~~in this state~~

~~shall be entitled to~~

~~a reasonable~~

6 13 compensation

~~which shall be the ordinary and customary charges~~

6 14

~~for like services in the community to be decided in each case~~

6 15

~~by a judge of the district court or of the juvenile court, as~~

6 16

~~applicable, including such sum or sums as the court may~~

6 17

~~determine are necessary for investigation in the interests of~~

6 18

~~justice and in the event of appeal the cost of obtaining the~~

6 19

~~transcript of the trial and the printing of the trial record~~

6 20

~~and necessary briefs in behalf of the defendant. However, the~~

6 21

~~reasonable compensation awarded an attorney shall not be~~

6 22

~~calculated based upon an~~

~~at the same hourly rate~~

~~that exceeds~~

6 23

~~the rate~~

~~and for the same activities and expenses that a~~

6 24 contract attorney as provided in section 13B.4 would receive

6 25 in a similar case.

~~Such~~

~~The noncontract attorney need not~~

6 26 follow the case into another county

~~or into the appellate~~

6 27

~~court unless so directed by the court at the request of the~~

6 28

~~defendant, where grounds for further litigation are not~~

6 29

~~capricious or unreasonable, but if such attorney does so, the~~

6 30

~~attorney's fee shall be determined accordingly~~

~~Only one~~

6 31 attorney fee shall be so awarded in any one case except that
6 32 in class "A" felony cases, two may be authorized.

6 33 Sec. 12. Section [815.9](#), Code 1997, is amended to read as
6 34 follows:

6 35 815.9 INDIGENCY DETERMINED PENALTY.

7 1 1. For purposes of this chapter,

~~section 68.8, section~~

7 2

~~222.22~~

~~chapter 13B, chapter 232, chapter 665, chapter 814,~~
7 3 ~~chapter 822,~~ and the rules of criminal procedure,

~~the~~

~~7 4~~

~~following apply~~

~~a person is indigent if the person is entitled~~
7 5 ~~to an attorney appointed by the court as follows:~~

7 6 a. A person is

~~indigent~~

~~entitled to an attorney appointed~~
7 7 ~~by the court to represent the person~~ if the person has an
7 8 income level at or below one hundred

~~fifty~~

~~twenty-five percent~~

7 9 of the United States poverty level as defined by the most
7 10 recently revised poverty income guidelines published by the
7 11 United States department of health and human services, ~~unless~~
7 12 ~~the court determines that the person is able to pay for the~~
7 13 ~~cost of an attorney to represent the person on the pending~~
7 14 ~~charges. In making the determination of a person's ability to~~
7 15 ~~pay for the cost of an attorney, the court shall consider not~~
7 16 ~~only the person's income, but also the availability of any~~
7 17 ~~assets not subject to execution, including but not limited to~~
7 18 ~~cash, stocks, bonds, and any other property which may be~~
7 19 ~~applied to the satisfaction of judgments.~~
7 20

~~b. A person is not indigent if the person has an income~~

~~7 21~~

~~level greater than one hundred fifty percent of the United~~

~~7 22~~

~~States poverty level as defined by the most recently revised~~

~~7 23~~

~~poverty income guidelines published by the United States~~

~~7 24~~

~~department of health and human services.~~

~~7 25~~

~~e~~
~~b. A person with an income level greater than one~~
7 26 ~~hundred~~

~~fifty~~

~~twenty-five percent, but~~

~~less than~~

~~at or below~~
7 27 ~~two hundred percent, of the most recently revised poverty~~
7 28 ~~income guidelines published by the United States department of~~
7 29 ~~health and human services~~

~~may be deemed partially indigent by~~

7 30 shall not be entitled to an attorney appointed by the court,
7 31 unless the court

~~— pursuant to~~
~~— makes~~ a written finding that

7 32

~~— given the person's circumstances,~~
~~— not~~ appointing counsel on
7 33 the pending charges would cause the person substantial
7 34 hardship.

~~— However, the court shall require a person appointed~~

7 35

~~— counsel to contribute to the cost of representation in~~

8 1

~~— accordance with rules adopted by the state public defender.~~

8 2 In determining whether substantial hardship would result, the
8 3 court shall consider not only the person's income, but also
8 4 the availability of any assets not subject to execution,
8 5 including but not limited to cash, stocks, bonds, and any
8 6 other property which may be applied to the satisfaction of
8 7 judgments.
8 8

~~— d.~~
~~— c.~~ A person with an income level greater than two
8 9 hundred percent of the most recently revised poverty income
8 10 guidelines published by the United States department of health
8 11 and human services shall not be

~~— deemed indigent or partially~~

8 12

~~— indigent~~
~~— entitled to any attorney appointed by the court,~~
8 13 unless the person is charged with a felony and the court makes
8 14 a written finding that

~~— , given the person's circumstances,~~
~~— not~~
8 15 appointing counsel would cause the person substantial
8 16 hardship.

~~— However, the court shall require a person appointed~~

8 17

~~— counsel to contribute to the cost of representation in~~

8 18

~~— accordance with rules adopted by the state public defender.~~

8 19 In determining whether substantial hardship would result, the
8 20 court shall consider not only the person's income, but also
8 21 the availability of any assets not subject to execution,
8 22 including but not limited to cash, stocks, bonds, and any

8 23 other property which may be applied to the satisfaction of
8 24 judgments.

8 25 2. A determination of

~~the indigent status of~~

~~whether a~~

8 26 person is entitled to an appointed attorney shall be made on
8 27 the basis of an affidavit of financial status submitted at the
8 28 time of the person's initial appearance

~~before a court~~

~~or at~~

8 29 such later time as a request for court appointment is made.

8 30

~~If a person is granted legal assistance as an indigent or~~

8 31

~~partial indigent, the financial statement shall be filed and~~

8 32

~~permanently retained in the person's court file.~~

~~The state~~

8 33 public defender shall adopt rules prescribing the form and
8 34 content of the affidavit of financial

~~statement and the~~

8 35

~~criteria by which a determination of indigency shall be based~~

9 1 status. The affidavit of financial

~~statement~~

~~status shall be~~

9 2 signed under penalty of perjury and shall contain sufficient
9 3 information to allow the determination to be made of whether
9 4 the person

~~meets the guidelines set out in subsection 1 and~~

9 5

~~shall be accompanied by the person's most recent pay slip, if~~

9 6

~~employed~~

~~is entitled to an appointed attorney under this~~

9 7 section. If the person is granted an appointed attorney, the
9 8 affidavit of financial status shall be filed and permanently
9 9 retained in the person's court file.

9 10 3.

~~A person who knowingly submits a false financial~~

9 11

~~statement for the purpose of obtaining legal assistance by~~

9 12

~~appointed counsel commits a fraudulent practice.~~

~~If a person~~

9 13 is granted an appointed attorney, the person shall be required
9 14 to reimburse the state for the total cost of legal assistance
9 15 provided to the person.

~~As used in this subsection, "legal~~

9 16

~~assistance" includes legal counsel~~

~~"Legal assistance" as used~~

9 17 in this section shall include not only an appointed attorney,
9 18 but also transcripts, witness fees

~~and~~

~~expenses, and any~~

9 19 other goods or services required by law to be provided to an
9 20 indigent person.

9 21 4. If the case is a criminal case, all costs and fees
9 22 incurred for legal assistance shall become due and payable to
9 23 the clerk of the district court by the person receiving the
9 24 legal assistance not later than the date of sentencing, or if
9 25 the person is acquitted or the charges are dismissed, within
9 26 thirty days of the acquittal or dismissal.

9 27 5. If the case is other than a criminal case, all costs
9 28 and fees incurred for legal assistance shall become due and
9 29 payable to the clerk of the district court by the person
9 30 receiving the legal assistance not later than the date of any
9 31 hearing or trial held in the case, or if the case is
9 32 dismissed, within thirty days of the dismissal.

9 33 6. An appointed attorney shall submit a report pertaining
9 34 to the costs and fees for legal assistance to the court at the
9 35 times specified in subsections 4 and 5. If the appointed
10 1 attorney is a public defender, the report shall specify the
10 2 total hours of service plus other expenses. If the appointed
10 3 attorney is a private attorney, the total amount of legal
10 4 assistance shall be the total amount of the fees claimed by
10 5 the appointed attorney together with other expenses.

10 6 7. If the costs and fees incurred for legal assistance are
10 7 not paid at the times specified in subsections 4 and 5, the
10 8 court shall assess an installment payment fee of thirty-five
10 9 dollars against the person who has received legal assistance.
10 10 Notwithstanding anything in sections 910.1, 910.2, and 910.9
10 11 to the contrary, the thirty-five dollar installment payment
10 12 fee shall be paid prior to crediting any payments received
10 13 against any amounts due from the person, notwithstanding
10 14 anything to the contrary in section 910.2. Payment of the
10 15 thirty-five dollar installment payment fee shall be separately
10 16 accounted for by the clerk and forwarded together with any
10 17 other amounts collected for payment of restitution and other
10 18 finances, penalties, fees, court costs, and surcharges under
10 19 section 602.8107.

10 20 8. If all costs and fees incurred for legal assistance are
10 21 not paid at the times specified in subsections 4 and 5, the
10 22 court shall order payment of the fees and costs in reasonable
10 23 installments. Any hearings held for purposes of monitoring
10 24 compliance with any installment payment plan are not contempt
10 25 hearings, unless the court specifically designates the hearing
10 26 as either a contempt or a show cause hearing. A person who is
10 27 responsible for making payments under a court ordered
10 28 installment payment plan shall receive notice prior to any
10 29 hearing that is designated by the court as a show cause or
10 30 contempt hearing that the court has determined that the person
10 31 has failed to abide by the terms of the payment plan and
10 32 should be required to show cause why the person should not be
10 33 held in contempt.

10 34 9. If a person is granted an appointed attorney or is
10 35 receiving legal assistance in accordance with this section and

11 1 the person is employed, the person shall execute an assignment
11 2 of wages. An order for assignment of income, in a reasonable
11 3 amount to be determined by the court, shall also be entered by
11 4 the court. The state public defender shall prescribe forms
11 5 for use in wage assignments and court orders entered under
11 6 this section.

11 7 10. If any costs and fees are not paid at the times
11 8 specified under subsections 4 and 5, a judgment shall be
11 9 entered against the person for any unpaid amounts.

11 10 Sec. 13. Section 815.10, Code 1997, is amended to read as
11 11 follows:

11 12 815.10 APPOINTMENT OF COUNSEL BY COURT.

11 13 1. The court, for cause and upon its own motion or upon
11 14 application by an indigent person or a public defender, shall
11 15 appoint the state public defender, the state public defender's
11 16 designee pursuant to section 13B.4, or an attorney pursuant to
11 17 section 13B.9 to represent an indigent person at any stage of
11 18 the criminal, postconviction, contempt, or juvenile
11 19 proceedings or on appeal of any criminal, postconviction,
11 20 contempt, or juvenile action in which the indigent person is
11 21 entitled to legal assistance at public expense. However, in
11 22 juvenile cases, the court may directly appoint an existing
11 23 nonprofit corporation established for and engaged in the
11 24 provision of legal services for juveniles. An appointment
11 25 shall not be made unless the person is determined to be
11 26 indigent under section 815.9. Only one attorney shall be
11 27 appointed in all cases, except that in class "A" felony cases
11 28 the court may appoint two attorneys.

11 29 2. An attorney other than a public defender

~~or a contract~~

11 30

~~attorney~~

~~who is appointed by the court under this section~~
11 31 shall apply to the

~~district court~~

~~state public defender~~ for

11 32 compensation and for reimbursement of costs incurred. The
11 33 amount of compensation due shall be determined in accordance
11 34 with any indigent defense contract or pursuant to section
11 35 815.7.

12 1 3.

~~A contract attorney appointed by the court pursuant to~~

12 2

~~this section and section 13B.4 shall apply to the state public~~

12 3

~~defender for compensation and for reimbursement of costs~~

12 4

~~incurred in accordance with the contract. The amount of~~

12 5

~~compensation due shall be determined in accordance with the~~

12 6

~~contract.~~

- The state public defender shall adopt rules which
12 7 specify the specific information which shall be included with
12 8 all claims for compensation submitted by court-appointed
12 9 attorneys under this section. If the information required
12 10 under this section and the rules of the state public defender
12 11 are not submitted, the claim may be denied until the
12 12 information is provided. If the information required under
12 13 this section and the rules of the state public defender is
12 14 submitted with the claim, the state public defender may
12 15 approve reasonable and proper compensation to the court-
12 16 appointed attorney in the matter provided in those rules.

12 17 Sec. 14. Section [815.11](#), Code 1997, is amended to read as
12 18 follows:

12 19 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

12 20 Costs incurred under section 232.141, subsection 3,
12 21 paragraph "c", sections 814.9, 814.10, 814.11, 815.4, 815.5,
12 22 815.6, 815.7, 815.10, and 822.5, chapter 665, or the rules of
12 23 criminal procedure on behalf of an indigent shall be paid from
12 24 funds appropriated by the general assembly to the department
12 25 of inspections and appeals for those purposes.

12 26 Sec. 15. Section [822.5](#), subsection 2, Code 1997, is
12 27 amended by striking the subsection.

12 28 Sec. 16. EMERGENCY RULES. The office of the state public
12 29 defender of the department of inspections and appeals may
12 30 adopt administrative rules under section 17A.4, subsection 2,
12 31 and section 17A.5, subsection 2, paragraph "b", to implement
12 32 the provisions of this Act. The rules shall become effective
12 33 immediately upon filing, unless a later effective date is
12 34 specified in the rules. Any rules adopted in accordance with
12 35 this section shall not take effect before the rules are
13 1 reviewed by the administrative rules review committee. Any
13 2 rules adopted in accordance with the provisions of this
13 3 section shall also be published as notice of intended action
13 4 as provided in section 17A.4.

13 5 Sec. 17. Sections 815.9A and 815.10A, Code 1997, are
13 6 repealed.

13 7 EXPLANATION

13 8 This bill makes changes pertaining to the payment of costs
13 9 for the defense of indigent persons in criminal, juvenile,
13 10 postconviction, contempt actions, and certain other civil
13 11 actions. The duties and authority of the state public
13 12 defender are amended to add postconviction relief and contempt
13 13 actions to the kinds of cases which are to be handled by that
13 14 office. The state public defender is given the direct
13 15 authority to approve, reduce, and modify claims made for
13 16 payment of indigent defense costs. Procedures are added in
13 17 the bill which permit the state public defender to set and
13 18 exceed limitations on indigent defense costs which are
13 19 submitted for payment by court-appointed attorneys.

13 20 References are eliminated which make the appointment of
13 21 counsel on appeals subject to supreme court rules. Instead,
13 22 the bill substitutes a procedure which provides for the
13 23 appointment of the state appellate defender, unless the
13 24 appellate defender has a conflict of interest or a temporary
13 25 overload of cases. In the latter two situations, the bill
13 26 provides for the appointment of an attorney who has entered
13 27 into a contract with the state public defender to handle
13 28 appeals. If no contract attorney is available, the court may
13 29 appoint a noncontract attorney on a rotational or equalization
13 30 basis, considering the experience of the attorney and the
13 31 difficulty of the case. The appointment must, however,
13 32 include specific findings that no contract attorney was
13 33 available. Noncontract attorneys will be paid directly
13 34 through the state public defender's office and are to submit
13 35 such reports and information relating to their fees and
14 1 expenses as are required by the state public defender. A
14 2 reference to the indigency determination threshold is

14 3 eliminated in the mental illness civil commitment Code chapter
14 4 to conform the language to the changes made in the indigency
14 5 determination thresholds in Code chapter 815.
14 6 The bill also changes the procedures for determination of
14 7 an individual's indigence and consequent eligibility for
14 8 court-appointed counsel at state expense. The requirement
14 9 that the state public defender's office make an initial
14 10 determination of indigence prior to the initial arraignment or
14 11 other initial court appearance is eliminated and all
14 12 references to determinations of indigency are transferred to
14 13 Code chapter 815. A person is indigent and entitled to court-
14 14 appointed counsel if the person has an income level at or
14 15 below 125 percent of poverty level. This is below the current
14 16 150 percent of poverty level ceiling. In determining
14 17 eligibility, the court is to consider not only the person's
14 18 income, but assets not subject to execution and any other
14 19 property which may be applied to the satisfaction of
14 20 judgments. Those persons whose income falls above the new
14 21 threshold are not entitled to court-appointed counsel unless
14 22 the court makes a written determination that not appointing
14 23 counsel on the pending charges would cause the person
14 24 substantial hardship. Like the original determination of
14 25 eligibility, the determination of substantial hardship is to
14 26 be based not only on the person's income, but also on assets
14 27 not subject to execution and any other property which may be
14 28 applied to the satisfaction of judgments. A person who
14 29 receives court-appointed counsel and is employed is required
14 30 to execute an assignment of wages and the court is to enter an
14 31 order for assignment of income on forms prescribed by the
14 32 state public defender. If a person is not able to pay the
14 33 costs of court-appointed counsel when the costs are due, the
14 34 court may provide for payment on an installment basis. A \$35
14 35 installment payment fee will be assessed, however, against the
15 1 person and will be paid before any other charges owed are
15 2 paid.
15 3 LSB 3409XL 77
15 4 lh/jw/5.2