

FILED MAR 9 1999

SENATE FILE 343  
BY DVORSKY, DELUHERY, GRONSTAL,  
and HORN

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

A BILL FOR

1 An Act relating to the rate of compensation for attorneys  
2 representing certain indigents and changing the procedure for  
3 approval of indigent defense costs.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24

SF 343  
JUDICIARY

1 Section 1. Section 13B.9, subsection 1, paragraph b, Code  
2 1999, is amended to read as follows:

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

17 Sec. 2. Section 28E.19, Code 1999, is amended to read as  
18 follows:

19 28E.19 JOINT COUNTY INDIGENT DEFENSE FUND.

20 Two or more counties may execute an agreement under this  
21 chapter to create a joint county indigent defense fund to be  
22 used to compensate attorneys appointed to represent indigents  
23 ~~under section 815.10 when funds budgeted for that purpose are~~  
24 ~~exhausted.~~ In addition to other requirements of an agreement  
25 under this chapter, the agreement shall provide for the amount  
26 to be paid by each county based on its population to establish  
27 and maintain an appropriate balance in the joint fund, and for  
28 a method of repayment if a county withdraws more funds than it  
29 has contributed.

30 Sec. 3. Section 124.407, unnumbered paragraphs 2 and 7,  
31 Code 1999, are amended by striking the unnumbered paragraphs.

32 Sec. 4. Section 125.78, subsections 1 and 2, Code 1999,  
33 are amended to read as follows:

34 1. Determine whether the respondent has an attorney who is  
35 able and willing to represent the respondent in the commitment

1 proceeding, and if not, whether the respondent is financially  
2 able to employ an attorney and capable of meaningfully  
3 assisting in selecting an attorney. In accordance with those  
4 determinations, the court shall allow the respondent to select  
5 an attorney or shall assign an attorney to the respondent. If  
6 the respondent is financially unable to pay an attorney, the  
7 ~~attorney shall be compensated in substantially the same manner~~  
8 ~~as provided by section 815.7, except that if the county has a~~  
9 ~~public defender, the court may assign the public defender or~~  
10 ~~an attorney on the public defender's staff as the respondent's~~  
11 attorney the county shall compensate the attorney at an hourly  
12 rate to be established by the county board of supervisors.

13 2. If the application includes a request for a court-  
14 appointed attorney for the applicant and the court is  
15 satisfied that a court-appointed attorney is necessary to  
16 assist the applicant in a meaningful presentation of the  
17 evidence, and that the applicant is financially unable to  
18 employ an attorney, the court shall appoint an attorney to  
19 represent the applicant. ~~The attorney shall be compensated in~~  
20 ~~substantially the same manner as provided by section 815.7 and~~  
21 the county shall compensate the attorney at an hourly rate to  
22 be established by the county board of supervisors.

23 Sec. 5. Section 222.13A, subsection 4, Code 1999, is  
24 amended to read as follows:

25 4. As soon as practicable after the filing of a petition  
26 for approval of the voluntary admission, the court shall  
27 determine whether the minor has an attorney to represent the  
28 minor in the proceeding. If the minor does not have an  
29 attorney, the court shall assign to the minor an attorney. If  
30 the minor is unable to pay for an attorney, the attorney shall  
31 be compensated ~~in substantially the same manner as provided in~~  
32 section 815.7 by the county at an hourly rate to be  
33 established by the county board of supervisors.

34 Sec. 6. Section 222.22, Code 1999, is amended to read as  
35 follows:

1 222.22 TIME OF APPEARANCE.

2 The time of appearance shall not be less than five days  
3 after completed service unless the court orders otherwise.  
4 Appearance on behalf of the person who is alleged to have  
5 mental retardation may be made by any citizen of the county or  
6 by any relative. The district court shall assign counsel for  
7 the person who is alleged to have mental retardation. Counsel  
8 shall prior to proceedings personally consult with the person  
9 who is alleged to have mental retardation unless the judge  
10 appointing counsel certifies that in the judge's opinion,  
11 consultation shall serve no useful purpose. The certification  
12 shall be made a part of the record. An attorney assigned by  
13 the court shall ~~receive-compensation-as-the-district-court~~  
14 ~~shall-fix-to-be-paid-in-the-first-instance-by-the-county~~ be  
15 compensated by the county at an hourly rate to be established  
16 by the county board of supervisors.

17 Sec. 7. Section 229.2, subsection 1, paragraph c, Code  
18 1999, is amended to read as follows:

19 c. As soon as is practicable after the filing of a  
20 petition for juvenile court approval of the admission of the  
21 minor, the juvenile court shall determine whether the minor  
22 has an attorney to represent the minor in the hospitalization  
23 proceeding, and if not, the court shall assign to the minor an  
24 attorney. If the minor is financially unable to pay for an  
25 attorney, the attorney shall be compensated ~~in-substantially~~  
26 ~~the-manner-provided-by-section-815-7~~ by the county at an  
27 hourly rate to be established by the county board of  
28 supervisors.

29 Sec. 8. Section 229.8, subsection 1, Code 1999, is amended  
30 to read as follows:

31 1. Determine whether the respondent has an attorney who is  
32 able and willing to represent the respondent in the  
33 hospitalization proceeding, and if not, whether the respondent  
34 is financially able to employ an attorney and capable of  
35 meaningfully assisting in selecting one. In accordance with

1 those determinations, the court shall if necessary allow the  
2 respondent to select, or shall assign to the respondent, an  
3 attorney. If the respondent is financially unable to pay an  
4 attorney, the attorney shall be compensated ~~in-substantially~~  
5 ~~the-manner-provided-by-section-815.7, except that if the~~  
6 ~~county-has-a-public-defender-the-court-may-designate-the~~  
7 ~~public-defender-or-an-attorney-on-the-public-defender's-staff~~  
8 ~~to-act-as-the-respondent's-attorney~~ by the county at an hourly  
9 rate to be established by the county board of supervisors.

10 Sec. 9. Section 229.19, unnumbered paragraph 3, Code 1999,  
11 is amended to read as follows:

12 The court or, if the advocate is appointed by the county  
13 board of supervisors, the board shall prescribe reasonable  
14 compensation for the services of the advocate. The  
15 compensation shall be based upon the reports filed by the  
16 advocate with the court. The advocate's compensation shall be  
17 paid by the county in which the court is located, either on  
18 order of the court or, if the advocate is appointed by the  
19 county board of supervisors, on the direction of the board.  
20 If the advocate is appointed by the court, the advocate is an  
21 employee of the state for purposes of chapter 669. If the  
22 advocate is appointed by the county board of supervisors, the  
23 advocate is an employee of the county for purposes of chapter  
24 670. If the patient or the person who is legally liable for  
25 the patient's support is not indigent, the board shall recover  
26 the costs of compensating the advocate from that person. If  
27 that person has an income level as determined pursuant to  
28 section 815.9 greater than one hundred percent but not more  
29 than one hundred fifty percent of the poverty guidelines, at  
30 least one hundred dollars of the advocate's compensation shall  
31 be recovered ~~in-accordance-with-rules-adopted-by-the-state~~  
32 ~~public-defender~~ in the manner prescribed by the county board  
33 of supervisors. If that person has an income level as  
34 determined pursuant to section 815.9 greater than one hundred  
35 fifty percent of the poverty guidelines, at least two hundred

1 dollars of the advocate's compensation shall be recovered in  
2 ~~accordance with rules adopted by the state public defender in~~  
3 the manner prescribed by the county board of supervisors.

4 Sec. 10. Section 232.141, subsection 2, Code 1999, is  
5 amended to read as follows:

6 2. ~~Upon certification of the court, all~~ All of the  
7 following expenses are a charge upon the county in which the  
8 proceedings are held, to the extent provided in subsection 3:

9 a. The fees and mileage of witnesses and the expenses of  
10 officers serving notices and subpoenas which are incurred in  
11 connection with the appointment of an attorney by the court to  
12 serve as counsel to any party or to serve as a guardian ad  
13 litem for any child.

14 b. Reasonable compensation for an attorney appointed by  
15 the court to serve as counsel to any party or as guardian ad  
16 litem for any child. However, the amount of compensation paid  
17 shall be paid in accordance with section 815.7.

18 Sec. 11. Section 232.141, subsection 3, paragraph c, Code  
19 1999, is amended to read as follows:

20 c. Costs incurred under subsection 2 which are not paid by  
21 the county under paragraphs "a" and "b" shall be reimbursed by  
22 the state. ~~Reimbursement for the costs of compensation of an~~  
23 ~~attorney appointed by the court to serve as counsel or~~  
24 ~~guardian ad litem shall be made as provided in section 815.7.~~  
25 ~~A county shall apply for reimbursement to the department of~~  
26 ~~inspections and appeals which~~ However, before any costs are  
27 paid, a claim must be submitted to and approved by the state  
28 public defender who shall prescribe rules and forms to  
29 implement this subsection.

30 Sec. 12. Section 237.20, subsection 4, paragraph e, Code  
31 1999, is amended to read as follows:

32 e. The guardian ad litem of the foster child. ~~The~~ An  
33 attorney appointed as guardian ad litem shall be eligible for  
34 compensation through under section 232.141, subsection ~~17~~  
35 ~~paragraph "b"~~ 2.

1 Sec. 13. Section 815.7, Code 1999, is amended to read as  
2 follows:

3 815.7 FEES TO ATTORNEYS.

4 An attorney who has not entered into a contract authorized  
5 under section 13B.4 and who is appointed by the court to  
6 represent any person charged with a crime in this state or to  
7 serve as counsel or guardian ad litem to a person in juvenile  
8 court in this state shall be entitled to a reasonable  
9 compensation ~~which shall be the ordinary and customary charges~~  
10 ~~for like services in the community to be decided in each case~~  
11 ~~by a judge of the district court or of the juvenile court, as~~  
12 ~~applicable, including such sum or sums as the court may~~  
13 ~~determine are necessary for investigation in the interests of~~  
14 ~~justice and in the event of appeal the cost of obtaining the~~  
15 ~~transcript of the trial and the printing of the trial record~~  
16 ~~and necessary briefs in behalf of the defendant. However, the~~  
17 The reasonable compensation awarded an attorney shall not be  
18 calculated based upon an hourly rate that exceeds the rate a  
19 contract attorney as provided in section 13B.4 would receive  
20 in a similar case. Such attorney need not follow the case  
21 into another county or into the appellate court unless so  
22 directed by the court at the request of the defendant, where  
23 grounds for further litigation are not capricious or  
24 unreasonable, but if such attorney does so, the attorney's fee  
25 shall be determined accordingly. Only one attorney fee shall  
26 be so awarded in any one case except that in class "A" felony  
27 cases, two may be authorized.

28

#### EXPLANATION

29 This bill provides for a county to negotiate the rate of  
30 compensation with noncontract attorneys or attorneys who are  
31 not public defenders representing indigents in certain court-  
32 appointed cases. Under current law, the rate of compensation  
33 attorneys charge a county for representing indigents in  
34 certain court-appointed cases is set in accordance with Code  
35 section 815.7.

1 The bill also provides that the court is not required to  
2 certify indigent defense costs before the costs are submitted  
3 to the state. The bill provides that the state public  
4 defender shall establish the rate which limits the  
5 compensation paid for indigent defense.

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35