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SENATE FILE 390

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 compensation for the legal defense of indigent  
2 persons in criminal, appellate, and certain civil cases.

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

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SF 390 JUDICIARY

1 Section 1. Section 13B.4, subsection 1, Code 1999, is  
2 amended to read as follows:

3 1. The state public defender shall coordinate the  
4 provision of legal representation of all indigents under  
5 arrest or charged with a crime, seeking postconviction relief,  
6 against whom a contempt action is pending, in proceedings  
7 under chapter 229A, on appeal in criminal cases, and on appeal  
8 in proceedings to obtain postconviction relief when ordered to  
9 do so by the district court in which the judgment or order was  
10 issued, and may provide for the representation of indigents in  
11 proceedings instituted pursuant to chapter 908. The state  
12 public defender shall not engage in the private practice of  
13 law.

14 Sec. 2. Section 13B.4, subsection 4, Code 1999, is amended  
15 by striking the subsection and inserting in lieu thereof the  
16 following:

17 4. a. The state public defender shall establish fee  
18 limitations for particular categories of cases. The fee  
19 limitations shall be reviewed at least every three years. In  
20 establishing and reviewing the fee limitations, the state  
21 public defender shall consider available information regarding  
22 ordinary and customary charges for like services; the number  
23 of cases in which legal services to indigents are anticipated;  
24 the seriousness of the charge; an appropriate allocation of  
25 resources among the types of cases; experience with existing  
26 hourly rates, claims, and fee limitations; and any other  
27 factors determined to be relevant.

28 b. The state public defender shall establish an expedited  
29 procedure for court-appointed counsel to request advance  
30 approval for compensation for the provision of anticipated  
31 services if the compensation will be in excess of any fee  
32 limitation. In determining whether a request should be  
33 granted, the state public defender shall consider whether the  
34 anticipated services are necessary and reasonable. The state  
35 public defender shall not require the disclosure by the

1 attorney of any information that is not subject to discovery.

2 Notwithstanding chapter 17A, an attorney may seek review of  
3 the actions of the state public defender in denying a request  
4 for advanced approval for anticipated compensation in excess  
5 of the fee limitations. This review shall be requested by  
6 filing a motion with the court with jurisdiction over the  
7 original appointment within five days of the action of the  
8 state public defender. The attorney shall have the burden to  
9 establish by a preponderance of the evidence that the  
10 anticipated compensation and services are reasonable and  
11 necessary to competently represent the client.

12 c. The state public defender shall establish a procedure  
13 for the submission of all claims for payment of indigent  
14 defense costs, including the submission of interim claims in  
15 appropriate cases.

16 d. The state public defender may review any claim for  
17 payment of indigent defense costs and may take any of the  
18 following actions:

19 (1) If the charges are appropriate and reasonable, approve  
20 the claim for payment.

21 (2) Deny the claim, if the claim is not timely filed.

22 (3) Request additional information or return the claim to  
23 the attorney, if the claim is incomplete.

24 (4) If any portion of the claim is excessive, notify the  
25 attorney that the claim is excessive and will be reduced to an  
26 amount which is not excessive, and reduce and approve the  
27 balance of the claim.

28 Notwithstanding chapter 17A, the attorney may seek review  
29 of any action or intended action taken pursuant to paragraph  
30 "d" by filing a motion with the court with jurisdiction over  
31 the original appointment for review. The motion must be filed  
32 within five days of any action taken by the state public  
33 defender. The attorney shall have the burden to establish by  
34 a preponderance of the evidence that the amount of  
35 compensation and expenses is reasonable and necessary to

1 competently represent the client. The filing of a motion  
2 shall not delay the payment of the amount specified by the  
3 state public defender pursuant to this subsection.

4 Sec. 3. Section 13B.4, Code 1999, is amended by adding the  
5 following new subsection:

6 NEW SUBSECTION. 4A. If any portion of the claim is not  
7 payable under the attorney's appointment, the state public  
8 defender shall deny those portions of the claim that are not  
9 payable and approve the remainder of the claim.

10 Notwithstanding chapter 17A, an attorney whose claim for  
11 compensation is denied may seek review of the action of the  
12 state public defender by filing a motion with the court with  
13 jurisdiction over the original appointment. The motion must  
14 be filed within thirty days of the action of the state public  
15 defender. The type of review and relief the court may provide  
16 shall be limited to the review and relief specified in chapter  
17 17A. The filing of a motion shall not delay the payment of  
18 the amount approved by the state public defender.

19 Sec. 4. Section 814.11, Code 1999, is amended to read as  
20 follows:

21 814.11 INDIGENT'S RIGHT TO COUNSEL.

22 An indigent defendant is entitled to appointed counsel on  
23 the appeal of all indictable offenses. Such The appointment  
24 is-subject-to-rules-of-the-supreme-court shall be made to the  
25 state appellate defender unless the state appellate defender  
26 is unable to handle the case due to a conflict of interest or  
27 because of a temporary overload of cases. If the state  
28 appellate defender is unable to handle the case, the court  
29 shall appoint an attorney who has a contract with the state  
30 public defender to handle such an appeal. If the court  
31 determines that no contract attorney is available to handle  
32 the appeal, the court may appoint a noncontract attorney who  
33 has agreed to handle the case, but the order of appointment  
34 shall include a specific finding that no contract attorney was  
35 available. The appointment of noncontract attorneys shall be

1 on a rotational or equalization basis, considering the  
2 experience of the attorney and the difficulty of the case.

3 Sec. 5. Section 815.7, Code 1999, is amended to read as  
4 follows:

5 815.7 FEES TO ATTORNEYS.

6 An attorney who has not entered into a contract authorized  
7 under section 13B.4 and who is appointed by the court to  
8 represent any person charged with a crime in this state,  
9 seeking postconviction relief, against whom a contempt action  
10 is pending, appealing a criminal conviction, appealing a  
11 denial of postconviction relief, or subject to a proceeding  
12 under chapter 229A, or to serve as counsel for any person or  
13 guardian ad litem to a person for any child in juvenile court,  
14 in this state shall be entitled to a reasonable compensation  
15 and expenses which shall be the ordinary and customary charges  
16 for like services in the community to be decided in each case  
17 by a judge of the district court or of the juvenile court, as  
18 applicable, including such sum or sums as the court may  
19 determine are necessary for investigation in the interests of  
20 justice and in the event of appeal the cost of obtaining the  
21 transcript of the trial and the printing of the trial record  
22 and necessary briefs in behalf of the defendant. However, the  
23 reasonable compensation awarded an attorney shall not be  
24 calculated based upon an hourly rate that exceeds the rate a  
25 contract attorney as provided in section 13B.4 would receive  
26 in a similar case. For appointments made on or after July 1,  
27 1999, the reasonable compensation shall be calculated on the  
28 basis of sixty dollars per hour for class "A" felonies, fifty-  
29 five dollars per hour for class "B" felonies, and fifty  
30 dollars per hour for all other offenses. The expenses shall  
31 include any sums as are necessary for investigations in the  
32 interest of justice, and the cost of obtaining the transcript  
33 of the trial record and briefs if an appeal is filed. Such  
34 The attorney need not follow the case into another county or  
35 into the appellate court unless so directed by the court at

1 ~~the request of the defendant, where grounds for further~~  
2 ~~litigation are not capricious or unreasonable, but if such~~  
3 ~~attorney does so, the attorney's fee shall be determined~~  
4 ~~accordingly.~~ If the attorney follows the case into another  
5 county or into the appellate court, the attorney shall be  
6 entitled to compensation as provided in this section. Only  
7 one attorney fee shall be so awarded in any one case except  
8 that in class "A" felony cases, two may be authorized.

9 Sec. 6. Section 815.9, Code 1999, is amended to read as  
10 follows:

11 815.9 INDIGENCY DETERMINED -- PENALTY.

12 1. For purposes of this chapter, ~~section 68-8, section~~  
13 ~~222-22~~ chapter 13B, chapter 232, ~~chapter~~ 229A, chapter 565,  
14 chapter 814, chapter 822, and the rules of criminal procedure,  
15 ~~the following apply~~ a person is indigent if the person is  
16 entitled to an attorney appointed by the court as follows:

17 a. A person is indigent entitled to an attorney appointed  
18 by the court to represent the person if the person has an  
19 income level at or below one hundred fifty twenty-five percent  
20 of the United States poverty level as defined by the most  
21 recently revised poverty income guidelines published by the  
22 United States department of health and human services, unless  
23 the court determines that the person is able to pay for the  
24 cost of an attorney to represent the person on the pending  
25 charges. In making the determination of a person's ability to  
26 pay for the cost of an attorney, the court shall consider not  
27 only the person's income, but also the availability of any  
28 assets subject to execution, including but not limited to  
29 cash, stocks, bonds, and any other property which may be  
30 applied to the satisfaction of judgments.

31 ~~b.---A person is not indigent if the person has an income~~  
32 ~~level greater than one hundred fifty percent of the United~~  
33 ~~States poverty level as defined by the most recently revised~~  
34 ~~poverty income guidelines published by the United States~~  
35 ~~department of health and human services.~~

1 e b. A person with an income level greater than one  
2 hundred fifty twenty-five percent, but ~~less than~~ at or below  
3 two hundred percent, of the most recently revised poverty  
4 income guidelines published by the United States department of  
5 health and human services ~~may-be-deemed-partially-indigent-by~~  
6 shall not be entitled to an attorney appointed by the court,  
7 unless the court pursuant-to makes a written finding that,  
8 ~~given-the-person's-circumstances,~~ not appointing counsel on  
9 the pending charges would cause the person substantial  
10 hardship. ~~However,-the-court-shall-require-a-person-appointed~~  
11 ~~counsel-to-contribute-to-the-cost-of-representation-in~~  
12 ~~accordance-with-rules-adopted-by-the-state-public-defender-~~  
13 In determining whether substantial hardship would result, the  
14 court shall consider not only the person's income, but also  
15 the availability of any assets subject to execution, including  
16 but not limited to cash, stocks, bonds, and any other property  
17 which may be applied to the satisfaction of judgments.

18 d c. A person with an income level greater than two  
19 hundred percent of the most recently revised poverty income  
20 guidelines published by the United States department of health  
21 and human services shall not be ~~deemed-indigent-or-partially~~  
22 ~~indigent~~ entitled to an attorney appointed by the court,  
23 unless the person is charged with a felony and the court makes  
24 a written finding that,~~given-the-person's-circumstances,~~ not  
25 appointing counsel would cause the person substantial  
26 hardship. ~~However,-the-court-shall-require-a-person-appointed~~  
27 ~~counsel-to-contribute-to-the-cost-of-representation-in~~  
28 ~~accordance-with-rules-adopted-by-the-state-public-defender-~~  
29 In determining whether substantial hardship would result, the  
30 court shall consider not only the person's income, but also  
31 the availability of any assets subject to execution, including  
32 but not limited to cash, stocks, bonds, and any other property  
33 which may be applied to the satisfaction of judgments.

34 2. A determination of ~~the-indigent-status-of~~ whether a  
35 person is entitled to an appointed attorney shall be made on

1 the basis of an affidavit of financial status submitted at the  
2 time of the person's initial appearance before a court or at  
3 such later time as a request for court appointment of counsel  
4 is made. ~~If a person is granted legal assistance as an~~  
5 ~~indigent or partial indigent, the financial statement shall be~~  
6 ~~filed and permanently retained in the person's court file.~~  
7 The state public defender shall adopt rules prescribing the  
8 form and content of the affidavit of financial statement and  
9 ~~the criteria by which a determination of indigency shall be~~  
10 based status. The affidavit of financial statement status  
11 shall be signed under penalty of perjury and shall contain  
12 sufficient information to allow the determination to be made  
13 of whether the person meets the guidelines set out in  
14 ~~subsection 1 and shall be accompanied by the person's most~~  
15 ~~recent pay slip, if employed~~ is entitled to an appointed  
16 attorney under this section. If the person is granted an  
17 appointed attorney, the affidavit of financial status shall be  
18 filed and permanently retained in the person's court file.

19 3. ~~A person who knowingly submits a false financial~~  
20 ~~statement for the purpose of obtaining legal assistance by~~  
21 ~~appointed counsel commits a fraudulent practice.~~ If a person  
22 is granted an appointed attorney, the person shall be required  
23 to reimburse the state for the total cost of legal assistance  
24 provided to the person. ~~As used in this subsection, "legal~~  
25 ~~assistance" includes legal counsel~~ "Legal assistance" as used  
26 in this section shall include not only an appointed attorney,  
27 but also transcripts, witness fees and, expenses, and any  
28 other goods or services required by law to be provided to an  
29 indigent person entitled to an appointed attorney.

30 4. If the case is a criminal case, all costs and fees  
31 incurred for legal assistance shall become due and payable to  
32 the clerk of the district court by the person receiving the  
33 legal assistance not later than the date of sentencing, or if  
34 the person is acquitted or the charges are dismissed, within  
35 thirty days of the acquittal or dismissal.



1 5. If the case is other than a criminal case, all costs  
2 and fees incurred for legal assistance shall become due and  
3 payable to the clerk of the district court by the person  
4 receiving the legal assistance not later than ten days from  
5 the date of any court ruling or trial held in the case, or if  
6 the case is dismissed, within ten days of the dismissal.

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

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

18 Sec. 7. Section 815.10, Code 1999, is amended to read as  
19 follows:

20 815.10 APPOINTMENT OF COUNSEL BY COURT.

21 1. The court, for cause and upon its own motion or upon  
22 application by an indigent person or a public defender, shall  
23 appoint the state public defender, the state public defender's  
24 designee pursuant to section 13B.4, or an attorney pursuant to  
25 section 13B.9 to represent an indigent person at any stage of  
26 the criminal, postconviction, contempt, commitment under  
27 chapter 229A, or juvenile proceedings or on appeal of any  
28 criminal, postconviction, contempt, or juvenile action in  
29 which the indigent person is entitled to legal assistance at  
30 public expense. However, in juvenile cases, the court may  
31 directly appoint an existing nonprofit corporation established  
32 for and engaged in the provision of legal services for  
33 juveniles. An appointment shall not be made unless the person  
34 is determined to be indigent under section 815.9. Only one  
35 attorney shall be appointed in all cases, except that in class

1 "A" felony cases the court may appoint two attorneys.

2 2. An attorney other than a public defender ~~or a contract~~  
3 attorney who is appointed by the court under this section  
4 shall apply to the ~~district court~~ state public defender for  
5 compensation and for reimbursement of costs incurred. The  
6 amount of compensation due shall be determined in accordance  
7 with any indigent defense contract or pursuant to section  
8 815.7.

9 3. ~~A contract attorney appointed by the court pursuant to~~  
10 ~~this section and section 13B-4 shall apply to the state public~~  
11 ~~defender for compensation and for reimbursement of costs~~  
12 ~~incurred in accordance with the contract. The amount of~~  
13 ~~compensation due shall be determined in accordance with the~~  
14 ~~contract. The state public defender shall adopt rules which~~  
15 specify the information which shall be included with all  
16 claims for compensation submitted by court-appointed attorneys  
17 under this section. If the information required under this  
18 section and the rules of the state public defender is not  
19 submitted, the claim may be denied until the information is  
20 provided. If the information required under this section and  
21 the rules of the state public defender is submitted with the  
22 claim, the state public defender may approve reasonable and  
23 proper compensation to the court-appointed attorney in the  
24 manner provided in the rules.

25 Sec. 8. Section 815.11, Code 1999, is amended to read as  
26 follows:

27 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

28 Costs incurred under chapter 229A, 665, or 822, or section  
29 232.141, subsection 3, paragraph "c", or sections 814.9,  
30 814.10, 814.11, 815.4, 815.5, 815.6, 815.7, and 815.10, or the  
31 rules of criminal procedure on behalf of an indigent shall be  
32 paid from funds appropriated by the general assembly to the  
33 department of inspections and appeals for those purposes.

34 Sec. 9. EMERGENCY RULES. The office of the state public  
35 defender of the department of inspections and appeals may

1 adopt administrative rules under section 17A.4, subsection 2,  
2 and section 17A.5, subsection 2, paragraph "b", to implement  
3 the provisions of this Act. The rules shall become effective  
4 immediately upon filing, unless a later effective date is  
5 specified in the rules. Any rules adopted in accordance with  
6 this section shall not take effect before the rules are  
7 reviewed by the administrative rules review committee. Any  
8 rules adopted in accordance with the provisions of this  
9 section shall also be published as notice of intended action  
10 as provided in section 17A.4.

11 Sec. 10. Sections 815.9A and 815.10A, Code 1999, are  
12 repealed.

13

#### EXPLANATION

14 This bill makes changes pertaining to the payment of costs  
15 for the defense of indigent persons in criminal, juvenile,  
16 postconviction, contempt actions, and certain other civil  
17 actions. The bill establishes the hourly rates for  
18 representation by noncontract court-appointed attorneys of  
19 class "A" felons at \$60 per hour and of class "B" felons at  
20 \$55 per hour. For all other offenses, the rate is \$50 per  
21 hour. The bill provides that the state public defender shall  
22 establish the fee limitations for various categories of cases.  
23 The state public defender is given the direct authority to  
24 approve, reduce, and modify claims made for payment of  
25 indigent defense costs. Procedures are added in the bill  
26 which permit the state public defender to set and exceed  
27 limitations on indigent defense costs which are submitted for  
28 payment by court-appointed attorneys. References are  
29 eliminated which make the appointment of counsel on appeals  
30 subject to supreme court rules. Instead, the bill substitutes  
31 a procedure which provides for the appointment of the state  
32 appellate defender, unless the appellate defender has a  
33 conflict of interest or a temporary overload of cases. In the  
34 latter two situations, the bill provides for the appointment  
35 of an attorney who has entered into a contract with the state

1 public defender to handle appeals. If no contract attorney is  
2 available, the court may appoint a noncontract attorney on a  
3 rotational or equalization basis, considering the experience  
4 of the attorney and the difficulty of the case. The  
5 appointment must, however, include specific findings that no  
6 contract attorney was available. Noncontract attorneys will  
7 be paid directly through the state public defender's office  
8 and are to submit such reports and information relating to  
9 their fees and expenses as are required by the state public  
10 defender.

11 The bill provides that a person is indigent and entitled to  
12 court-appointed counsel if the person has an income level at  
13 or below 125 percent of poverty level. This is below the  
14 current 150 percent of poverty level ceiling. In determining  
15 eligibility, the court is to consider not only the person's  
16 income, but assets subject to execution and any other property  
17 which may be applied to the satisfaction of judgments. Those  
18 persons whose income falls above the new threshold are not  
19 entitled to court-appointed counsel unless the court makes a  
20 written determination that not appointing counsel on the  
21 pending charges would cause the person substantial hardship.  
22 Like the original determination of eligibility, the  
23 determination of substantial hardship is to be based not only  
24 on the person's income, but also on assets subject to  
25 execution and any other property which may be applied to the  
26 satisfaction of judgments.

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