

Senate Study Bill 3011

Bill Text

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1 1 Section 1. Section [13B.4](#), subsection 4, paragraph c, Code
1 2 2001, is amended to read as follows:

1 3 c. The state public defender may review any claim for
1 4 payment of indigent defense costs and may take any of the
1 5 following actions:

1 6 (1) If the charges are appropriate and reasonable, approve
1 7 the claim for payment.

1 8 (2) Deny the claim

~~1 9 if the claim is not timely filed.~~

1 9 under the following circumstances:

1 10 (a) If it is not timely.

1 11 (b) If it is not payable as an indigent defense claim
1 12 under chapter 815.

1 13 (c) If it is not payable under the contract between the
1 14 claimant and the state public defender.

1 15 (d) If the appointment of the claimant was obtained in
1 16 violation of section 814.11 or 815.10.

1 17 (3) Request additional information or return the claim to
1 18 the attorney, if the claim is incomplete.

1 19 (4) If any portion of the claim is excessive, notify the
1 20 attorney that the claim is excessive and will be reduced to an
1 21 amount which is not excessive, and reduce and approve the
1 22 balance of the claim.

1 23 (5) If any portion of the claim is not payable within the
1 24 scope of appointment of the attorney, notify the attorney that
1 25 a portion of the claim is not within the scope of appointment
1 26 and is not payable, deny those portions of the claim that are
1 27 not payable, and approve the balance of the claim.

1 28 Sec. 2. Section [13B.4](#), subsection 4, paragraph d, Code
1 29 2001, is amended by striking the paragraph and inserting in
1 30 lieu thereof the following:

1 31 d. Notwithstanding chapter 17A, the attorney may seek
1 32 review of any action or intended action denying or reducing
1 33 any claim by filing a motion with the court with jurisdiction
1 34 over the original appointment for review.

1 35 (1) The motion must be filed with in twenty days of any
2 1 action taken by the state public defender.

2 2 (2) The state public defender shall be provided with at
2 3 least ten days' notice of any hearing on the motion.

2 4 (3) The state public defender or the attorney may
2 5 participate by telephone. The party appearing by telephone
2 6 shall be responsible for initiating and paying for all
2 7 telephone charges. If the state public defender and the
2 8 attorney both participate in the hearing by telephone, the
2 9 attorney shall be responsible for initiating and paying for
2 10 all telephone charges.

2 11 (4) The filing of a motion shall not delay the payment of
2 12 the amount approved by the state public defender.

2 13 (5) If a claim or portion of the claim is denied, the
2 14 action of the state public defender shall be affirmed unless
2 15 the action conflicts with an administrative rule or the law.

2 16 (6) If the claim is reduced for being excessive, the
2 17 attorney shall have the burden to establish by a preponderance
2 18 of the evidence that the amount of compensation and expenses

2 19 is reasonable and necessary to competently represent the
2 20 client.
2 21 Sec. 3. Section [13B.4](#), subsection 5, Code 2001, is amended
2 22 by striking the subsection and inserting in lieu thereof the
2 23 following:
2 24 5. In reviewing a claim for compensation submitted by an
2 25 attorney who had been retained or agreed to represent an
2 26 indigent person prior to appointment, the state public
2 27 defender may consider any moneys earned or paid to the
2 28 attorney prior to the appointment in determining whether the
2 29 claim is reasonable and necessary or excessive. The attorney
2 30 shall provide the state public defender with a copy of any
2 31 representation agreement, and information on any moneys earned
2 32 or paid to the attorney prior to the appointment.
2 33 Sec. 4. Section [13B.4](#), subsection 7, Code 2001, is amended
2 34 by striking the subsection.
2 35 Sec. 5. Section [13B.8](#), subsection 1, unnumbered paragraph
3 1 2, Code 2001, is amended by striking the unnumbered paragraph.
3 2 Sec. 6. Section [13B.9](#), subsection 2, Code 2001, is amended
3 3 to read as follows:
3 4 2. An

~~appointed~~

- attorney appointed under this section is
3 5 not liable to a person represented by the attorney

~~pursuant to~~

3 6

~~this chapter~~

- for damages as a result of a conviction in a
3 7 criminal case unless the court determines in a postconviction
3 8

~~appeal~~

- proceeding that the person's conviction resulted from
3 9 ineffective assistance of counsel, and the ineffective
3 10 assistance of counsel is the proximate cause of the damage.
3 11 In juvenile or civil proceedings, an attorney appointed under
3 12 this section is not liable to a person represented by the
3 13 attorney for damages unless it has been determined that the
3 14 attorney has provided ineffective assistance of counsel and
3 15 the ineffective assistance of counsel claim is the proximate
3 16 cause of the damage.

3 17 Sec. 7. Section [13B.9](#), subsection 4, Code 2001, is amended
3 18 to read as follows:

3 19 4. If a conflict of interest arises or if the local public
3 20 defender is unable to handle a case because of a temporary
3 21 overload of cases, the local public defender shall return the
3 22 case to the court.

~~The court shall first appoint a contract~~

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~~attorney. Appointments by the court shall be on a rotational~~

3 24

~~or equalization basis considering the experience of the~~

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~~attorney and the difficulty of the case.~~

- If the case is

3 26 returned and the state public defender has filed a successor

3 27 designation, the court shall appoint the successor designee.
3 28 If there is no successor designee on file, the court shall
3 29 make the appointment pursuant to section 815.10.
3 30 Sec. 8. Section 13B.9, subsection 5, Code 2001, is amended
3 31 by striking the subsection.
3 32 Sec. 9. Section 22.7, Code Supplement 2001, is amended by
3 33 adding the following new subsection:
3 34 NEW SUBSECTION. 43. Information provided to the court and
3 35 state public defender pursuant to section 13B.4, subsection 5;
4 1 section 814.11, subsection 6; or section 815.10, subsection 5.
4 2 Sec. 10. Section 814.11, Code 2001, is amended to read as
4 3 follows:
4 4 814.11 INDIGENT'S RIGHT TO COUNSEL.
4 5 1. An indigent

~~defendant~~

- person is entitled to appointed
4 6 counsel on the appeal of all

~~indictable offenses~~

- cases if the
4 7 person is entitled to appointment of counsel under section
4 8 815.9.
4 9 2.

~~The~~

- If the appeal involves an indictable offense or
4 10 denial of postconviction relief, the appointment shall be made
4 11 to the state appellate defender unless the state appellate
4 12 defender is unable to handle the case due to a conflict of
4 13 interest or because of a temporary overload of cases.
4 14 3. If the appeal is other than an indictable offense or
4 15 denial of postconviction relief or if the state appellate
4 16 defender is unable to handle the case, the court shall appoint
4 17 an attorney who has a contract with the state public defender
4 18 to handle such an appeal.
4 19 4. If the court determines that no contract attorney is
4 20 available to handle the appeal, the court may appoint a
4 21 noncontract attorney

~~who has agreed to handle the case, but~~

-
4 22

~~the~~

- The order of appointment shall include a specific
4 23 finding that no contract attorney was available.
4 24 5. The appointment of

~~noncontract attorneys~~

- an attorney

4 25 shall be on a rotational or equalization basis, considering
4 26 the experience of the attorney and the difficulty of the case.
4 27 6. An attorney who has been retained or has agreed to
4 28 represent a person on appeal and subsequently applies to the
4 29 court for appointment to represent that person on appeal
4 30 because the person is indigent shall notify the state public
4 31 defender of the application. Upon the filing of the
4 32 application, the attorney shall provide the state public
4 33 defender with a copy of any representation agreement, and
4 34 information on any moneys earned or paid to the attorney prior
4 35 to the appointment.
5 1 7. An attorney appointed under this section is not liable
5 2 to a person represented by the attorney for damages as a
5 3 result of a conviction in a criminal case unless the court
5 4 determines in a postconviction proceeding that the person's
5 5 conviction resulted from ineffective assistance of counsel.

5 6 and the ineffective assistance of counsel is the proximate
5 7 cause of the damage. In juvenile or civil proceedings, an
5 8 attorney appointed under this section is not liable to a
5 9 person represented by the attorney for damages unless it has
5 10 been determined that the attorney has provided ineffective
5 11 assistance of counsel and the ineffective assistance of
5 12 counsel claim is the proximate cause of the damage.

5 13 Sec. 11. Section [815.10](#), Code 2001, is amended to read as
5 14 follows:

5 15 815.10 APPOINTMENT OF COUNSEL BY COURT.

5 16 1. The court, for cause and upon its own motion or upon
5 17 application by an indigent person or a public defender, shall
5 18 appoint the state public defender's designee pursuant to
5 19 section 13B.4,

~~or an attorney pursuant to section 13B.9,
- to~~

5 20 represent an indigent person at any stage of the criminal,
5 21 postconviction, contempt, commitment under chapter 229A, or
5 22 juvenile proceedings or on appeal of any criminal,
5 23 postconviction, contempt, commitment under chapter 229A, or
5 24 juvenile action in which the indigent person is entitled to
5 25 legal assistance at public expense. However, in juvenile
5 26 cases, the court may directly appoint an existing nonprofit
5 27 corporation established for and engaged in the provision of
5 28 legal services for juveniles. An appointment shall not be
5 29 made unless the person is determined to be indigent under
5 30 section 815.9. Only one attorney shall be appointed in all
5 31 cases, except that in class "A" felony cases the court may
5 32 appoint two attorneys.
5 33 2.

~~An attorney other than a public defender who is~~

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~~appointed by the court under this section shall apply to the~~

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~~state public defender for compensation and for reimbursement~~

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~~of costs incurred. The amount of compensation due shall be~~

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6 2~~

~~determined in accordance with any indigent defense contract or~~

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6 3~~

~~pursuant to section 815.7.~~

~~- If the state public defender or~~

6 4 the state public defender's designee is unable to represent an
6 5 indigent person, the court shall appoint an attorney who has a
6 6 contract with the state public defender to represent the
6 7 person.

6 8 3.

~~The state public defender shall adopt rules which~~

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~~specify the information which shall be included with all~~

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~~claims for compensation submitted by court appointed attorneys~~
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~~under this section. The rules shall require that a court~~
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~~appointed attorney shall obtain court approval of a claim~~
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~~prior to exceeding the fee limitations established pursuant to~~
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~~section 13B.4. However, a court appointed attorney may~~
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~~request court approval after exceeding a fee limitation if~~
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~~good cause is shown. The order approving a claim that exceeds~~
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~~the fee limitation shall be included in the information~~
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~~submitted under this section. If the information required~~
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~~under this section and the rules of the state public defender~~
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~~is not submitted, the claim may be denied until the~~
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~~information is provided. If the information required under~~
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~~this section and the rules of the state public defender is~~
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~~submitted with the claim, the state public defender may~~
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~~approve reasonable and proper compensation to the court~~
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~~appointed attorney in the manner provided in the rules.~~
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6 26 the court determines that no contract attorney is available to
6 27 represent the person, the court may appoint a noncontract
6 28 attorney. The order of appointment shall include a specific
6 29 finding that no contract attorney was available.

6 30 4. The appointment of an attorney shall be on a rotational
6 31 or equalization basis, considering the experience of the
6 32 attorney and the difficulty of the case.

6 33 5. An attorney who has been retained or has agreed to
6 34 represent a person and subsequently applies to the court for
6 35 appointment to represent that person because the person is
7 1 indigent shall notify the state public defender of the
7 2 application. Upon the filing of the application, the attorney
7 3 shall provide the state public defender with a copy of any
7 4 representation agreement, and information on any moneys earned
7 5 or paid to the attorney prior to the appointment.

7 6 6. An attorney appointed under this section is not liable
7 7 to a person represented by the attorney for damages as a
7 8 result of a conviction in a criminal case unless the court
7 9 determines in a postconviction proceeding that the person's
7 10 conviction resulted from ineffective assistance of counsel,
7 11 and the ineffective assistance of counsel is the proximate
7 12 cause of the damage. In juvenile or civil proceedings, an
7 13 attorney appointed under this section is not liable to a
7 14 person represented by the attorney for damages unless it has
7 15 been determined that the attorney has provided ineffective
7 16 assistance of counsel, and the ineffective assistance of
7 17 counsel claim is the proximate cause of the damage.

7 18 Sec. 12. NEW SECTION. 815.10A CLAIMS FOR COMPENSATION.

7 19 1. An attorney other than a public defender who has been
7 20 appointed by the court under this chapter must apply to the
7 21 state public defender for compensation and reimbursement of
7 22 expenses incurred in the representation of an indigent person.

7 23 2. An attorney shall obtain court approval prior to
7 24 exceeding the fee limitations established by the state public
7 25 defender pursuant to section 13B.4. An attorney may exceed
7 26 the fee limitations, if good cause is shown. An attorney may
7 27 obtain court approval after exceeding the fee limitations, if
7 28 good cause is shown. Failure to timely file an application to
7 29 exceed a fee limitation after exceeding the fees shall not
7 30 constitute good cause. The application and the court order
7 31 approving the application to exceed fee limitations shall be
7 32 submitted with any claim for compensation.

7 33 3. If the information is not submitted as required under
7 34 this section and under the rules of the state public defender,
7 35 the claim for compensation may be denied until the information
8 1 is provided. Upon submitting the required information, the
8 2 state public defender may approve reasonable and necessary
8 3 compensation, as provided for in the administrative rules and
8 4 the law.

8 5 Sec. 13. Section 815.11, Code 2001, is amended to read as
8 6 follows:

8 7 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

8 8 Costs incurred under chapter 229A, 665, or 822, or section
8 9 232.141, subsection 3, paragraph "c", or sections 814.9,
8 10 814.10, 814.11, 815.4, 815.5,

~~815.6,~~

- 815.7, and 815.10, or the

8 11 rules of criminal procedure on behalf of an indigent shall be
8 12 paid from funds appropriated by the general assembly to the
8 13 office of the state public defender in the department of
8 14 inspections and appeals for those purposes. Costs incurred
8 15 under other provisions of the Code or administrative rules are
8 16 not payable from these funds.

8 17 EXPLANATION

8 18 This bill relates to the representation of indigent persons
8 19 and to the duties of the state public defender.

8 20 The bill permits the state public defender to deny an
8 21 indigent defense claim requesting payment from the state if
8 22 the claim is not payable as an indigent defense claim, or if
8 23 it is not payable under the contract between the attorney and

8 24 the state public defender, or if the appointment was obtained
8 25 improperly by the attorney. The bill also permits the state
8 26 public defender to deny portions of a claim if it is not
8 27 within the scope of representation of the indigent person.
8 28 Current law permits the state public defender to deny a claim
8 29 only if it is not timely filed or incomplete, and to deny
8 30 those portions that are excessive.

8 31 The bill provides that an attorney seeking judicial review
8 32 of any action denying or reducing an indigent defense claim
8 33 must file a motion within 20 days of the denial or reduction
8 34 of the claim by the state public defender. The bill requires
8 35 the state public defender be notified 10 days prior to the
9 1 hearing on the motion. The bill permits the attorney or state
9 2 public defender to appear at the hearing by telephone and that
9 3 the party appearing by telephone shall be responsible for
9 4 initiating and paying for the telephone charges. However, the
9 5 bill provides that if both parties appear at the hearing by
9 6 telephone, the attorney shall be responsible for initiating
9 7 and paying for the telephone charges.

9 8 The bill provides that in reviewing a claim for
9 9 compensation to determine if a claim is reasonable and
9 10 necessary, the state public defender may consider whether the
9 11 attorney was retained or agreed to represent the indigent
9 12 person prior to appointment. The bill requires the attorney
9 13 to provide the state public defender with any representation
9 14 agreement and any information on moneys earned or paid prior
9 15 to appointment. The bill makes confidential all attorney-
9 16 client information submitted to the state public defender
9 17 regarding the representation prior to appointment.

9 18 The bill strikes the section requiring the state public
9 19 defender to annually report to the general assembly the amount
9 20 of funds recouped from the collection of assessed court-
9 21 appointed attorney fees and public defender expenses.

9 22 The bill strikes the Code provision requiring the state
9 23 public defender to provide a written proposal to the justice
9 24 systems appropriation subcommittee detailing the reasons for
9 25 establishing or abolishing a local public defender office.
9 26 The provision stricken by the bill requires that if the state
9 27 public defender proposes to abolish a local public defender
9 28 office before the regular session of the general assembly, the
9 29 state public defender must notify the general assembly of such
9 30 action. The provision stricken by the bill further requires
9 31 that, if within the first 90 days of session, the general
9 32 assembly fails to act on the proposal, the local public
9 33 defender office shall be abolished.

9 34 The bill provides that a public defender or any other
9 35 attorney appointed to represent an indigent person is immune
10 1 from liability for representing the person, unless it is found
10 2 that the attorney provided ineffective assistance of counsel
10 3 and it is the proximate cause of the injury or damage to the
10 4 person. Current law provides that an appointed attorney is
10 5 immune from liability unless the conviction of an indigent
10 6 person resulted from ineffective assistance of counsel.

10 7 The bill provides that if the public defender is unable to
10 8 represent a person because of a temporary overload of cases or
10 9 a conflict of interest, the court shall appoint the designee
10 10 of the public defender. The bill provides that if there is no
10 11 designee available, the court shall appoint a contract
10 12 attorney, and if a contract attorney is unavailable, the court
10 13 shall appoint a noncontract attorney. Current law provides
10 14 that if the public defender has a temporary overload of cases
10 15 or a conflict of interest, the court shall first attempt to
10 16 appoint a contract attorney; however, if a contract attorney
10 17 is unavailable, then appoint a noncontract attorney.

10 18 The bill provides that the court shall first attempt to
10 19 appoint the appellate defender, if available, to represent an
10 20 indigent person on appeal for denial of postconviction relief.

10 21 The bill provides that an attorney appointed to represent
10 22 an indigent person shall obtain court approval prior to
10 23 exceeding the fee limitations established pursuant to Code
10 24 section 13B.4, subsection 4. The bill provides that an
10 25 attorney may exceed the fee limitations if good cause is
10 26 shown. The bill also provides that an attorney may obtain
10 27 court approval after exceeding the fee limitations, if good
10 28 cause is shown. The bill provides that failure to timely file
10 29 an application to exceed the fee limitations after exceeding
10 30 the fees does not constitute good cause.

10 31 The bill provides that costs incurred under provisions of
10 32 the Code not enumerated and administrative rules, including
10 33 fees to material witnesses, are not payable out of indigent
10 34 defense funds.

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