

MAR 9 2005
Place On Calendar

HOUSE FILE 683
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 236)

Passed House, Date 3-15-05 Passed Senate, Date 4-12-05
Vote: Ayes 97 Nays 0 Vote: Ayes 50 Nays 0
Re-passed Approved 5/4/05 *Re-passed*
4-21-05 99-0 *4-26-05 50-0*

A BILL FOR

1 An Act authorizing the appointment of an attorney to represent an
2 indigent parole violator, and providing effective and
3 retroactive applicability date provisions.

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

HF 683

STATE PUBLIC DEFENDER

1
2 Section 1. Section 13B.4, subsection 1, Code 2005, is
3 amended to read as follows:

4 1. The state public defender shall coordinate the
5 provision of legal representation of all indigents under
6 arrest or charged with a crime, seeking postconviction relief,
7 against whom a contempt action is pending, in proceedings
8 under section 811.1A or chapter 229A or 812, in juvenile
9 proceedings, on appeal in criminal cases, and on appeal in
10 proceedings to obtain postconviction relief when ordered to do
11 so by the district court in which the judgment or order was
12 issued, ~~and-on-a-reopening-of-a-sentence-proceeding~~, and may
13 provide for the representation of indigents in proceedings
14 instituted pursuant to ~~section-908-11~~ chapter 908. The state
15 public defender shall not engage in the private practice of
16 law.

17 Sec. 2. Section 602.8102, subsection 133, Code 2005, is
18 amended by striking the subsection.

19 Sec. 3. Section 815.10, subsection 1, Code 2005, is
20 amended to read as follows:

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's designee pursuant to
24 section 13B.4 to represent an indigent person at any stage of
25 the criminal, postconviction, contempt, commitment under
26 chapter 229A, detention under section 811.1A, competency under
27 chapter 812, parole revocation if applicable under section
28 908.2A, or juvenile proceedings or on appeal of any criminal,
29 postconviction, contempt, commitment under chapter 229A,
30 detention under section 811.1A, competency under chapter 812,
31 parole revocation under chapter 908, or juvenile action in
32 which the indigent person is entitled to legal assistance at
33 public expense. However, in juvenile cases, the court may
34 directly appoint an existing nonprofit corporation established
35 for and engaged in the provision of legal services for

1 juveniles. An appointment shall not be made unless the person
2 is determined to be indigent under section 815.9. Only one
3 attorney shall be appointed in all cases, except that in class
4 "A" felony cases the court may appoint two attorneys.

5 Sec. 4. Section 815.11, Code 2005, is amended to read as
6 follows:

7 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

8 Costs incurred under chapter 229A, 665, ~~or~~ 822, or 908, or
9 section 232.141, subsection 3, paragraph "c", or section
10 598.23A, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10, ~~or~~
11 ~~908-11~~ on behalf of an indigent shall be paid from funds
12 appropriated by the general assembly to the office of the
13 state public defender in the department of inspections and
14 appeals for those purposes. Costs incurred representing an
15 indigent defendant in a contempt action, or representing an
16 indigent juvenile in a juvenile court proceeding under chapter
17 600, are also payable from these funds. However, costs
18 incurred in any administrative proceeding or in any other
19 proceeding under chapter 598, 600, 600A, 633, or 915 or other
20 provisions of the Code or administrative rules are not payable
21 from these funds.

22 Sec. 5. Section 908.2, Code 2005, is amended to read as
23 follows:

24 908.2 INITIAL APPEARANCE -- BAIL.

25 1. An officer making an arrest of an alleged parole
26 violator shall take the arrested person before a magistrate
27 without unnecessary delay for an initial appearance. At ~~that~~
28 ~~time-the-alleged-parole-violator-shall-be-furnished-with-a~~ the
29 initial appearance the magistrate shall do all of the
30 following:

31 a. Provide written notice of the claimed violation and
32 ~~shall-be-given.~~

33 b. Provide notice that a parole revocation hearing will
34 take place and that its purpose is to determine whether the
35 alleged parole violation occurred and whether the alleged

1 violator's parole should be revoked.

2 c. Advise the alleged parole violator of the right to
3 request an appointed attorney.

4 2. The magistrate may order the alleged parole violator
5 confined in the county jail or may order the alleged parole
6 violator released on bail under terms and conditions as the
7 magistrate may require. Admittance to bail is discretionary
8 with the magistrate and is not a matter of right. A person
9 for whom bail is set may make application for amendment of
10 bail to a district judge or district associate judge having
11 jurisdiction to amend the order. The motion shall be promptly
12 set for hearing and a record shall be made of the hearing.

13 Sec. 6. NEW SECTION. 908.2A APPOINTMENT OF AN ATTORNEY.

14 1. An attorney may be appointed to represent an alleged
15 parole violator in a parole revocation proceeding only if all
16 of the following criteria apply:

17 a. The alleged parole violator requests appointment of an
18 attorney.

19 b. The alleged parole violator is determined to be
20 indigent as defined in section 815.9.

21 c. The appointing authority determines each of the
22 following:

23 (1) The alleged parole violator lacks skill or education
24 and would have difficulty presenting the alleged parole
25 violator's case, particularly if the proceeding would require
26 the cross-examination of witnesses or would require the
27 submission or examination of complex documentary evidence.

28 (2) The alleged parole violator has a colorable claim the
29 alleged violation did not occur, or there are substantial
30 reasons that justify or mitigate the violation and make any
31 revocation inappropriate under the circumstances.

32 2. If all of the criteria apply in subsection 1, a
33 contract attorney with the state public defender may be
34 appointed to represent the alleged parole violator. If a
35 contract attorney is unavailable, an attorney who has agreed

1 to provide these services may be appointed. The appointed
2 attorney shall apply to the state public defender for payment
3 in the manner prescribed by the state public defender.

4 Sec. 7. Section 908.4, subsection 2, Code 2005, is amended
5 to read as follows:

6 2. The administrative parole judge shall make a verbatim
7 record of the proceedings. The alleged violator ~~shall not~~
8 ~~have the right to appointed counsel~~, shall be informed of the
9 evidence against the violator, shall be given an opportunity
10 to be heard, shall have the right to present witnesses and
11 other evidence, and shall have the right to cross-examine
12 adverse witnesses, except if the judge finds that a witness
13 would be subjected to risk or harm if the witness's identity
14 were disclosed. The revocation hearing may be conducted
15 electronically.

16 Sec. 8. Section 815.1, Code 2005, is repealed.

17 Sec. 9. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.

18 This Act, being deemed of immediate importance, takes effect
19 upon enactment, and applies retroactively to November 10,
20 2004.

21 EXPLANATION

22 This bill authorizes the appointment by an administrative
23 law judge or the court of an attorney at state expense for an
24 indigent parole violator.

25 The bill, in response to the Iowa supreme court case
26 Pfister v. Iowa District Court for Polk County, requires that
27 an alleged parole violator be informed of the right to request
28 an attorney for any parole revocation proceeding, and under
29 certain circumstances requires that an attorney be appointed
30 to represent the alleged parole violator during such
31 proceedings. The law prior to Pfister prohibited the court
32 appointment of an attorney on behalf of an indigent parole
33 violator.

34 Under the bill, an alleged parole violator may be appointed
35 an attorney if all of the following apply: the alleged

1 violator requests the appointment of an attorney; the alleged
2 violator is indigent; the alleged violator lacks the education
3 or skill to present the alleged violator's case or the case
4 requires the submission or examination of complex documentary
5 evidence; and the alleged violator has a colorable claim the
6 violation did not occur or there are substantial reasons which
7 justify or mitigate any parole revocation.

8 The bill also authorizes payment from the indigent defense
9 fund in Code section 815.11 to appointed attorneys
10 representing indigent parole violators. Current law under
11 Pfister authorizes payment for the representation of an
12 indigent parole violator from the general fund of the state.

13 The bill also repeals Code section 815.1 because the
14 substance of the section is now included in the references to
15 parole revocations in Code sections 815.10 and 815.11.

16 The bill takes effect upon enactment and applies
17 retroactively to November 10, 2004, the date the supreme court
18 decided Pfister v. Iowa District Court for Polk County.

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

S-3066

1 Amend House File 683, as passed by the House, as
2 follows:

3 1. Page 1, by inserting after line 16 the
4 following:

5 "Sec. _____. Section 600A.2, Code 2005, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. 10A. "Indigent" means a person
8 has an income level at or below one hundred percent of
9 the United States poverty level as defined by the most
10 recently revised poverty income guidelines published
11 by the United States department of health and human
12 services, unless the court determines that the person
13 is able to pay for the cost of an attorney in the
14 pending case. In making the determination of a
15 person's ability to pay for the cost of an attorney,
16 the court shall consider the person's income and the
17 availability of any assets subject to execution,
18 including but not limited to cash, stocks, bonds, and
19 any other property which may be applied to the
20 satisfaction of judgments, and the nature and
21 complexity of the case.

22 Sec. _____. Section 600A.6, subsection 3, Code 2005,
23 is amended by adding the following new paragraph:

24 NEW PARAGRAPH. c. A statement that the person
25 against whom a proceeding for termination of parental
26 rights is brought shall have the right to counsel
27 pursuant to section 600A.6A.

28 Sec. _____. NEW SECTION. 600A.6A RIGHT TO AND
29 APPOINTMENT OF COUNSEL.

30 1. Upon the filing of a petition for termination
31 of parental rights under this chapter, the parent
32 identified in the petition shall have the right to
33 counsel in connection with all subsequent hearings and
34 proceedings.

35 2. If the parent against whom the petition is
36 filed desires but is financially unable to employ
37 counsel, the court, following an in-court colloquy,
38 shall appoint counsel for the person if all of the
39 following criteria are met:

40 a. The person requests appointment of counsel.

41 b. The person is indigent.

42 c. The court determines both of the following:

43 (1) The person, because of lack of skill or
44 education, would have difficulty in presenting the
45 person's version of the facts in dispute, particularly
46 where the presentation of the facts requires the
47 examination or cross-examination of witnesses or the
48 presentation of complex documentary evidence.

49 (2) The person has a colorable defense to the
50 termination of parental rights, or there are

S-3066

1 substantial reasons that make termination of parental
2 rights inappropriate.

3 Sec. ____ . NEW SECTION. 600A.6B PAYMENT OF
4 ATTORNEY FEES.

5 1. A person filing a petition for termination of
6 parental rights under this chapter or the person on
7 whose behalf the petition is filed shall be
8 responsible for the payment of reasonable attorney
9 fees for counsel appointed pursuant to section 600A.6A
10 unless the court determines that the person filing the
11 petition or the person on whose behalf the petition is
12 filed is indigent.

13 2. If the person filing the petition or the person
14 on whose behalf the petition is filed is indigent, the
15 appointed attorney shall be paid reasonable attorney
16 fees by the county as determined by the court pursuant
17 to section 602.1302.

18 Sec. ____ . Section 602.1302, subsection 4, Code
19 2005, is amended to read as follows:

20 4. The judicial branch shall reimburse counties
21 ~~for the costs of witness and mileage fees and for~~
22 attorney fees paid pursuant to section ~~232.141,~~
23 ~~subsection 1~~ 600A.6B."

24 2. Page 4, line 20, by striking the words
25 "enactment, and applies" and inserting the following:
26 "enactment. The sections of this Act amending chapter
27 600A and section 602.1302, apply retroactively to May
28 12, 2004, and the remaining sections of this Act
29 apply".

30 3. Title page, line 2, by inserting after the
31 word "indigent" the following: "person during a
32 termination of parental rights proceeding or an
33 indigent".

COMMITTEE ON JUDICIARY
KEITH A. KREIMAN, CO-CHAIRPERSON
DAVID MILLER, CO-CHAIRPERSON

**EIGHTY FIRST GENERAL ASSEMBLY
2005 REGULAR SESSION
DAILY
SENATE CLIP SHEET**

APRIL 13, 2005

HOUSE FILE 683

S-3112

1 Amend the amendment, S-3066, to House File 683, as
2 passed by the House, as follows:

3 1. Page 1, by inserting before line 3 the
4 following:

5 "____. Page 1, by striking line 1."

6 2. Page 2, by striking lines 18 through 23 and
7 inserting the following:

8 "____. Page 1, by inserting before line 17 the
9 following:

10 "Sec. _____. Section 602.1302, subsections 3 and 4,
11 Code 2005, are amended to read as follows:

12 3. A revolving fund is created in the state
13 treasury for the payment of jury and witness fees,
14 attorney fees, mileage, and costs related to summoning
15 jurors by the judicial branch. The judicial branch
16 shall deposit any reimbursements to the state for the
17 payment of jury and witness fees and mileage in the
18 revolving fund. Notwithstanding section 8.33,
19 unencumbered and unobligated receipts in the revolving
20 fund at the end of a fiscal year do not revert to the
21 general fund of the state. The judicial branch shall
22 on or before February 1 file a financial accounting of
23 the moneys in the revolving fund with the legislative
24 services agency. The accounting shall include an
25 estimate of disbursements from the revolving fund for
26 the remainder of the fiscal year and for the next
27 fiscal year.

28 4. The judicial branch shall reimburse counties
29 for the costs of witness and mileage fees and for
30 attorney fees paid pursuant to section ~~232.141,~~
31 ~~subsection 1~~ 600A.6B from the revolving fund
32 established in subsection 3."

33 3. By renumbering as necessary.

By KEITH A. KREIMAN

S-3112 FILED APRIL 12, 2005
ADOPTED

**EIGHTY-FIRST GENERAL ASSEMBLY
2005 REGULAR SESSION
DAILY
HOUSE CLIP SHEET**

APRIL 14, 2005

**SENATE AMENDMENT TO
HOUSE FILE 683**

H-1358

1 Amend House File 683, as passed by the House, as
2 follows:

3 1. Page 1, by striking line 1.

4 2. Page 1, by inserting after line 16 the
5 following:

6 "Sec. ____ . Section 600A.2, Code 2005, is amended
7 by adding the following new subsection:

8 NEW SUBSECTION. 10A. "Indigent" means a person
9 has an income level at or below one hundred percent of
10 the United States poverty level as defined by the most
11 recently revised poverty income guidelines published
12 by the United States department of health and human
13 services, unless the court determines that the person
14 is able to pay for the cost of an attorney in the
15 pending case. In making the determination of a
16 person's ability to pay for the cost of an attorney,
17 the court shall consider the person's income and the
18 availability of any assets subject to execution,
19 including but not limited to cash, stocks, bonds, and
20 any other property which may be applied to the
21 satisfaction of judgments, and the nature and
22 complexity of the case.

23 Sec. ____ . Section 600A.6, subsection 3, Code 2005,
24 is amended by adding the following new paragraph:

25 NEW PARAGRAPH. c. A statement that the person
26 against whom a proceeding for termination of parental
27 rights is brought shall have the right to counsel
28 pursuant to section 600A.6A.

29 Sec. ____ . NEW SECTION. 600A.6A RIGHT TO AND
30 APPOINTMENT OF COUNSEL.

31 1. Upon the filing of a petition for termination
32 of parental rights under this chapter, the parent
33 identified in the petition shall have the right to
34 counsel in connection with all subsequent hearings and
35 proceedings.

36 2. If the parent against whom the petition is
37 filed desires but is financially unable to employ
38 counsel, the court, following an in-court colloquy,
39 shall appoint counsel for the person if all of the
40 following criteria are met:

41 a. The person requests appointment of counsel.

42 b. The person is indigent.

43 c. The court determines both of the following:

44 (1) The person, because of lack of skill or
45 education, would have difficulty in presenting the
46 person's version of the facts in dispute, particularly
47 where the presentation of the facts requires the
48 examination or cross-examination of witnesses or the
49 presentation of complex documentary evidence.

50 (2) The person has a colorable defense to the

H-1358

1 termination of parental rights, or there are
2 substantial reasons that make termination of parental
3 rights inappropriate.

4 Sec. ____ . NEW SECTION. 600A.6B PAYMENT OF
5 ATTORNEY FEES.

6 1. A person filing a petition for termination of
7 parental rights under this chapter or the person on
8 whose behalf the petition is filed shall be
9 responsible for the payment of reasonable attorney
10 fees for counsel appointed pursuant to section 600A.6A
11 unless the court determines that the person filing the
12 petition or the person on whose behalf the petition is
13 filed is indigent.

14 2. If the person filing the petition or the person
15 on whose behalf the petition is filed is indigent, the
16 appointed attorney shall be paid reasonable attorney
17 fees by the county as determined by the court pursuant
18 to section 602.1302."

19 3. Page 1, by inserting before line 17 the
20 following:

21 "Sec. ____ . Section 602.1302, subsections 3 and 4,
22 Code 2005, are amended to read as follows:

23 3. A revolving fund is created in the state
24 treasury for the payment of jury and witness fees,
25 attorney fees, mileage, and costs related to summoning
26 jurors by the judicial branch. The judicial branch
27 shall deposit any reimbursements to the state for the
28 payment of jury and witness fees and mileage in the
29 revolving fund. Notwithstanding section 8.33,
30 unencumbered and unobligated receipts in the revolving
31 fund at the end of a fiscal year do not revert to the
32 general fund of the state. The judicial branch shall
33 on or before February 1 file a financial accounting of
34 the moneys in the revolving fund with the legislative
35 services agency. The accounting shall include an
36 estimate of disbursements from the revolving fund for
37 the remainder of the fiscal year and for the next
38 fiscal year.

39 4. The judicial branch shall reimburse counties
40 for the costs of witness and mileage fees and for
41 attorney fees paid pursuant to section ~~232.141,~~
42 subsection 1 600A.6B from the revolving fund
43 established in subsection 3."

44 4. Page 4, line 19, by striking the words
45 "enactment, and applies" and inserting the following:
46 "enactment. The sections of this Act amending chapter
47 600A and section 602.1302, apply retroactively to May
48 12, 2004, and the remaining sections of this Act
49 apply".

50 5. Title page, line 2, by inserting after the

1 word "indigent" the following: "person during a
2 termination of parental rights proceeding or an
3 indigent".

RECEIVED FROM THE SENATE

HOUSE FILE 683

H-1456

- 1 Amend the Senate amendment, H-1358, to House File
2 683, as passed by the House as, follows:
3 1. Page 2, by striking lines 17 and 18 and
4 inserting the following: "fees as determined by the
5 state public defender."
6 2. Page 2, by inserting after line 18 the
7 following:
8 "3. The state public defender shall review all the
9 claims submitted under this section and shall have the
10 same authority with regard to the payment of these
11 claims as the state public defender has with regard to
12 claims submitted under chapters 13B and 815, including
13 the authority to adopt rules concerning the review and
14 payment of claims submitted."
15 3. Page 2, by striking lines 21 and 22 and
16 inserting the following:
17 "Sec. ____ . Section 602.1302, subsection 3, Code
18 2005, is amended to read as follows:"
19 4. Page 2, by striking lines 25 and 26 and
20 inserting the following: "mileage, ~~and~~ costs related
21 to summoning jurors by the judicial branch, and
22 attorney fees paid by the state public defender for
23 counsel appointed pursuant to section 600A.6A. The
24 judicial branch".
25 5. Page 2, line 29, by inserting after the word
26 "fund." the following: "In each calendar quarter the
27 judicial branch shall reimburse the state public
28 defender for attorney fees paid pursuant to section
29 600A.6B."
30 6. Page 2, by striking lines 39 through 43.
31 7. Page 2, by inserting before line 44 the
32 following:
33 "____ . Page 1, line 26, by inserting after the
34 figure "229A," the following: "termination under
35 chapter 600A,".
36 ____ . Page 1, line 29, by inserting after the
37 figure "229A," the following: "termination under
38 chapter 600A,".
39 ____ . Page 2, line 10, by inserting after the
40 figure "598.23A," the following: "600A.6B,".
41 8. Page 2, line 47, by inserting after the figure
42 "602.1302," the following: "and the portions of this
43 Act amending sections 815.10 and 815.11 relating to
44 chapter 600A".
45 9. Page 2, line 48, by inserting after the word
46 "Act" the following: ", including the portions of
47 this Act amending sections 815.10 and 815.11 relating
48 to chapter 908,".

By MADDUX of Polk

H-1456 FILED APRIL 21, 2005

ADOPTED

HOUSE AMENDMENT TO SENATE AMENDMENT TO
HOUSE FILE 683

S-3158

1 Amend the Senate amendment, H-1358, to House File
2 683, as passed by the House as, follows:

3 1. Page 2, by striking lines 17 and 18 and
4 inserting the following: "fees as determined by the
5 state public defender."

6 2. Page 2, by inserting after line 18 the
7 following:

8 "3. The state public defender shall review all the
9 claims submitted under this section and shall have the
10 same authority with regard to the payment of these
11 claims as the state public defender has with regard to
12 claims submitted under chapters 13B and 815, including
13 the authority to adopt rules concerning the review and
14 payment of claims submitted."

15 3. Page 2, by striking lines 21 and 22 and
16 inserting the following:

17 "Sec. ____ . Section 602.1302, subsection 3, Code
18 2005, is amended to read as follows:"

19 4. Page 2, by striking lines 25 and 26 and
20 inserting the following: "mileage, and costs related
21 to summoning jurors by the judicial branch, and
22 attorney fees paid by the state public defender for
23 counsel appointed pursuant to section 600A.6A. The
24 judicial branch".

25 5. Page 2, line 29, by inserting after the word
26 "fund." the following: "In each calendar quarter the
27 judicial branch shall reimburse the state public
28 defender for attorney fees paid pursuant to section
29 600A.6B."

30 6. Page 2, by striking lines 39 through 43.

31 7. Page 2, by inserting before line 44 the
32 following:

33 "____ . Page 1, line 26, by inserting after the
34 figure "229A," the following: "termination under
35 chapter 600A,".

36 ____ . Page 1, line 29, by inserting after the
37 figure "229A," the following: "termination under
38 chapter 600A,".

39 ____ . Page 2, line 10, by inserting after the
40 figure "598.23A," the following: "600A.6B,".

41 8. Page 2, line 47, by inserting after the figure
42 "602.1302," the following: "and the portions of this
43 Act amending sections 815.10 and 815.11 relating to
44 chapter 600A".

45 9. Page 2, line 48, by inserting after the word
46 "Act" the following: ", including the portions of
47 this Act amending sections 815.10 and 815.11 relating
48 to chapter 908,".

RECEIVED FROM THE HOUSE

S-3158 FILED APRIL 21, 2005

Maddox - ch
Van Fossen
Olson

HSB 236

JUDICIARY ded By

HOUSE FILE SF/0683

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON PAULSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act authorizing the appointment of an attorney to represent an
2 indigent parole violator, and providing effective and
3 retroactive applicability date provisions.

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

TLSB 3054HC 81

jm/cf/24

STATE PUBLIC DEFENDER

1
2 Section 1. Section 13B.4, subsection 1, Code 2005, is
3 amended to read as follows:

4 1. The state public defender shall coordinate the
5 provision of legal representation of all indigents under
6 arrest or charged with a crime, seeking postconviction relief,
7 against whom a contempt action is pending, in proceedings
8 under section 811.1A or chapter 229A or 812, in juvenile
9 proceedings, on appeal in criminal cases, and on appeal in
10 proceedings to obtain postconviction relief when ordered to do
11 so by the district court in which the judgment or order was
12 issued, ~~and-on-a-reopening-of-a-sentence-proceeding~~, and may
13 provide for the representation of indigents in proceedings
14 instituted pursuant to ~~section-908.11~~ chapter 908. The state
15 public defender shall not engage in the private practice of
16 law.

17 Sec. 2. Section 602.8102, subsection 133, Code 2005, is
18 amended by striking the subsection.

19 Sec. 3. Section 815.10, subsection 1, Code 2005, is
20 amended to read as follows:

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's designee pursuant to
24 section 13B.4 to represent an indigent person at any stage of
25 the criminal, postconviction, contempt, commitment under
26 chapter 229A, detention under section 811.1A, competency under
27 chapter 812, parole revocation if applicable under section
28 908.2A, or juvenile proceedings or on appeal of any criminal,
29 postconviction, contempt, commitment under chapter 229A,
30 detention under section 811.1A, competency under chapter 812,
31 parole revocation under chapter 908, or juvenile action in
32 which the indigent person is entitled to legal assistance at
33 public expense. However, in juvenile cases, the court may
34 directly appoint an existing nonprofit corporation established
35 for and engaged in the provision of legal services for

1 juveniles. An appointment shall not be made unless the person
2 is determined to be indigent under section 815.9. Only one
3 attorney shall be appointed in all cases, except that in class
4 "A" felony cases the court may appoint two attorneys.

5 Sec. 4. Section 815.11, Code 2005, is amended to read as
6 follows:

7 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

8 Costs incurred under chapter 229A, 665, ~~or~~ 822, or 908, or
9 section 232.141, subsection 3, paragraph "c", or section
10 598.23A, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10, ~~or~~
11 ~~908.11~~ on behalf of an indigent shall be paid from funds
12 appropriated by the general assembly to the office of the
13 state public defender in the department of inspections and
14 appeals for those purposes. Costs incurred representing an
15 indigent defendant in a contempt action, or representing an
16 indigent juvenile in a juvenile court proceeding under chapter
17 600, are also payable from these funds. However, costs
18 incurred in any administrative proceeding or in any other
19 proceeding under chapter 598, 600, 600A, 633, or 915 or other
20 provisions of the Code or administrative rules are not payable
21 from these funds.

22 Sec. 5. Section 908.2, Code 2005, is amended to read as
23 follows:

24 908.2 INITIAL APPEARANCE -- BAIL.

25 1. An officer making an arrest of an alleged parole
26 violator shall take the arrested person before a magistrate
27 without unnecessary delay for an initial appearance. At ~~that~~
28 ~~time-the-alleged-parole-violator-shall-be-furnished-with-a~~ the
29 initial appearance the magistrate shall do all of the
30 following:

31 a. Provide written notice of the claimed violation and
32 ~~shall-be-given.~~

33 b. Provide notice that a parole revocation hearing will
34 take place and that its purpose is to determine whether the
35 alleged parole violation occurred and whether the alleged

1 violator's parole should be revoked.

2 c. Advise the alleged parole violator of the right to
3 request an appointed attorney.

4 2. The magistrate may order the alleged parole violator
5 confined in the county jail or may order the alleged parole
6 violator released on bail under terms and conditions as the
7 magistrate may require. Admittance to bail is discretionary
8 with the magistrate and is not a matter of right. A person
9 for whom bail is set may make application for amendment of
10 bail to a district judge or district associate judge having
11 jurisdiction to amend the order. The motion shall be promptly
12 set for hearing and a record shall be made of the hearing.

13 Sec. 6. NEW SECTION. 908.2A APPOINTMENT OF AN ATTORNEY.

14 1. An attorney may be appointed to represent an alleged
15 parole violator in a parole revocation proceeding only if all
16 of the following criteria apply:

17 a. The alleged parole violator requests appointment of an
18 attorney.

19 b. The alleged parole violator is determined to be
20 indigent as defined in section 815.9.

21 c. The appointing authority determines each of the
22 following:

23 (1) The alleged parole violator lacks skill or education
24 and would have difficulty presenting the alleged parole
25 violator's case, particularly if the proceeding would require
26 the cross-examination of witnesses or would require the
27 submission or examination of complex documentary evidence.

28 (2) The alleged parole violator has a colorable claim the
29 alleged violation did not occur, or there are substantial
30 reasons that justify or mitigate the violation and make any
31 revocation inappropriate under the circumstances.

32 2. If all of the criteria apply in subsection 1, a
33 contract attorney with the state public defender may be
34 appointed to represent the alleged parole violator. If a
35 contract attorney is unavailable, an attorney who has agreed

1 to provide these services may be appointed. The appointed
2 attorney shall apply to the state public defender for payment
3 in the manner prescribed by the state public defender.

4 Sec. 7. Section 908.4, subsection 2, Code 2005, is amended
5 to read as follows:

6 2. The administrative parole judge shall make a verbatim
7 record of the proceedings. The alleged violator ~~shall not~~
8 ~~have the right to appointed counsel~~, shall be informed of the
9 evidence against the violator, shall be given an opportunity
10 to be heard, shall have the right to present witnesses and
11 other evidence, and shall have the right to cross-examine
12 adverse witnesses, except if the judge finds that a witness
13 would be subjected to risk or harm if the witness's identity
14 were disclosed. The revocation hearing may be conducted
15 electronically.

16 Sec. 8. Section 815.1, Code 2005, is repealed.

17 Sec. 9. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.
18 This Act, being deemed of immediate importance, takes effect
19 upon enactment, and applies retroactively to November 10,
20 2004.

21 **EXPLANATION**

22 This bill authorizes the appointment by an administrative
23 law judge or the court of an attorney at state expense for an
24 indigent parole violator.

25 The bill, in response to the Iowa supreme court case
26 Pfister v. Iowa District Court for Polk County, requires that
27 an alleged parole violator be informed of the right to request
28 an attorney for any parole revocation proceeding, and under
29 certain circumstances requires that an attorney be appointed
30 to represent the alleged parole violator during such
31 proceedings. The law prior to Pfister prohibited the court
32 appointment of an attorney on behalf of an indigent parole
33 violator.

34 Under the bill, an alleged parole violator may be appointed
35 an attorney if all of the following apply: the alleged

1 violator requests the appointment of an attorney; the alleged
2 violator is indigent; the alleged violator lacks the education
3 or skill to present the alleged violator's case or the case
4 requires the submission or examination of complex documentary
5 evidence; and the alleged violator has a colorable claim the
6 violation did not occur or there are substantial reasons which
7 justify or mitigate any parole revocation.

8 The bill also authorizes payment from the indigent defense
9 fund in Code section 815.11 to appointed attorneys
10 representing indigent parole violators. Current law under
11 Pfister authorizes payment for the representation of an
12 indigent parole violator from the general fund of the state.

13 The bill also repeals Code section 815.1 because the
14 substance of the section is now included in the references to
15 parole revocations in Code sections 815.10 and 815.11.

16 The bill takes effect upon enactment and applies
17 retroactively to November 10, 2004, the date the supreme court
18 decided Pfister v. Iowa District Court for Polk County.

19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

HOUSE FILE 683

AN ACT

AUTHORIZING THE APPOINTMENT OF AN ATTORNEY TO REPRESENT AN INDIGENT PERSON DURING A TERMINATION OF PARENTAL RIGHTS PROCEEDING OR AN INDIGENT PAROLE VIOLATOR, AND PROVIDING EFFECTIVE AND RETROACTIVE APPLICABILITY DATE PROVISIONS.

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

Section 1. Section 13B.4, subsection 1, Code 2005, is amended to read as follows:

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under section 811.1A or chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, ~~and on a reopening of a sentence proceeding~~, and may provide for the representation of indigents in proceedings instituted pursuant to ~~section 908-111~~ chapter 908. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 600A.2, Code 2005, is amended by adding the following new subsection:

NEW SUBSECTION. 10A. "Indigent" means a person has an income level at or below one hundred percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney in the pending case. In making the determination of a person's ability to pay for the cost of an attorney, the

court shall consider the person's income and the availability of any assets subject to execution, including but not limited to cash, stocks, bonds, and any other property which may be applied to the satisfaction of judgments, and the nature and complexity of the case.

Sec. 3. Section 600A.6, subsection 3, Code 2005, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. A statement that the person against whom a proceeding for termination of parental rights is brought shall have the right to counsel pursuant to section 600A.6A.

Sec. 4. NEW SECTION. 600A.6A RIGHT TO AND APPOINTMENT OF COUNSEL.

1. Upon the filing of a petition for termination of parental rights under this chapter, the parent identified in the petition shall have the right to counsel in connection with all subsequent hearings and proceedings.

2. If the parent against whom the petition is filed desires but is financially unable to employ counsel, the court, following an in-court colloquy, shall appoint counsel for the person if all of the following criteria are met:

- a. The person requests appointment of counsel.
- b. The person is indigent.
- c. The court determines both of the following:

(1) The person, because of lack of skill or education, would have difficulty in presenting the person's version of the facts in dispute, particularly where the presentation of the facts requires the examination or cross-examination of witnesses or the presentation of complex documentary evidence.

(2) The person has a colorable defense to the termination of parental rights, or there are substantial reasons that make termination of parental rights inappropriate.

Sec. 5. NEW SECTION. 600A.6B PAYMENT OF ATTORNEY FEES.

1. A person filing a petition for termination of parental rights under this chapter or the person on whose behalf the petition is filed shall be responsible for the payment of

reasonable attorney fees for counsel appointed pursuant to section 600A.6A unless the court determines that the person filing the petition or the person on whose behalf the petition is filed is indigent.

2. If the person filing the petition or the person on whose behalf the petition is filed is indigent, the appointed attorney shall be paid reasonable attorney fees as determined by the state public defender.

3. The state public defender shall review all the claims submitted under this section and shall have the same authority with regard to the payment of these claims as the state public defender has with regard to claims submitted under chapters 13B and 815, including the authority to adopt rules concerning the review and payment of claims submitted.

Sec. 6. Section 602.1302, subsection 3, Code 2005, is amended to read as follows:

3. A revolving fund is created in the state treasury for the payment of jury and witness fees, mileage, and costs related to summoning jurors by the judicial branch, and attorney fees paid by the state public defender for counsel appointed pursuant to section 600A.6A. The judicial branch shall deposit any reimbursements to the state for the payment of jury and witness fees and mileage in the revolving fund. In each calendar quarter the judicial branch shall reimburse the state public defender for attorney fees paid pursuant to section 600A.6B. Notwithstanding section 8.33, unencumbered and unobligated receipts in the revolving fund at the end of a fiscal year do not revert to the general fund of the state. The judicial branch shall on or before February 1 file a financial accounting of the moneys in the revolving fund with the legislative services agency. The accounting shall include an estimate of disbursements from the revolving fund for the remainder of the fiscal year and for the next fiscal year.

Sec. 7. Section 602.8102, subsection 133, Code 2005, is amended by striking the subsection.

Sec. 8. Section 815.10, subsection 1, Code 2005, is amended to read as follows:

1. The court, for cause and upon its own motion or upon application by an indigent person or a public defender, shall appoint the state public defender's designee pursuant to section 13B.4 to represent an indigent person at any stage of the criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation if applicable under section 908.2A, or juvenile proceedings or on appeal of any criminal, postconviction, contempt, commitment under chapter 229A, termination under chapter 600A, detention under section 811.1A, competency under chapter 812, parole revocation under chapter 908, or juvenile action in which the indigent person is entitled to legal assistance at public expense. However, in juvenile cases, the court may directly appoint an existing nonprofit corporation established for and engaged in the provision of legal services for juveniles. An appointment shall not be made unless the person is determined to be indigent under section 815.9. Only one attorney shall be appointed in all cases, except that in class "A" felony cases the court may appoint two attorneys.

Sec. 9. Section 815.11, Code 2005, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, 665, or 822, or 908, or section 232.141, subsection 3, paragraph "c", or section 598.23A, 600A.6B, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10, ~~or 908~~ on behalf of an indigent shall be paid from funds appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals for those purposes. Costs incurred representing an indigent defendant in a contempt action, or representing an indigent juvenile in a juvenile court proceeding under chapter 600, are also payable from these funds. However, costs incurred in any administrative proceeding or in any other

proceeding under chapter 598, 600, 600A, 633, or 915 or other provisions of the Code or administrative rules are not payable from these funds.

Sec. 10. Section 908.2, Code 2005, is amended to read as follows:

908.2 INITIAL APPEARANCE -- BAIL.

1. An officer making an arrest of an alleged parole violator shall take the arrested person before a magistrate without unnecessary delay for an initial appearance. At that time the alleged parole violator shall be furnished with a the initial appearance the magistrate shall do all of the following:

a. Provide written notice of the claimed violation and shall be given.

b. Provide notice that a parole revocation hearing will take place and that its purpose is to determine whether the alleged parole violation occurred and whether the alleged violator's parole should be revoked.

c. Advise the alleged parole violator of the right to request an appointed attorney.

2. The magistrate may order the alleged parole violator confined in the county jail or may order the alleged parole violator released on bail under terms and conditions as the magistrate may require. Admittance to bail is discretionary with the magistrate and is not a matter of right. A person for whom bail is set may make application for amendment of bail to a district judge or district associate judge having jurisdiction to amend the order. The motion shall be promptly set for hearing and a record shall be made of the hearing.

Sec. 11. NEW SECTION. 908.2A APPOINTMENT OF AN ATTORNEY.

1. An attorney may be appointed to represent an alleged parole violator in a parole revocation proceeding only if all of the following criteria apply:

a. The alleged parole violator requests appointment of an attorney.

b. The alleged parole violator is determined to be indigent as defined in section 815.9.

c. The appointing authority determines each of the following:

(1) The alleged parole violator lacks skill or education and would have difficulty presenting the alleged parole violator's case, particularly if the proceeding would require the cross-examination of witnesses or would require the submission or examination of complex documentary evidence.

(2) The alleged parole violator has a colorable claim the alleged violation did not occur, or there are substantial reasons that justify or mitigate the violation and make any revocation inappropriate under the circumstances.

2. If all of the criteria apply in subsection 1, a contract attorney with the state public defender may be appointed to represent the alleged parole violator. If a contract attorney is unavailable, an attorney who has agreed to provide these services may be appointed. The appointed attorney shall apply to the state public defender for payment in the manner prescribed by the state public defender.

Sec. 12. Section 908.4, subsection 2, Code 2005, is amended to read as follows:

2. The administrative parole judge shall make a verbatim record of the proceedings. The alleged violator ~~shall not have the right to appointed counsel,~~ shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness's identity were disclosed. The revocation hearing may be conducted electronically.

Sec. 13. Section 815.1, Code 2005, is repealed.

Sec. 14. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This Act, being deemed of immediate importance, takes effect upon enactment. The sections of this Act amending chapter

600A and section 602.1302, and the portions of this Act amending sections 815.10 and 815.11 relating to chapter 600A apply retroactively to May 12, 2004, and the remaining sections of this Act, including the portions of this Act amending sections 815.10 and 815.11 relating to chapter 908, apply retroactively to November 10, 2004.

CHRISTOPHER C. RANTS
Speaker of the House

JOHN P. KIBBIE
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 683, Eighty-first General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 5/4, 2005

THOMAS J. VILSACK
Governor