

Senate Study Bill 1126 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT
OF INSPECTIONS AND
APPEALS/STATE PUBLIC
DEFENDER BILL)

A BILL FOR

1 An Act relating to payments from the indigent defense fund by
2 the state public defender.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13B.4, subsection 4, paragraph d, Code
2 2013, is amended by striking the paragraph.

3 Sec. 2. Section 13B.4, subsection 8, Code 2013, is amended
4 to read as follows:

5 8. The state public defender shall adopt rules, as
6 necessary, pursuant to chapter 17A to interpret and administer
7 this chapter, and chapter 815, and sections 229A.6, 232.11,
8 232.89, 232.113, 232.126, 232.141, 232.179, 600A.6A, 600A.6B,
9 814.11, and 908.2A. The state public defender shall have the
10 discretion to interpret such rules.

11 Sec. 3. NEW SECTION. **13B.4A Judicial review of agency**
12 **action.**

13 1. Notwithstanding chapter 17A, a claimant for payment of
14 indigent defense costs may seek judicial review of the state
15 public defender's final agency action denying or reducing any
16 claim by filing a motion for judicial review in the court with
17 jurisdiction over the original appointment. This section is
18 the sole and exclusive method of seeking judicial review of the
19 state public defender's action on any claim for payment.

20 a. A claimant may only file the motion after the state
21 public defender has taken final agency action, as defined by
22 the state public defender, on the claim, and the claimant must
23 file the motion within twenty days of the final agency action.

24 b. Failure to seek judicial review within twenty days of
25 final agency action as defined by the state public defender
26 shall preclude any judicial review of the action taken by the
27 state public defender.

28 c. The motion must clearly and concisely set forth the
29 grounds for error and any other grounds the claimant intends
30 to rely upon when challenging the action of the state public
31 defender.

32 2. a. The court shall set the motion for hearing and
33 provide the state public defender with at least ten days'
34 notice of the hearing. The state public defender shall not
35 be required to file a resistance to the motion for judicial

1 review.

2 *b.* The claimant or state public defender may participate
3 in the hearing by telephone. If the state public defender
4 participates by telephone, the state public defender shall be
5 responsible for initiating the telephone call and paying all
6 telephone charges incurred for the hearing.

7 3. The claimant shall have the burden to show by a
8 preponderance of the evidence any of the following, otherwise
9 the action of the state public defender shall be affirmed:

10 *a.* The action of the state public defender violates the
11 Constitution of the United States or the Constitution of the
12 State of Iowa, a statute, or an administrative rule adopted by
13 the state public defender.

14 *b.* The action of the state public defender is arbitrary,
15 capricious, or an abuse of discretion.

16 4. In a hearing on a motion for judicial review of an action
17 of the state public defender the following shall apply:

18 *a.* The state public defender's interpretation of the rules
19 adopted by the state public defender or a statute, which the
20 state public defender is vested with discretion to interpret
21 pursuant to section 13B.4, subsection 8, is binding on the
22 court unless the interpretation is irrational, illogical, or a
23 wholly unjustifiable interpretation of the law.

24 *b.* Factual findings of the state public defender must be
25 accepted by the court unless not supported by substantial
26 evidence.

27 *c.* If the state public defender provides an administrative
28 procedure for review of an action on a claim, the court shall
29 not consider any grounds for error or any other grounds unless
30 raised with the state public defender prior to the final agency
31 action, and the court shall not admit new evidence that was
32 not presented to the state public defender prior to the final
33 agency action.

34 5. If the state public defender is not first notified and
35 given an opportunity to be heard, any court order entered after

1 the state public defender has taken action on the claim, which
2 affects the claim, is void.

3 6. The decision of the court following a hearing on a motion
4 for judicial review is a final judgment appealable by either
5 the claimant or state public defender.

6 Sec. 4. NEW SECTION. **13B.4B Confidentiality of indigent**
7 **defense claim records.**

8 1. A claim for compensation and reimbursement for legal
9 assistance and supporting documents submitted to the state
10 public defender for payment of costs incurred in the legal
11 representation of an indigent person from the indigent defense
12 fund established in section 815.11 shall be kept confidential
13 by the state public defender except as otherwise provided in
14 subsection 2.

15 2. *a.* The claim and supporting documents may be released to
16 the client on whose behalf the costs were incurred.

17 *b.* Summary claims data may be released if the data contains
18 no information that is required to be kept confidential
19 pursuant to an attorney's obligations under the Iowa rules of
20 professional conduct. Such summary data may include:

21 (1) The name of the attorney or vendor who provided the
22 legal services.

23 (2) The name of the county in which legal services were
24 provided.

25 (3) The case number and name of the client unless the
26 information is a confidential juvenile record under section
27 232.147.

28 (4) The type of claim and the type of cases for which legal
29 services were provided.

30 (5) The number of hours and expenses claimed, and the total
31 amount paid.

32 *c.* The state public defender may in the state public
33 defender's sole discretion release claims and supporting
34 documents to the auditor of state, the Iowa supreme court
35 attorney disciplinary board, the grievance commission of the

1 supreme court of Iowa, or to other state or local agencies to
2 the extent necessary to investigate fraud or other criminal
3 activity against the attorney or vendor submitting the claim.

4 *d.* The state public defender may release the claim and
5 supporting documents to the court with respect to a hearing
6 held under section 13B.4A.

7 Sec. 5. Section 13B.8, subsection 2, Code 2013, is amended
8 to read as follows:

9 2. The state public defender may appoint ~~and may, for~~
10 ~~cause, remove~~ the local public defender, assistant local
11 public defenders, clerks, investigators, secretaries, or other
12 employees. After completion of an employee's probationary
13 period, the state public defender shall only remove the
14 employee for cause. An employee of the state public defender
15 exempt from the merit system provisions of chapter 8A,
16 subchapter IV, shall serve a one-year probationary period from
17 the beginning date of employment. Each local public defender,
18 and any assistant local public defender, must be an attorney
19 admitted to the practice of law before the Iowa supreme court.

20 Sec. 6. NEW SECTION. 13B.12 Gideon fellowship program
21 **established.**

22 The state public defender may establish a gideon fellowship
23 program for the entry level hiring and training of public
24 defender attorneys. The state public defender may appoint
25 up to four gideon fellows for a term of up to two years and
26 may assign each fellow to a local public defender office or
27 appellate defender office. Each fellow shall be a licensed
28 attorney admitted to practice law in this state prior to
29 commencement of the fellowship. An attorney hired as a fellow
30 shall be excluded from the provisions of chapter 20.

31 Sec. 7. Section 22.7, Code 2013, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 10. A claim for compensation and
34 reimbursement for legal assistance and supporting documents
35 submitted to the state public defender for payment from

1 the indigent defense fund established in section 815.11, as
2 provided in section 13B.4B.

3 Sec. 8. Section 600A.6, subsection 2, Code 2013, is amended
4 to read as follows:

5 2. a. Prior to the service of notice on the necessary
6 parties, the juvenile court shall appoint a guardian ad litem
7 for a minor child if the child does not have a guardian or if
8 the interests of the guardian conflict with the interests of
9 the child. Such guardian ad litem shall be a necessary party
10 under subsection 1 ~~of this section.~~

11 b. A person who is appointed as a guardian ad litem for
12 a minor child shall not also be the attorney for any party
13 other than the minor child in any proceeding involving the
14 minor child. The guardian ad litem may make an independent
15 investigation of the interest of the child and may cause
16 witnesses to appear before the court to provide testimony
17 relevant to the best interest of the minor child.

18 c. The costs of the guardian ad litem shall be paid by the
19 person filing the petition under section 600A.5, subsection
20 1. The costs are not payable from the indigent defense fund
21 established in section 815.11.

22 Sec. 9. Section 600A.6B, Code 2013, is amended to read as
23 follows:

24 **600A.6B Payment of attorney fees.**

25 1. A person filing a petition for termination of parental
26 rights under this chapter ~~or the person on whose behalf the~~
27 ~~petition is filed~~ shall be responsible for the payment of
28 reasonable attorney fees for counsel appointed pursuant to
29 section 600A.6A unless the person filing the petition is a
30 private child-placing agency ~~as defined in section 238.1~~
31 licensed under chapter 238, or unless the court determines that
32 the person filing the petition ~~or the person on whose behalf~~
33 ~~the petition is filed~~ is indigent.

34 2. If the person filing the petition is a private
35 child-placing agency ~~as defined in section 238.1~~ licensed

1 under chapter 238 or if the person filing the petition or the
2 person on whose behalf the petition is filed is indigent, the
3 appointed attorney shall be paid reasonable attorney fees as
4 determined by the state public defender prospective parent on
5 whose behalf the petition is filed shall be responsible for
6 the payment of reasonable attorney fees for counsel appointed
7 pursuant to section 600A.6A unless the court determines that
8 the prospective parent on whose behalf the petition is filed
9 is indigent.

10 3. The If the prospective parent on whose behalf the
11 petition is filed is indigent, and if the person filing the
12 petition is indigent or a private child-placing agency licensed
13 under chapter 238, the appointed attorney shall be paid
14 reasonable attorney fees as determined by the state public
15 defender from the indigent defense fund established in section
16 815.11.

17 4. The state public defender shall review all the claims
18 submitted for payment under this section subsection 3 and shall
19 have the same authority with regard to the payment of these
20 claims as the state public defender has with regard to claims
21 submitted under chapters 13B and 815, including the authority
22 to adopt rules concerning the review and payment of claims
23 submitted.

24 Sec. 10. Section 814.11, subsections 2, 3, and 4, Code 2013,
25 are amended to read as follows:

26 2. a. If the appeal involves an indictable offense or
27 denial of postconviction relief, the appointment shall be made
28 to the state appellate defender unless the state appellate
29 defender notifies the court that the state appellate defender
30 is unable to handle the case.

31 b. If the state appellate defender is unable to handle
32 the case, the state public defender may transfer the case to
33 a local public defender office, nonprofit organization, or
34 private attorney designated by the state public defender to
35 handle such a case. The state appellate defender shall notify

1 the supreme court of the transfer of a case, and upon such
2 notification the responsibility of the state appellate defender
3 in the case terminates.

4 c. If, after transfer of the case to a local public defender
5 office, nonprofit organization, or private attorney, the local
6 public defender office, nonprofit organization, or private
7 attorney withdraws from the case, the court shall appoint an
8 attorney who has a contract with the state public defender to
9 provide legal services in appellate cases.

10 3. a. In a juvenile case under chapter 232 or a proceeding
11 under chapter 600A, the trial attorney shall continue
12 representation throughout the appeal without an additional
13 appointment order unless the court grants the attorney
14 permission to withdraw from the case.

15 b. If the court grants the attorney permission to withdraw,
16 the court shall appoint the state public defender's designee
17 pursuant to section 13B.4.

18 c. If the state public defender has not made a designation
19 pursuant to section 13B.4 to handle the type of case or the
20 state public defender's designee is unable to handle the case,
21 the court shall appoint an attorney who has a contract with the
22 state public defender to provide legal services in appellate
23 cases.

24 4. a. In all other cases not specified in subsection 2 or
25 3, or except as otherwise provided in this section, the court
26 shall appoint the state public defender's designee pursuant to
27 section 13B.4.

28 b. If the state public defender has not made a designation
29 pursuant to section 13B.4 to handle these other types of cases
30 or the state public defender's designee is unable to handle
31 the case, the court shall appoint an attorney to represent
32 an indigent person who has a contract with the state public
33 defender to provide legal services in appellate cases.

34 Sec. 11. NEW SECTION. 815.1 **Costs incurred by a privately**
35 **retained attorney representing an indigent person.**

1 1. The court shall not authorize the payment of state
2 funds for the costs incurred in the legal representation of a
3 person represented by a privately retained attorney unless the
4 requirements of this section are satisfied.

5 2. An application for the payment of state funds for the
6 costs incurred in the legal representation of an indigent
7 person that is submitted by the privately retained attorney
8 shall be filed with the court in the county in which the case
9 was filed and include the following:

10 a. A copy of the attorney's fee agreement for the
11 representation.

12 b. An itemized accounting of all compensation paid to the
13 attorney including the amount of any retainer.

14 c. The amount of compensation earned by the attorney.

15 d. Information on any expected additional costs to be paid
16 or owed by the represented person to the attorney for the
17 representation.

18 e. A signed financial affidavit completed by the represented
19 person.

20 3. The attorney shall submit a copy of the application and
21 all attached documents to the state public defender.

22 4. The court shall not grant the application and authorize
23 all or a portion of the payment to be made from state funds
24 unless the court determines, after reviewing the application
25 and supporting documents, that all of the following apply:

26 a. The represented person is indigent and unable to pay for
27 the costs sought to be paid by the attorney.

28 b. The costs are reasonable and necessary for the
29 representation of the person in a case for which counsel could
30 have been appointed under section 815.10.

31 c. The moneys paid or to be paid to the attorney by or on
32 behalf of the represented person are insufficient to pay all or
33 a portion of the costs sought to be paid from state funds.

34 (1) In determining whether the moneys paid or to be paid to
35 the attorney are insufficient for purposes of this paragraph

1 "c", the court shall add the hours previously worked to the
2 hours expected to be worked to finish the case and multiply
3 that sum by the hourly rate of compensation specified under
4 section 815.7.

5 (2) If the product calculated in subparagraph (1) is
6 greater than the moneys paid or to be paid to the attorney by
7 or on behalf of the represented person, the moneys shall be
8 considered insufficient to pay all or a portion of the costs
9 sought to be paid from state funds.

10 (3) If the private attorney is retained on a flat fee
11 agreement, and a precise record of hours worked is not
12 available, the privately retained attorney shall provide the
13 court a reasonable estimate of the time expended to allow the
14 court to make the calculation pursuant to this paragraph "c".

15 5. This section applies to payments to witnesses under
16 section 815.4, evaluators, investigators, and certified
17 shorthand reporters, and for other costs incurred in the legal
18 representation.

19 6. This section shall not be construed to restrict payment
20 of costs on behalf of an indigent person represented on a pro
21 bono basis.

22 EXPLANATION

23 This bill relates to payments from the indigent defense fund
24 by the state public defender.

25 Under the bill, an indigent defense claimant may seek
26 judicial review of the final agency action of the state
27 public defender denying or reducing an indigent defense claim
28 by filing a motion for judicial review in the court with
29 jurisdiction over the original court appointment.

30 The bill requires the motion to be filed within 20 days after
31 the final agency action. The bill also requires the motion
32 to clearly and concisely set forth the grounds for error the
33 claimant intends to rely upon when challenging the final agency
34 action of the state public defender.

35 The bill requires the motion to be set for a hearing and that

1 the state public defender be provided at least 10 days' notice
2 of the hearing. The bill does not require the state public
3 defender to file a resistance to the motion. The claimant or
4 state public defender may appear at the hearing by telephone,
5 however, if the state public defender appears by telephone, the
6 state public defender shall be responsible for initiating and
7 paying all telephone charges incurred during the hearing.

8 The bill specifies that if the state public defender is not
9 first notified and given an opportunity to be heard on a motion
10 to review a claim for payment, any court order entered after
11 the state public defender has taken action on the claim, which
12 affects the claim, is void.

13 The bill requires the claimant to prove by a preponderance of
14 the evidence that the final agency action of the state public
15 defender violated the constitutions of the United States or the
16 State of Iowa, a statute, or an administrative rule, or that
17 the final agency action was arbitrary, capricious, or an abuse
18 of discretion.

19 Under the bill, if the state public defender provides an
20 administrative procedure for review of an action on a claim,
21 the court, during judicial review, shall not consider any
22 grounds for error unless raised with the state public defender
23 prior to the final agency action, and the court is prohibited
24 from admitting new evidence that was not previously presented
25 to the state public defender.

26 The bill specifies the state public defender may adopt rules
27 to interpret and administer Code sections 229A.6 (sexually
28 violent predators), 232.11 (juvenile delinquency), 232.89
29 (child in need of assistance), 232.113 (termination of parental
30 rights in juvenile court), 232.126 (appointment of guardian
31 ad litem for family in need of assistance), 232.141 (juvenile
32 court expenses and costs), 232.179 (appointment of counsel and
33 guardian ad litem for voluntary foster care placement), 600A.6A
34 (termination of parental rights), 600A.6B (payment of attorney
35 fees for termination of parental rights), 814.11 (indigent's

1 right to counsel), and 908.2A (appointment of an attorney for
2 violations of probation or parole).

3 The bill specifies that indigent defense claims and
4 supporting documents are confidential documents under Code
5 section 22.7 but allows the state public defender to release
6 the confidential information under certain circumstances. The
7 state public defender may release the claim and supporting
8 documents to the indigent person who was the client in the
9 case. The bill specifies that summary claims data may be
10 released including the name of the attorney or vendor providing
11 services, the county in which legal services were provided, the
12 case number and name of the client unless the information is a
13 confidential juvenile record, the type of claim and case, the
14 number of hours and costs claimed, and the amount paid to the
15 claimant.

16 The bill also allows the state public defender to provide
17 indigent defense claims and supporting documents to the auditor
18 of state, the Iowa supreme court attorney disciplinary board,
19 or grievance commission, or to other state or local agencies
20 for the purpose of investigating fraud or criminal activity.

21 After completion of an employee's probationary period, the
22 bill specifies that the state public defender may only remove
23 the employee for cause. The bill specifies that an employee of
24 the state public defender not covered by the merit system under
25 Code chapter 8A shall serve a one-year probationary period from
26 the beginning date of employment.

27 The bill establishes the gideon fellowship program for the
28 entry level hiring and training of attorneys within the office
29 of the state public defender. Under the bill, the state public
30 defender may hire up to four gideon fellows to serve under the
31 program as a public or appellate defender for up to two years.
32 The bill requires the fellows to be licensed attorneys in this
33 state and excludes the fellows from Code chapter 20 relating to
34 public collective bargaining.

35 The bill specifies that costs incurred by a guardian ad

1 litem in a proceeding under Code chapter 600A (termination
2 of parental rights) shall be paid by the person filing the
3 petition under Code section 600A.5(1).

4 The bill provides that a child-placing agency licensed under
5 Code chapter 238 may file a petition to terminate parental
6 rights under Code chapter 600A. Current law specifies a
7 child-placing agency as defined in Code section 238.1 may file
8 such a petition.

9 The bill specifies that if a person filing a petition
10 to terminate parental rights under Code chapter 600A is a
11 child-placing agency licensed under Code chapter 238 or if the
12 person filing the petition is indigent, the prospective parent
13 on whose behalf the petition is filed shall be responsible for
14 the payment of reasonable attorney fees in the case, unless the
15 court determines the prospective parent on whose behalf the
16 petition is filed is indigent.

17 If a prospective parent on whose behalf a petition is filed
18 is indigent, and if the person filing the petition is indigent
19 or a child-placing agency licensed under Code chapter 238 files
20 the petition, the bill requires the appointed attorney in the
21 case to be paid reasonable attorney fees from the indigent
22 defense fund established in Code section 815.11.

23 In an appeal involving an indictable offense or denial
24 of postconviction relief, the bill specifies that if the
25 state appellate defender is unable to handle the case, the
26 state public defender may transfer the case to a local public
27 defender office, nonprofit organization, or private attorney
28 designated by the state public defender to handle such a
29 case. If after the transfer of the appeal, the attorney or
30 organization withdraws from the case, the court shall appoint
31 an attorney who has a contract with the state public defender
32 to provide such services in appellate cases.

33 In an appeal in a juvenile or termination of parental rights
34 case under Code chapter 600A, the bill specifies that if the
35 court grants permission for an attorney to withdraw from the

1 appeal, the court shall appoint the state public defender's
2 designee pursuant to Code section 13B.4. If the state public
3 defender has not made a designation pursuant to Code section
4 13B.4 to handle the type of case or the designee is unable to
5 handle the case, the bill requires the court to appoint an
6 attorney who has a contract with the state public defender to
7 provide legal services in appellate cases.

8 In all other cases not involving an indictable offense,
9 juvenile case, or termination of parental rights under Code
10 chapter 600A, the bill specifies that the court shall appoint
11 the state public defender's designee on an appeal. If the
12 state public defender has not made a designation pursuant
13 to Code section 13B.4 to handle these types of cases or the
14 designee is unable to handle the case, the bill requires the
15 court to appoint an attorney who has a contract with the state
16 public defender to provide legal services in appellate cases.

17 The bill establishes a process for payment of state funds
18 to a privately retained attorney for the costs incurred in the
19 legal representation of a person who is later determined to be
20 indigent.

21 Under the bill, the privately retained attorney shall
22 file an application for the payment of state funds with the
23 court. The bill requires the application to include a copy of
24 the attorney's fee agreement, an itemized accounting of all
25 compensation paid to the attorney including the amount of any
26 retainer, information on any expected additional expense paid
27 or owed to the attorney in the case, and a signed financial
28 affidavit completed by the represented person.

29 The bill requires a copy of the application to be submitted
30 to the state public defender.

31 The bill prohibits the payment of state funds to a privately
32 retained attorney unless the court determines that the
33 represented person is indigent and unable to pay for the
34 expenses sought to be paid by the attorney, the expense of the
35 attorney is reasonable and necessary for the representation of

1 an indigent person for which counsel could have been appointed,
2 and the moneys paid or to be paid by or on behalf of the
3 represented person to the private attorney are insufficient to
4 pay all or a portion of the expenses sought to be paid from
5 state funds. In determining whether the moneys paid or to be
6 paid to the attorney are insufficient, the bill requires the
7 court to add the hours previously worked to the hours expected
8 to be worked to finish the case and to multiply that sum by the
9 hourly rate of compensation specified under Code section 815.7.
10 If this calculation is greater than the moneys paid or to be
11 paid by or on behalf of the represented person to the attorney,
12 the bill specifies the moneys shall be considered insufficient
13 to pay all or a portion of the expenses sought to be paid
14 from state funds, and the court may authorize the payment of
15 state funds to the extent the moneys paid or to be paid to the
16 attorney are insufficient to pay the expenses as calculated
17 by the court. If the private attorney is retained on a flat
18 fee agreement, and a precise record of hours worked is not
19 available, the bill requires the privately retained attorney to
20 provide the court a reasonable estimate of the time expended to
21 allow the court to determine whether state funds must be paid
22 to the privately retained attorney.

23 This process of the payment of state funds established in
24 the bill also applies to payments to witnesses, evaluators,
25 investigators, and certified shorthand reporters, and for other
26 costs incurred in the legal representation. However, nothing
27 in the bill should be construed to restrict payment of expenses
28 from state funds on behalf on an indigent person represented by
29 an attorney on a pro bono basis.