

Senate Study Bill 3037 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED STATE PUBLIC
DEFENDER BILL)

A BILL FOR

1 An Act relating to payments from the indigent defense fund by
2 the state public defender, and providing penalties.
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 2014, is amended by striking the paragraph.

3 Sec. 2. Section 13B.4, subsection 8, Code 2014, 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 date that the state
24 public defender provides notice of the final agency action to
25 the claimant.

26 b. Failure to seek judicial review within twenty days of
27 the date that the state public defender provides notice to the
28 claimant of final agency action as defined by the state public
29 defender shall preclude any judicial review of the action taken
30 by the state public defender.

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

35 2. a. The court shall set the motion for hearing and

1 provide the state public defender with at least ten days'
2 notice of the hearing. The state public defender shall not
3 be required to file a resistance to the motion for judicial
4 review.

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

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

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

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

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

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

27 *b.* Factual findings of the state public defender must be
28 accepted by the court unless not supported by substantial
29 evidence.

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

1 agency action.

2 5. If the state public defender is not first notified and
3 given an opportunity to be heard, any court order entered after
4 the state public defender has taken action on the claim, which
5 affects the claim, is void.

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

9 Sec. 4. Section 13B.4B, subsection 2, paragraphs c and d,
10 Code 2014, are amended to read as follows:

11 c. The state public defender may in the state public
12 defender's sole discretion release claims and supporting
13 documents, including any information that would otherwise
14 be confidential in sections 232.147 through 232.150, to the
15 auditor of state, the Iowa supreme court attorney disciplinary
16 board, the grievance commission of the supreme court of Iowa,
17 or to other state or local agencies to the extent necessary
18 to investigate fraud or other criminal activity against the
19 attorney or vendor submitting the claim.

20 d. The state public defender may release the claim and
21 supporting documents to the court with respect to a hearing
22 held under section ~~13B.4, subsection 4, paragraph "d"~~ 13B.4A.

23 Sec. 5. Section 232.151, Code 2014, is amended to read as
24 follows:

25 **232.151 Criminal penalties.**

26 Any person who knowingly discloses, receives, or makes
27 use or permits the use of information derived directly or
28 indirectly from the records concerning a child referred to in
29 sections 232.147 ~~to~~ through 232.150, except as provided by
30 those sections or section 13B.4B, subsection 2, paragraph "c",
31 shall be guilty of a serious misdemeanor.

32 Sec. 6. Section 600A.6B, Code 2014, is amended to read as
33 follows:

34 **600A.6B Payment of attorney fees.**

35 1. A person filing a petition for termination of parental

1 rights under this chapter ~~or the person on whose behalf the~~
2 ~~petition is filed~~ shall be responsible for the payment of
3 reasonable attorney fees for services provided by counsel
4 appointed pursuant to section 600A.6A in juvenile court or in
5 an appellate proceeding initiated by the person filing the
6 petition unless the person filing the petition is a private
7 child-placing agency ~~as defined in section 238.1~~ licensed under
8 chapter 238 or ~~unless~~ the court determines that the person
9 filing the petition ~~or the person on whose behalf the petition~~
10 ~~is filed~~ is indigent.

11 2. If the person filing the petition is a private
12 child-placing agency ~~as defined in section 238.1~~ licensed
13 under chapter 238 or if the person filing the petition ~~or the~~
14 ~~person on whose behalf the petition is filed~~ is indigent, the
15 ~~appointed attorney shall be paid reasonable attorney fees~~
16 prospective parent on whose behalf the petition is filed
17 shall be responsible for the payment of reasonable attorney
18 fees for services provided in juvenile court or an appellate
19 proceeding as determined by the state public defender for
20 counsel appointed pursuant to section 600A.6A unless the court
21 determines that the prospective parent on whose behalf the
22 petition is filed is indigent.

23 3. If the prospective parent on whose behalf the petition
24 is filed is indigent, and if the person filing the petition
25 is indigent or a private child-placing agency licensed under
26 chapter 238, the appointed counsel shall be paid reasonable
27 attorney fees as determined by the state public defender from
28 the indigent defense fund established in section 815.11.

29 ~~3.~~ 4. If the parent against whom the petition is filed
30 appeals a termination order under section 600A.9, subsection 1,
31 paragraph "b", the person who filed the petition or the person
32 on whose behalf the petition is filed shall not be responsible
33 for the payment of attorney fees for services provided by
34 counsel appointed pursuant to section 600A.6A in the appellate
35 proceeding. Instead, the appointed attorney shall be paid

1 reasonable attorney fees as determined by the state public
2 defender from the indigent defense fund established pursuant
3 to section 815.11.

4 ~~4.~~ 5. The state public defender shall review all the
5 claims submitted under ~~this section~~ subsection 3 or 4 and shall
6 have the same authority with regard to the payment of these
7 claims as the state public defender has with regard to claims
8 submitted under chapters 13B and 815, including the authority
9 to adopt rules concerning the review and payment of claims
10 submitted.

11 **Sec. 7. NEW SECTION. 815.1 Costs incurred by a privately**
12 **retained attorney representing an indigent person.**

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

17 2. An application for the payment of state funds for the
18 costs incurred in the legal representation of an indigent
19 person that is submitted by the privately retained attorney
20 shall be submitted in camera to the court in the county in
21 which the case was filed and include the following:

22 *a.* A copy of the attorney's fee agreement for the
23 representation.

24 *b.* An itemized accounting of all compensation paid to the
25 attorney including the amount of any retainer.

26 *c.* The amount of compensation earned by the attorney.

27 *d.* Information on any expected additional costs to be paid
28 or owed by the represented person to the attorney for the
29 representation.

30 *e.* A signed financial affidavit completed by the represented
31 person.

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

34 4. The court shall not grant the application and authorize
35 all or a portion of the payment to be made from state funds

1 unless the court determines, after reviewing the application
2 and supporting documents, that all of the following apply:

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

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

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

11 (1) In determining whether the moneys paid or to be paid to
12 the attorney are insufficient for purposes of this paragraph
13 "c", the court shall add the hours previously worked to the
14 hours expected to be worked to finish the case and multiply
15 that sum by the hourly rate of compensation specified under
16 section 815.7.

17 (2) If the product calculated in subparagraph (1) is
18 greater than the moneys paid or to be paid to the attorney by
19 or on behalf of the represented person, the moneys shall be
20 considered insufficient to pay all or a portion of the costs
21 sought to be paid from state funds.

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

27 5. This section applies to payments to witnesses under
28 section 815.4, evaluators, investigators, and certified
29 shorthand reporters, and for other costs incurred in the legal
30 representation.

31 6. This section shall not be construed to restrict payment
32 of costs on behalf of an indigent person represented on a pro
33 bono basis.

34

EXPLANATION

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 This bill relates to payments from the indigent defense fund
3 by the state public defender.

4 The bill specifies the state public defender may adopt rules
5 to interpret and administer Code sections 229A.6 (sexually
6 violent predators), 232.11 (juvenile delinquency), 232.89
7 (child in need of assistance), 232.113 (termination of parental
8 rights in juvenile court), 232.126 (appointment of guardian
9 ad litem for family in need of assistance), 232.141 (juvenile
10 court expenses and costs), 232.179 (appointment of counsel and
11 guardian ad litem for voluntary foster care placement), 600A.6A
12 (termination of parental rights), 600A.6B (payment of attorney
13 fees for termination of parental rights), 814.11 (indigent's
14 right to counsel), and 908.2A (appointment of an attorney for
15 violations of probation or parole).

16 The bill strikes the current provisions for judicial review
17 of an indigent fee claim in Code section 13B.4(4)(d) and
18 replaces this provision with new Code section 13B.4A. Under
19 the bill, an indigent defense claimant may seek judicial review
20 of the final agency action of the state public defender denying
21 or reducing an indigent defense claim by filing a motion
22 for judicial review in the court with jurisdiction over the
23 original court appointment.

24 The bill requires the motion to be filed within 20 days of
25 the date that the state public defender provides notice of the
26 final agency action to the claimant. The bill also requires
27 the motion to clearly and concisely set forth the grounds
28 for error the claimant intends to rely upon when challenging
29 the final agency action of the state public defender. Under
30 the bill, failure to seek judicial review within 20 days of
31 the notice provided by the state public defender precludes
32 any judicial review of the action taken by the state public
33 defender.

34 The bill requires the motion to be set for a hearing and that
35 the state public defender be provided at least 10 days' notice

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

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

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

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

25 The bill also allows the state public defender to provide
26 indigent defense claims and supporting documents relating to
27 confidential juvenile records to the auditor of state, the
28 Iowa supreme court attorney disciplinary board, or grievance
29 commission, or to other state or local agencies for the purpose
30 of investigating fraud or criminal activity. Current law
31 allows the release of indigent defense claims and supporting
32 documents for the purpose of investigating fraud or criminal
33 activity but does not specifically allow for the release of
34 confidential juvenile records for the purpose of investigating
35 fraud or other criminal activity.

1 The bill makes it a serious misdemeanor for a person to
2 knowingly disclose confidential juvenile information relating
3 to an indigent defense claim except as provided in Code section
4 13B.4B(2)(c). Current law allows disclosure of confidential
5 juvenile information under Code sections 232.147 through
6 232.150.

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

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

20 If a prospective parent on whose behalf a petition is filed
21 is indigent, and if the person filing the petition is indigent
22 or a child-placing agency licensed under Code chapter 238
23 files the petition, the bill requires the appointed attorney
24 in the case to be paid reasonable attorney fees as determined
25 by the state public defender from the indigent defense fund
26 established in Code section 815.11.

27 The bill establishes a process for payment of state funds
28 to a privately retained attorney for the costs incurred in the
29 legal representation of a person who is later determined to be
30 indigent.

31 Under the bill, the privately retained attorney shall submit
32 an application for the payment of state funds in camera with
33 the court in the county in which the case was filed. The bill
34 requires the application to include a copy of the attorney's
35 fee agreement, an itemized accounting of all compensation

1 paid to the attorney including the amount of any retainer,
2 information on any expected additional expense paid or owed
3 to the attorney in the case, and a signed financial affidavit
4 completed by the represented person.

5 The bill requires a copy of the application to be submitted
6 to the state public defender.

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

34 This process of the payment of state funds established in
35 the bill also applies to payments to witnesses, evaluators,

1 investigators, and certified shorthand reporters, and for other
2 costs incurred in the legal representation. However, nothing
3 in the bill is to be construed to restrict payment of expenses
4 from state funds on behalf on an indigent person represented by
5 an attorney on a pro bono basis.