

Senate Study Bill 1135 - 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 for costs incurred by a privately
3 retained attorney representing an indigent person.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 815.1 Costs incurred by a privately
2 retained attorney representing an indigent person.

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

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

12 a. A copy of the attorney's fee agreement for the
13 representation, including hourly rate, amount of retainer or
14 other moneys received, and number of hours of work completed
15 by the attorney to date.

16 b. A showing that the costs are reasonable and necessary for
17 the representation of the indigent person in a case for which
18 counsel could have been appointed under section 815.10.

19 c. An itemized accounting of all compensation paid to the
20 attorney including the amount of any retainer.

21 d. The amount of compensation earned by the attorney.

22 e. Information on any expected additional costs to be
23 paid or owed by the indigent person to the attorney for the
24 representation.

25 f. A signed financial affidavit completed by the indigent
26 person.

27 3. The privately retained attorney shall submit a copy of
28 the application and all attached documents to the state public
29 defender.

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

34 a. The represented person is indigent and unable to pay for
35 the costs sought to be paid.

1 *b.* The costs are reasonable and necessary for the
2 representation of the indigent person in a case for which
3 counsel could have been appointed under section 815.10.

4 *c.* The moneys paid or to be paid to the privately
5 retained attorney by or on behalf of the indigent person are
6 insufficient to pay all or a portion of the costs sought to be
7 paid from state funds.

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

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

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

24 5. Either the privately retained attorney for the indigent
25 person or a representative from the office of the state public
26 defender may participate in a hearing on the application by
27 telephone.

28 6. If the court finds the payment of the costs incurred or
29 to be incurred by a privately retained attorney are reasonable
30 and necessary, the order of the court shall specify the maximum
31 amount of costs which the attorney may incur without further
32 court order, and that the actual amount of such costs to be
33 allowed are subject to review by the state public defender for
34 reasonableness.

35 7. Following entry of an order allowing costs to be incurred

1 by a privately retained attorney representing an indigent
2 person, the attorney or a claimant referred to in subsection 9
3 seeking payment or reimbursement for costs shall submit a claim
4 for payment in accordance with the rules of the state public
5 defender.

6 8. If the privately retained attorney or claimant referred
7 to in subsection 9 seeking payment or reimbursement for costs
8 pursuant to this section fails to comply with the requirements
9 of this section, the state public defender may deny all or a
10 part of the costs requested.

11 9. This section applies to payments to witnesses under
12 section 815.4, evaluators, investigators, and certified
13 shorthand reporters, and for other costs incurred by a
14 privately retained attorney in the legal representation.

15 10. This section shall not be construed to restrict the
16 payment of costs on behalf of indigent persons represented on
17 a pro bono basis.

18 EXPLANATION

19 The inclusion of this explanation does not constitute agreement with
20 the explanation's substance by the members of the general assembly.

21 This bill relates to payments from the indigent defense fund
22 by the state public defender for costs incurred by a privately
23 retained attorney representing an indigent person.

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

28 Under the bill, the privately retained attorney shall
29 file an application for the payment of state funds with the
30 court. The bill requires the application to include a copy
31 of the attorney's fee agreement, a showing that the costs
32 are reasonable and necessary, an itemized accounting of all
33 compensation paid to the attorney including the amount of any
34 retainer, information on any expected additional expense paid
35 or owed to the attorney in the case, and a signed financial

1 affidavit completed by the represented person.

2 The bill requires a copy of the application to be submitted
3 to the state public defender.

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

1 the maximum amount of costs which the attorney may incur
2 without further court order, and that the actual amount of such
3 costs to be allowed are subject to review by the state public
4 defender for reasonableness. Following entry of an order
5 allowing costs to be incurred by a privately retained attorney
6 representing an indigent person, the attorney or claimant
7 seeking payment or reimbursement for costs shall submit a claim
8 for payment in accordance with the rules of the state public
9 defender. If the privately retained attorney or claimant
10 seeking payment or reimbursement for such costs fails to comply
11 with the requirements of the bill, the state public defender
12 may deny all or a part of the costs requested.

13 This process of the payment of state funds established in
14 the bill also applies to payments to witnesses, evaluators,
15 investigators, and certified shorthand reporters, and for other
16 costs incurred in the legal representation. However, nothing
17 in the bill should be construed to restrict payment of expenses
18 from state funds on behalf on an indigent person represented by
19 an attorney on a pro bono basis.