

FEB 21 2006
HUMAN RESOURCES

HOUSE FILE 2452
BY ALONS

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

A BILL FOR

1 An Act relating to involuntary termination of parental rights
2 proceedings, providing an effective date, and providing for
3 retroactive applicability.

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

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

3 1. The state public defender shall coordinate the
4 provision of legal representation of all indigents under
5 arrest or charged with a crime, seeking postconviction relief,
6 against whom a contempt action is pending, in proceedings
7 under section 811.1A or chapter 229A, 600A, or 812, in
8 juvenile proceedings, on appeal in criminal cases, and on
9 appeal in proceedings to obtain postconviction relief when
10 ordered to do so by the district court in which the judgment
11 or order was issued, and may provide for the representation of
12 indigents in proceedings instituted pursuant to chapter 908.
13 The state public defender shall not engage in the private
14 practice of law.

15 Sec. 2. Section 600A.6, subsection 3, paragraph c, Code
16 Supplement 2005, is amended to read as follows:

17 c. A statement that the person parent against whom a
18 proceeding for involuntary termination of parental rights is
19 brought filed shall have the right to counsel and, if the
20 parent is indigent, the right to appointment of counsel,
21 pursuant to section 600A.6A.

22 Sec. 3. Section 600A.6A, Code Supplement 2005, is amended
23 to read as follows:

24 600A.6A INVOLUNTARY TERMINATION -- RIGHT TO AND
25 APPOINTMENT OF COUNSEL.

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

30 2. If the parent against whom the petition is filed
31 desires but is financially unable to employ counsel, the
32 court, following an-in-court-colloquy a determination that the
33 parent is indigent, shall appoint counsel for the person-if
34 all-of-the-following-criteria-are-met:

35 a.--The-person-requests-appointment-of-counsel parent.

1 ~~b.--The person is indigent.~~

2 ~~c.--The court determines both of the following:~~

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

8 ~~(2)--The person has a colorable defense to the termination~~
9 ~~of parental rights, or there are substantial reasons that make~~
10 ~~termination of parental rights inappropriate. In appointing~~
11 counsel to represent a parent under this section, the court
12 shall first consider appointing an attorney under contract
13 with the state public defender pursuant to section 13B.4. If
14 an attorney under contract with the state public defender is
15 not available, the court may appoint an attorney who has
16 agreed to provide these services. The appointed attorney
17 shall apply to the state public defender for payment in the
18 manner prescribed by the state public defender.

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

25 Sec. 4. Section 602.1302, subsection 3, Code Supplement
26 2005, is amended to read as follows:

27 3. A revolving fund is created in the state treasury for
28 the payment of jury and witness fees, mileage, costs related
29 to summoning jurors by the judicial branch, and attorney fees
30 paid by the state public defender for counsel appointed
31 pursuant to section 600A.6A. The judicial branch shall
32 deposit any reimbursements to the state for the payment of
33 jury and witness fees and mileage in the revolving fund. In
34 each calendar quarter the judicial branch shall reimburse the
35 state public defender for attorney fees paid pursuant to

1 section ~~600A-6B~~ 600A.6A. Notwithstanding section 8.33,
2 unencumbered and unobligated receipts in the revolving fund at
3 the end of a fiscal year do not revert to the general fund of
4 the state. The judicial branch shall on or before February 1
5 file a financial accounting of the moneys in the revolving
6 fund with the legislative services agency. The accounting
7 shall include an estimate of disbursements from the revolving
8 fund for the remainder of the fiscal year and for the next
9 fiscal year.

10 Sec. 5. Section 815.7, Code 2005, is amended to read as
11 follows:

12 815.7 FEES TO ATTORNEYS.

13 An attorney who has not entered into a contract authorized
14 under section 13B.4 and who is appointed by the court to
15 represent any person charged with a crime in this state,
16 seeking postconviction relief, against whom a contempt action
17 is pending, appealing a criminal conviction, appealing a
18 denial of postconviction relief, or subject to a proceeding
19 under section 811.1A or chapter 229A, 600A, or 812, or to
20 serve as counsel for any person or guardian ad litem for any
21 child in juvenile court, shall be entitled to reasonable
22 compensation and expenses. For appointments made on or after
23 July 1, 1999, the reasonable compensation shall be calculated
24 on the basis of sixty dollars per hour for class "A" felonies,
25 fifty-five dollars per hour for class "B" felonies, and fifty
26 dollars per hour for all other cases. The expenses shall
27 include any sums as are necessary for investigations in the
28 interest of justice, and the cost of obtaining the transcript
29 of the trial record and briefs if an appeal is filed. The
30 attorney need not follow the case into another county or into
31 the appellate court unless so directed by the court. If the
32 attorney follows the case into another county or into the
33 appellate court, the attorney shall be entitled to
34 compensation as provided in this section. Only one attorney
35 fee shall be so awarded in any one case except that in class

1 "A" felony cases, two may be authorized.

2 Sec. 6. Section 815.9, Code 2005, is amended by adding the
3 following new subsection:

4 NEW SUBSECTION. 1A. In addition to appointment of an
5 attorney as described in subsection 1, a person is entitled to
6 an attorney appointed by the court for the purposes of chapter
7 600A if the person is indigent as defined in section 600A.2.

8 Sec. 7. Section 815.11, Code Supplement 2005, is amended to
9 read as follows:

10 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

11 Costs incurred under chapter 229A, 665, 822, or 908, or
12 section 232.141, subsection 3, paragraph "c", or section
13 598.23A, ~~600A-6B~~ 600A.6A, 814.9, 814.10, 814.11, 815.4, 815.7,
14 or 815.10 on behalf of an indigent shall be paid from funds
15 appropriated by the general assembly to the office of the
16 state public defender in the department of inspections and
17 appeals for those purposes. Costs incurred representing an
18 indigent defendant in a contempt action, or representing an
19 indigent juvenile in a juvenile court proceeding under chapter
20 600, are also payable from these funds. However, costs
21 incurred in any administrative proceeding or in any other
22 proceeding under chapter 598, 600, 600A, 633, or 915 or other
23 provisions of the Code or administrative rules are not payable
24 from these funds.

25 Sec. 8. Section 600A.6B, Code Supplement 2005, is
26 repealed.

27 Sec. 9. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY.
28 This Act, being deemed of immediate importance, takes effect
29 upon enactment and is retroactively applicable to March 12,
30 2004.

31 EXPLANATION

32 This bill relates to involuntary termination of parental
33 rights proceedings under Code chapter 600A. Code chapters 232
34 and 600A both provide for termination of parental rights
35 proceedings. The bill changes the provisions of Code chapter

1 600A to make them consistent with the provisions of Code
2 chapter 232 relative to involuntary terminations of parental
3 rights. The bill provides that if a petition for involuntary
4 termination of parental rights is filed under Code chapter
5 600A, the parent identified in the petition has the right to
6 counsel in connection with all subsequent hearings and
7 proceedings. If the parent identified in the petition for
8 involuntary termination desires but is financially unable to
9 employ counsel, the bill directs the court, following a
10 determination that the parent is indigent, to appoint counsel
11 for the parent.

12 The bill eliminates the provisions requiring the person who
13 files the petition or the person on whose behalf the petition
14 is filed to be responsible for the payment of the fees of the
15 attorney appointed for the indigent parent. Instead, the bill
16 provides that in appointing counsel for an indigent parent,
17 the court is first to consider appointing an attorney under
18 contract with the state public defender. If an attorney under
19 contract with the state public defender is not available, the
20 court may then appoint an attorney who has agreed to provide
21 these services, and the appointed attorney must apply to the
22 state public defender for payment. The bill authorizes the
23 state public defender to review all the claims submitted under
24 the bill and provides the state public defender with the same
25 authority regarding the payment of these claims as with other
26 claims submitted.

27 The bill also makes conforming changes in Code chapter 13B
28 (public defender), chapter 602 (judicial branch relating to
29 state funding), and chapter 802 (indigent defense).

30 The bill takes effect upon enactment, and is retroactively
31 applicable to March 12, 2004, which is the date the Iowa
32 supreme court decision in *In re S.A.J.B.*, 679 N.W.2d 645 (Iowa
33 2004), was filed. In that case the Iowa supreme court held,
34 on equal protection grounds, that if an indigent parent has
35 the right to counsel at public expense in involuntary

1 termination of parental rights proceedings under Code chapter
2 232, the same right should be afforded such parents in
3 proceedings brought under Code chapter 600A.

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