

Tremmel, Chair
Shen
Larson

HSB 703

JUDICIARY

Succeeded By

HOUSE FILE

SF / (HF) 2563

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LARSON)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to legal representation of an indigent person in
2 a parole proceeding.

3 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 2001, is
2 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 chapter 229A, on appeal in criminal cases, on appeal in
8 proceedings to obtain postconviction relief when ordered to do
9 so by the district court in which the judgment or order was
10 issued, and on a reopening of a sentence proceeding, and may
11 provide for the representation of indigents in proceedings
12 instituted pursuant to chapter 908. The state public defender
13 shall not provide legal representation to a person in a parole
14 proceeding. The state public defender shall not engage in the
15 private practice of law.

16 Sec. 2. Section 815.1, Code 2001, is amended to read as
17 follows:

18 815.1 COSTS PAYABLE BY STATE IN SPECIAL CASES.

19 All costs and fees incurred ~~in-a-parole-revocation~~
20 ~~proceeding-or~~ in a criminal case brought against an inmate of
21 a state institution for a crime committed while confined in
22 the institution, or for a crime committed by the inmate while
23 placed outside the walls or confines of the institution under
24 the control and direction of a warden, supervisor, officer, or
25 employee of the institution, or for a crime committed by the
26 inmate during an escape or other unauthorized departure from
27 the institution or from the control of a warden, supervisor,
28 officer, or employee of the institution, or from wherever the
29 inmate may have been placed by authorized personnel of the
30 institution, are waived if the prosecution fails, or if the
31 person liable to pay the costs and fees cannot pay the costs
32 and fees. An award of attorney fees to a court-appointed
33 attorney incurred in these cases shall be paid out of the
34 state treasury from the general fund if the prosecution fails
35 or if the person liable to pay the attorney fees cannot pay

1 them. The facts shall be certified by the clerk of the
 2 district court under the clerk's seal of office to the
 3 director of the department of corrections, including a
 4 statement of the amount of fees or costs incurred, approved by
 5 the presiding judge in writing. When a conviction is rendered
 6 and the court orders restitution for costs of the prosecution,
 7 the inmate, work releasee, or parolee shall make restitution
 8 to the general fund pursuant to section 910.2.

9 Sec. 3. Section 815.10, subsection 1, Code 2001, is
 10 amended to read as follows:

11 1. The court, for cause and upon its own motion or upon
 12 application by an indigent person or a public defender, shall
 13 appoint the state public defender's designee pursuant to
 14 section 13B.4, or an attorney pursuant to section 13B.9, to
 15 represent an indigent person at any stage of the criminal,
 16 postconviction, contempt, commitment under chapter 229A, or
 17 juvenile proceedings or on appeal of any criminal,
 18 postconviction, contempt, commitment under chapter 229A, or
 19 juvenile action in which the indigent person is entitled to
 20 legal assistance at public expense. However, in the state
 21 public defender's designee or an attorney subject to
 22 appointment under section 13B.9 shall not be appointed to
 23 represent a person in a parole proceeding. In juvenile cases,
 24 the court may directly appoint an existing nonprofit
 25 corporation established for and engaged in the provision of
 26 legal services for juveniles. An appointment shall not be
 27 made unless the person is determined to be indigent under
 28 section 815.9. Only one attorney shall be appointed in all
 29 cases, except that in class "A" felony cases the court may
 30 appoint two attorneys.

31 Sec. 4. Section 908.2, unnumbered paragraph 1, Code 2001,
 32 is amended to read as follows:

33 An officer making an arrest of an alleged parole violator
 34 shall take the arrested person before a magistrate without
 35 unnecessary delay for an initial appearance. At that time the

1 alleged parole violator shall be furnished with a written
2 notice of the claimed violation, ~~shall be advised of the right~~
3 ~~to appointed counsel under rule 26 of the rules of criminal~~
4 ~~procedure~~, and shall be given notice that a parole revocation
5 hearing will take place and that its purpose is to determine
6 whether the alleged parole violation occurred and whether the
7 alleged violator's parole should be revoked.

8 EXPLANATION

9 This bill relates to legal representation of an indigent
10 person in a parole proceeding.

11 The bill provides that the state public defender, the state
12 public defender's designee, or any other attorney appointed by
13 the court to represent an indigent person shall not be
14 appointed or provide legal representation for an indigent
15 person in a parole proceeding.

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5-3/13/02 Judiciary
5-3/14/02 Do Pass

FEB 27 2002
Place On Calendar

HOUSE FILE 2563
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 703)

Passed House, ^(P.739) Date 3-12-02 Passed Senate, Date _____
Vote: Ayes 94 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

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HF 2563

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Legislative Fiscal Bureau

Fiscal Note

HF 2563 - Representation of Indigent Probationers & Parolees (LSB 6874 HV)
Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)
Fiscal Note Version - New
Requested by Representative Mark Tremmel

Description

House File 2563 provides that defense counsel shall not be provided in a parole proceeding.

Assumptions

1. State costs for indigent defense in parole proceedings during FY 2001 were approximately \$70,000.
2. The law will become effective July 1, 2002. A lag of six months is assumed, from the effective date in the change in the law to the date of parole proceedings occurring without defense counsel for indigent parolees.
3. The average annual increase in total spending is 6.2% for indigent defense, including the State Public Defender's Office and the Indigent Defense appropriation, from FY 1997 through FY 2001.
4. The average annual increase for all cases is 8.4% staffed by the State Public Defender's Office and all claims for the Indigent Defense appropriation from FY 1990 through FY 2001.

Fiscal Impact

State claims for indigent defense may be reduced by \$35,000 in FY 2003 and \$70,000 in FY 2004. However, this may be a cost containment measure rather than an expenditure reduction measure. Total spending may not decrease due to increases in other cases and claims staffed by the State Public Defender's Office or private attorneys.

Source

Office of the State Public Defender

/s/ Dennis C Prouty

February 28, 2002

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Legislative Fiscal Bureau

Fiscal Note

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