

Lamberti, Fiegen, Tinsman

SSB 3011  
Judiciary

Succeeded By  
SF HF 2301

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
INSPECTIONS AND APPEALS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to representation of indigent persons and the  
2 duties of the state public defender.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 13B.4, subsection 4, paragraph c, Code  
2 2001, is amended to read as follows:

3 c. The state public defender may review any claim for  
4 payment of indigent defense costs and may take any of the  
5 following actions:

6 (1) If the charges are appropriate and reasonable, approve  
7 the claim for payment.

8 (2) ~~Deny the claim, if the claim is not timely filed.~~  
9 Deny the claim under the following circumstances:

10 (a) If it is not timely.

11 (b) If it is not payable as an indigent defense claim  
12 under chapter 815.

13 (c) If it is not payable under the contract between the  
14 claimant and the state public defender.

15 (d) If the appointment of the claimant was obtained in  
16 violation of section 814.11 or 815.10.

17 (3) Request additional information or return the claim to  
18 the attorney, if the claim is incomplete.

19 (4) If any portion of the claim is excessive, notify the  
20 attorney that the claim is excessive and will be reduced to an  
21 amount which is not excessive, and reduce and approve the  
22 balance of the claim.

23 (5) If any portion of the claim is not payable within the  
24 scope of appointment of the attorney, notify the attorney that  
25 a portion of the claim is not within the scope of appointment  
26 and is not payable, deny those portions of the claim that are  
27 not payable, and approve the balance of the claim.

28 Sec. 2. Section 13B.4, subsection 4, paragraph d, Code  
29 2001, is amended by striking the paragraph and inserting in  
30 lieu thereof the following:

31 d. Notwithstanding chapter 17A, the attorney may seek  
32 review of any action or intended action denying or reducing  
33 any claim by filing a motion with the court with jurisdiction  
34 over the original appointment for review.

35 (1) The motion must be filed with in twenty days of any

1 action taken by the state public defender.

2 (2) The state public defender shall be provided with at  
3 least ten days' notice of any hearing on the motion.

4 (3) The state public defender or the attorney may  
5 participate by telephone. The party appearing by telephone  
6 shall be responsible for initiating and paying for all  
7 telephone charges. If the state public defender and the  
8 attorney both participate in the hearing by telephone, the  
9 attorney shall be responsible for initiating and paying for  
10 all telephone charges.

11 (4) The filing of a motion shall not delay the payment of  
12 the amount approved by the state public defender.

13 (5) If a claim or portion of the claim is denied, the  
14 action of the state public defender shall be affirmed unless  
15 the action conflicts with an administrative rule or the law.

16 (6) If the claim is reduced for being excessive, the  
17 attorney shall have the burden to establish by a preponderance  
18 of the evidence that the amount of compensation and expenses  
19 is reasonable and necessary to competently represent the  
20 client.

21 Sec. 3. Section 13B.4, subsection 5, Code 2001, is amended  
22 by striking the subsection and inserting in lieu thereof the  
23 following:

24 5. In reviewing a claim for compensation submitted by an  
25 attorney who had been retained or agreed to represent an  
26 indigent person prior to appointment, the state public  
27 defender may consider any moneys earned or paid to the  
28 attorney prior to the appointment in determining whether the  
29 claim is reasonable and necessary or excessive. The attorney  
30 shall provide the state public defender with a copy of any  
31 representation agreement, and information on any moneys earned  
32 or paid to the attorney prior to the appointment.

33 Sec. 4. Section 13B.4, subsection 7, Code 2001, is amended  
34 by striking the subsection.

35 Sec. 5. Section 13B.8, subsection 1, unnumbered paragraph

1 2, Code 2001, is amended by striking the unnumbered paragraph.

2 Sec. 6. Section 13B.9, subsection 2, Code 2001, is amended  
3 to read as follows:

4 2. An ~~appointed~~ attorney appointed under this section is  
5 not liable to a person represented by the attorney pursuant-to  
6 ~~this-chapter~~ for damages as a result of a conviction in a  
7 criminal case unless the court determines in a postconviction  
8 ~~appeal~~ proceeding that the person's conviction resulted from  
9 ineffective assistance of counsel, and the ineffective  
10 assistance of counsel is the proximate cause of the damage.  
11 In juvenile or civil proceedings, an attorney appointed under  
12 this section is not liable to a person represented by the  
13 attorney for damages unless it has been determined that the  
14 attorney has provided ineffective assistance of counsel and  
15 the ineffective assistance of counsel claim is the proximate  
16 cause of the damage.

17 Sec. 7. Section 13B.9, subsection 4, Code 2001, is amended  
18 to read as follows:

19 4. If a conflict of interest arises or if the local public  
20 defender is unable to handle a case because of a temporary  
21 overload of cases, the local public defender shall return the  
22 case to the court. ~~The-court-shall-first-appoint-a-contract~~  
23 ~~attorney.--Appointments-by-the-court-shall-be-on-a-rotational~~  
24 ~~or-equalization-basis-considering-the-experience-of-the~~  
25 ~~attorney-and-the-difficulty-of-the-case.~~ If the case is  
26 returned and the state public defender has filed a successor  
27 designation, the court shall appoint the successor designee.  
28 If there is no successor designee on file, the court shall  
29 make the appointment pursuant to section 815.10.

30 Sec. 8. Section 13B.9, subsection 5, Code 2001, is amended  
31 by striking the subsection.

32 Sec. 9. Section 22.7, Code Supplement 2001, is amended by  
33 adding the following new subsection:

34 NEW SUBSECTION. 43. Information provided to the court and  
35 state public defender pursuant to section 13B.4, subsection 5;

1 section 814.11, subsection 6; or section 815.10, subsection 5.  
2 Sec. 10. Section 814.11, Code 2001, is amended to read as  
3 follows:

4 814.11 INDIGENT'S RIGHT TO COUNSEL.

5 1. An indigent defendant person is entitled to appointed  
6 counsel on the appeal of all indictable-offenses cases if the  
7 person is entitled to appointment of counsel under section  
8 815.9.

9 2. The If the appeal involves an indictable offense or  
10 denial of postconviction relief, the appointment shall be made  
11 to the state appellate defender unless the state appellate  
12 defender is unable to handle the case due to a conflict of  
13 interest or because of a temporary overload of cases.

14 3. If the appeal is other than an indictable offense or  
15 denial of postconviction relief or if the state appellate  
16 defender is unable to handle the case, the court shall appoint  
17 an attorney who has a contract with the state public defender  
18 to handle such an appeal.

19 4. If the court determines that no contract attorney is  
20 available to handle the appeal, the court may appoint a  
21 noncontract attorney ~~who-has-agreed-to-handle-the-case,-but~~  
22 ~~the.~~ The order of appointment shall include a specific  
23 finding that no contract attorney was available.

24 5. The appointment of ~~noncontract-attorneys~~ an attorney  
25 shall be on a rotational or equalization basis, considering  
26 the experience of the attorney and the difficulty of the case.

27 6. An attorney who has been retained or has agreed to  
28 represent a person on appeal and subsequently applies to the  
29 court for appointment to represent that person on appeal  
30 because the person is indigent shall notify the state public  
31 defender of the application. Upon the filing of the  
32 application, the attorney shall provide the state public  
33 defender with a copy of any representation agreement, and  
34 information on any moneys earned or paid to the attorney prior  
35 to the appointment.

1     7. An attorney appointed under this section is not liable  
2 to a person represented by the attorney for damages as a  
3 result of a conviction in a criminal case unless the court  
4 determines in a postconviction proceeding that the person's  
5 conviction resulted from ineffective assistance of counsel,  
6 and the ineffective assistance of counsel is the proximate  
7 cause of the damage. In juvenile or civil proceedings, an  
8 attorney appointed under this section is not liable to a  
9 person represented by the attorney for damages unless it has  
10 been determined that the attorney has provided ineffective  
11 assistance of counsel and the ineffective assistance of  
12 counsel claim is the proximate cause of the damage.

13     Sec. 11. Section 815.10, Code 2001, is amended to read as  
14 follows:

15     815.10 APPOINTMENT OF COUNSEL BY COURT.

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

33     ~~2. An attorney other than a public defender who is~~  
34 ~~appointed by the court under this section shall apply to the~~  
35 ~~state public defender for compensation and for reimbursement~~

1 of costs incurred. ~~The amount of compensation due shall be~~  
 2 ~~determined in accordance with any indigent defense contract or~~  
 3 ~~pursuant to section 815.7. If the state public defender or~~  
 4 ~~the state public defender's designee is unable to represent an~~  
 5 ~~indigent person, the court shall appoint an attorney who has a~~  
 6 ~~contract with the state public defender to represent the~~  
 7 ~~person.~~

8 3. ~~The state public defender shall adopt rules which~~  
 9 ~~specify the information which shall be included with all~~  
 10 ~~claims for compensation submitted by court appointed attorneys~~  
 11 ~~under this section. The rules shall require that a court~~  
 12 ~~appointed attorney shall obtain court approval of a claim~~  
 13 ~~prior to exceeding the fee limitations established pursuant to~~  
 14 ~~section 13B.4. However, a court appointed attorney may~~  
 15 ~~request court approval after exceeding a fee limitation if~~  
 16 ~~good cause is shown. The order approving a claim that exceeds~~  
 17 ~~the fee limitation shall be included in the information~~  
 18 ~~submitted under this section. If the information required~~  
 19 ~~under this section and the rules of the state public defender~~  
 20 ~~is not submitted, the claim may be denied until the~~  
 21 ~~information is provided. If the information required under~~  
 22 ~~this section and the rules of the state public defender is~~  
 23 ~~submitted with the claim, the state public defender may~~  
 24 ~~approve reasonable and proper compensation to the court~~  
 25 ~~appointed attorney in the manner provided in the rules. If~~  
 26 ~~the court determines that no contract attorney is available to~~  
 27 ~~represent the person, the court may appoint a noncontract~~  
 28 ~~attorney. The order of appointment shall include a specific~~  
 29 ~~finding that no contract attorney was available.~~

30 4. The appointment of an attorney shall be on a rotational  
 31 or equalization basis, considering the experience of the  
 32 attorney and the difficulty of the case.

33 5. An attorney who has been retained or has agreed to  
 34 represent a person and subsequently applies to the court for  
 35 appointment to represent that person because the person is

1 indigent shall notify the state public defender of the  
2 application. Upon the filing of the application, the attorney  
3 shall provide the state public defender with a copy of any  
4 representation agreement, and information on any moneys earned  
5 or paid to the attorney prior to the appointment.

6 6. An attorney appointed under this section is not liable  
7 to a person represented by the attorney for damages as a  
8 result of a conviction in a criminal case unless the court  
9 determines in a postconviction proceeding that the person's  
10 conviction resulted from ineffective assistance of counsel,  
11 and the ineffective assistance of counsel is the proximate  
12 cause of the damage. In juvenile or civil proceedings, an  
13 attorney appointed under this section is not liable to a  
14 person represented by the attorney for damages unless it has  
15 been determined that the attorney has provided ineffective  
16 assistance of counsel, and the ineffective assistance of  
17 counsel claim is the proximate cause of the damage.

18 Sec. 12. NEW SECTION. 815.10A CLAIMS FOR COMPENSATION.

19 1. An attorney other than a public defender who has been  
20 appointed by the court under this chapter must apply to the  
21 state public defender for compensation and reimbursement of  
22 expenses incurred in the representation of an indigent person.

23 2. An attorney shall obtain court approval prior to  
24 exceeding the fee limitations established by the state public  
25 defender pursuant to section 13B.4. An attorney may exceed  
26 the fee limitations, if good cause is shown. An attorney may  
27 obtain court approval after exceeding the fee limitations, if  
28 good cause is shown. Failure to timely file an application to  
29 exceed a fee limitation after exceeding the fees shall not  
30 constitute good cause. The application and the court order  
31 approving the application to exceed fee limitations shall be  
32 submitted with any claim for compensation.

33 3. If the information is not submitted as required under  
34 this section and under the rules of the state public defender,  
35 the claim for compensation may be denied until the information

1 is provided. Upon submitting the required information, the  
2 state public defender may approve reasonable and necessary  
3 compensation, as provided for in the administrative rules and  
4 the law.

5 Sec. 13. Section 815.11, Code 2001, is amended to read as  
6 follows:

7 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

8 Costs incurred under chapter 229A, 665, or 822, or section  
9 232.141, subsection 3, paragraph "c", or sections 814.9,  
10 814.10, 814.11, 815.4, 815.5, ~~815.6~~ 815.7, and 815.10, or the  
11 rules of criminal procedure on behalf of an indigent shall be  
12 paid from funds appropriated by the general assembly to the  
13 office of the state public defender in the department of  
14 inspections and appeals for those purposes. Costs incurred  
15 under other provisions of the Code or administrative rules are  
16 not payable from these funds.

17 EXPLANATION

18 This bill relates to the representation of indigent persons  
19 and to the duties of the state public defender.

20 The bill permits the state public defender to deny an  
21 indigent defense claim requesting payment from the state if  
22 the claim is not payable as an indigent defense claim, or if  
23 it is not payable under the contract between the attorney and  
24 the state public defender, or if the appointment was obtained  
25 improperly by the attorney. The bill also permits the state  
26 public defender to deny portions of a claim if it is not  
27 within the scope of representation of the indigent person.  
28 Current law permits the state public defender to deny a claim  
29 only if it is not timely filed or incomplete, and to deny  
30 those portions that are excessive.

31 The bill provides that an attorney seeking judicial review  
32 of any action denying or reducing an indigent defense claim  
33 must file a motion within 20 days of the denial or reduction  
34 of the claim by the state public defender. The bill requires  
35 the state public defender be notified 10 days prior to the

1 hearing on the motion. The bill permits the attorney or state  
2 public defender to appear at the hearing by telephone and that  
3 the party appearing by telephone shall be responsible for  
4 initiating and paying for the telephone charges. However, the  
5 bill provides that if both parties appear at the hearing by  
6 telephone, the attorney shall be responsible for initiating  
7 and paying for the telephone charges.

8 The bill provides that in reviewing a claim for  
9 compensation to determine if a claim is reasonable and  
10 necessary, the state public defender may consider whether the  
11 attorney was retained or agreed to represent the indigent  
12 person prior to appointment. The bill requires the attorney  
13 to provide the state public defender with any representation  
14 agreement and any information on moneys earned or paid prior  
15 to appointment. The bill makes confidential all attorney-  
16 client information submitted to the state public defender  
17 regarding the representation prior to appointment.

18 The bill strikes the section requiring the state public  
19 defender to annually report to the general assembly the amount  
20 of funds recouped from the collection of assessed court-  
21 appointed attorney fees and public defender expenses.

22 The bill strikes the Code provision requiring the state  
23 public defender to provide a written proposal to the justice  
24 systems appropriation subcommittee detailing the reasons for  
25 establishing or abolishing a local public defender office.  
26 The provision stricken by the bill requires that if the state  
27 public defender proposes to abolish a local public defender  
28 office before the regular session of the general assembly, the  
29 state public defender must notify the general assembly of such  
30 action. The provision stricken by the bill further requires  
31 that, if within the first 90 days of session, the general  
32 assembly fails to act on the proposal, the local public  
33 defender office shall be abolished.

34 The bill provides that a public defender or any other  
35 attorney appointed to represent an indigent person is immune

1 from liability for representing the person, unless it is found  
 2 that the attorney provided ineffective assistance of counsel  
 3 and it is the proximate cause of the injury or damage to the  
 4 person. Current law provides that an appointed attorney is  
 5 immune from liability unless the conviction of an indigent  
 6 person resulted from ineffective assistance of counsel.

7 The bill provides that if the public defender is unable to  
 8 represent a person because of a temporary overload of cases or  
 9 a conflict of interest, the court shall appoint the designee  
 10 of the public defender. The bill provides that if there is no  
 11 designee available, the court shall appoint a contract  
 12 attorney, and if a contract attorney is unavailable, the court  
 13 shall appoint a noncontract attorney. Current law provides  
 14 that if the public defender has a temporary overload of cases  
 15 or a conflict of interest, the court shall first attempt to  
 16 appoint a contract attorney; however, if a contract attorney  
 17 is unavailable, then appoint a noncontract attorney.

18 The bill provides that the court shall first attempt to  
 19 appoint the appellate defender, if available, to represent an  
 20 indigent person on appeal for denial of postconviction relief.

21 The bill provides that an attorney appointed to represent  
 22 an indigent person shall obtain court approval prior to  
 23 exceeding the fee limitations established pursuant to Code  
 24 section 13B.4, subsection 4. The bill provides that an  
 25 attorney may exceed the fee limitations if good cause is  
 26 shown. The bill also provides that an attorney may obtain  
 27 court approval after exceeding the fee limitations, if good  
 28 cause is shown. The bill provides that failure to timely file  
 29 an application to exceed the fee limitations after exceeding  
 30 the fees does not constitute good cause.

31 The bill provides that costs incurred under provisions of  
 32 the Code not enumerated and administrative rules, including  
 33 fees to material witnesses, are not payable out of indigent  
 34 defense funds.

35

SSB 3011

IOWA DEPARTMENT OF

# INSPECTIONS & APPEALS

THOMAS J. VILSACK  
GOVERNOR

KEVIN W. TECHAU, DIRECTOR

SALLY J. PEDERSON  
LT. GOVERNOR

January 14, 2002

TO: Members of the General Assembly

FR: Office of the State Public Defender

RE: Proposed legislative changes regarding the operation of the State Public Defender system

This bill clarifies several provisions regarding appointment of counsel, review and payment of fee claims, payments from the indigent defense fund, and operation of the state public defender system. The bill also conforms certain statutory provisions to current practice.

For additional information regarding this proposal, or other questions, please contact Mark Smith, First Assistant State Public Defender, at 242-6513 or by e-mail at [Mark.Smith@SPD.state.ia.us](mailto:Mark.Smith@SPD.state.ia.us).

LUCAS STATE OFFICE BUILDING, 321 EAST 12<sup>TH</sup> STREET, DES MOINES, IOWA 50319-0083 • TTY: (515) 242-6515

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(515) 281-5457

ADMINISTRATIVE HEARINGS  
(515) 281-4843

AUDITS  
(515) 242-5109

HEALTH FACILITIES  
(515) 281-4115

INSPECTIONS  
(515) 281-5686

INVESTIGATIONS  
(515) 281-5714

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FILED FEB 25 2002

SENATE FILE 2301  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3011)

Passed Senate, Date <sup>(p.558)</sup> 3-11-02 Passed House, Date <sup>(p.906)</sup> 3/20/02  
Vote: Ayes 48 Nays 0 Vote: Ayes 94 Nays 0

Approved April 4, 2002

*re-passed 3-25-02*  
*Vote 49-0*

A BILL FOR

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*2301*

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7 the claim for payment.

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9 under any of the following circumstances:

10 (a) If it is not timely.

11 (b) If it is not payable as an indigent defense claim  
12 under chapter 815.

13 (c) If it is not payable under the contract between the  
14 claimant and the state public defender.

15 (d) If the appointment of the claimant was obtained in  
16 violation of section 814.11 or 815.10.

17 (3) Request additional information or return the claim to  
18 the attorney, if the claim is incomplete.

19 (4) If any portion of the claim is excessive, notify the  
20 attorney that the claim is excessive and will be reduced to an  
21 amount which is not excessive, and reduce and approve the  
22 balance of the claim.

23 (5) If any portion of the claim is not payable within the  
24 scope of appointment of the attorney, notify the attorney that  
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31 d. Notwithstanding chapter 17A, the attorney may seek  
32 review of any action or intended action denying or reducing  
33 any claim by filing a motion with the court with jurisdiction  
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35 (1) The motion must be filed within twenty days of any

1 action taken by the state public defender.

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3 least ten days' notice of any hearing on the motion.

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5 ~~appeal~~ proceeding that the person's conviction resulted from  
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7 assistance of counsel is the proximate cause of the damage.  
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14     Sec. 7. Section 13B.9, subsection 4, Code 2001, is amended  
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16     4. If a conflict of interest arises or if the local public  
17 defender is unable to handle a case because of a temporary  
18 overload of cases, the local public defender shall return the  
19 case to the court. ~~The court shall first appoint a contract~~  
20 ~~attorney.---Appointments by the court shall be on a rotational~~  
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22 ~~attorney and the difficulty of the case.~~ If the case is  
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24 designation, the court shall appoint the successor designee.  
25 If there is no successor designee on file, the court shall  
26 make the appointment pursuant to section 815.10.

27     Sec. 8. Section 13B.9, subsection 5, Code 2001, is amended  
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6 2. The If the appeal involves an indictable offense or  
7 denial of postconviction relief, the appointment shall be made  
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9 defender is unable to handle the case due to a conflict of  
10 interest or because of a temporary overload of cases.

11 3. If the appeal is other than an indictable offense or  
12 denial of postconviction relief or if the state appellate  
13 defender is unable to handle the case, the court shall appoint  
14 an attorney who has a contract with the state public defender  
15 to handle such an appeal.

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17 available to handle the appeal, the court may appoint a  
18 noncontract attorney who-has-agreed-to-handle-the-case,-but  
19 the. The order of appointment shall include a specific  
20 finding that no contract attorney was available.

21 5. The appointment of noncontract-attorneys an attorney  
22 shall be on a rotational or equalization basis, considering  
23 the experience of the attorney and the difficulty of the case.

24 6. An attorney who has been retained or has agreed to  
25 represent a person on appeal and subsequently applies to the  
26 court for appointment to represent that person on appeal  
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28 defender of the application. Upon the filing of the  
29 application, the attorney shall provide the state public  
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32 to the appointment.

33 7. An attorney appointed under this section is not liable  
34 to a person represented by the attorney for damages as a  
35 result of a conviction in a criminal case unless the court

1 determines in a postconviction proceeding that the person's  
2 conviction resulted from ineffective assistance of counsel,  
3 and the ineffective assistance of counsel is the proximate  
4 cause of the damage. In juvenile or civil proceedings, an  
5 attorney appointed under this section is not liable to a  
6 person represented by the attorney for damages unless it has  
7 been determined that the attorney has provided ineffective  
8 assistance of counsel and the ineffective assistance of  
9 counsel claim is the proximate cause of the damage.

10 Sec. 11. Section 815.9, subsection 8, Code 2001, is  
11 amended to read as follows:

12 8. If a person is granted an appointed attorney or is  
13 receiving has received legal assistance in accordance with  
14 this section and the person is employed, the person shall  
15 execute an assignment of wages. An order for assignment of  
16 income, in a reasonable amount to be determined by the court,  
17 shall also be entered by the court. The state public defender  
18 shall prescribe forms for use in wage assignments and court  
19 orders entered under this section subsection.

20 Sec. 12. Section 815.10, Code 2001, is amended to read as  
21 follows:

22 815.10 APPOINTMENT OF COUNSEL BY COURT.

23 1. The court, for cause and upon its own motion or upon  
24 application by an indigent person or a public defender, shall  
25 appoint the state public defender's designee pursuant to  
26 ~~section 13B.4, or an attorney pursuant to section 13B-9,~~ to  
27 represent an indigent person at any stage of the criminal,  
28 postconviction, contempt, commitment under chapter 229A, or  
29 juvenile proceedings or on appeal of any criminal,  
30 postconviction, contempt, commitment under chapter 229A, or  
31 juvenile action in which the indigent person is entitled to  
32 legal assistance at public expense. However, in juvenile  
33 cases, the court may directly appoint an existing nonprofit  
34 corporation established for and engaged in the provision of  
35 legal services for juveniles. An appointment shall not be

1 made unless the person is determined to be indigent under  
2 section 815.9. Only one attorney shall be appointed in all  
3 cases, except that in class "A" felony cases the court may  
4 appoint two attorneys.

5 2. ~~An attorney other than a public defender who is~~  
6 ~~appointed by the court under this section shall apply to the~~  
7 ~~state public defender for compensation and for reimbursement~~  
8 ~~of costs incurred. The amount of compensation due shall be~~  
9 ~~determined in accordance with any indigent defense contract or~~  
10 ~~pursuant to section 815.7. If the state public defender or~~  
11 ~~the state public defender's designee is unable to represent an~~  
12 ~~indigent person, the court shall appoint an attorney who has a~~  
13 ~~contract with the state public defender to represent the~~  
14 ~~person.~~

15 3. ~~The state public defender shall adopt rules which~~  
16 ~~specify the information which shall be included with all~~  
17 ~~claims for compensation submitted by court appointed attorneys~~  
18 ~~under this section. The rules shall require that a court-~~  
19 ~~appointed attorney shall obtain court approval of a claim~~  
20 ~~prior to exceeding the fee limitations established pursuant to~~  
21 ~~section 13B.4. However, a court appointed attorney may~~  
22 ~~request court approval after exceeding a fee limitation if~~  
23 ~~good cause is shown. The order approving a claim that exceeds~~  
24 ~~the fee limitation shall be included in the information~~  
25 ~~submitted under this section. If the information required~~  
26 ~~under this section and the rules of the state public defender~~  
27 ~~is not submitted, the claim may be denied until the~~  
28 ~~information is provided. If the information required under~~  
29 ~~this section and the rules of the state public defender is~~  
30 ~~submitted with the claim, the state public defender may~~  
31 ~~approve reasonable and proper compensation to the court-~~  
32 ~~appointed attorney in the manner provided in the rules. If~~  
33 ~~the court determines that no contract attorney is available to~~  
34 ~~represent the person, the court may appoint a noncontract~~  
35 ~~attorney. The order of appointment shall include a specific~~

1 finding that no contract attorney was available.

2 4. The appointment of an attorney shall be on a rotational  
3 or equalization basis, considering the experience of the  
4 attorney and the difficulty of the case.

5 5. An attorney who has been retained or has agreed to  
6 represent a person and subsequently applies to the court for  
7 appointment to represent that person because the person is  
8 indigent shall notify the state public defender of the  
9 application. Upon the filing of the application, the attorney  
10 shall provide the state public defender with a copy of any  
11 representation agreement, and information on any moneys earned  
12 or paid to the attorney prior to the appointment.

13 6. An attorney appointed under this section is not liable  
14 to a person represented by the attorney for damages as a  
15 result of a conviction in a criminal case unless the court  
16 determines in a postconviction proceeding that the person's  
17 conviction resulted from ineffective assistance of counsel,  
18 and the ineffective assistance of counsel is the proximate  
19 cause of the damage. In juvenile or civil proceedings, an  
20 attorney appointed under this section is not liable to a  
21 person represented by the attorney for damages unless it has  
22 been determined that the attorney has provided ineffective  
23 assistance of counsel, and the ineffective assistance of  
24 counsel claim is the proximate cause of the damage.

25 Sec. 13. NEW SECTION. 815.10A CLAIMS FOR COMPENSATION.

26 1. An attorney other than a public defender who has been  
27 appointed by the court under this chapter must apply to the  
28 state public defender for compensation and reimbursement of  
29 expenses incurred in the representation of an indigent person.

30 2. An attorney shall obtain court approval prior to  
31 exceeding the fee limitations established by the state public  
32 defender pursuant to section 13B.4. An attorney may exceed  
33 the fee limitations, if good cause is shown. An attorney may  
34 obtain court approval after exceeding the fee limitations, if  
35 good cause is shown. The order approving an application to

1 exceed the fee limitations shall be effective from the date of  
2 filing the application unless the court order provides an  
3 alternative effective date. Failure to timely file an  
4 application to exceed a fee limitation after exceeding the  
5 fees shall not constitute good cause. The application and the  
6 court order approving the application to exceed fee  
7 limitations shall be submitted with any claim for  
8 compensation.

9 3. If the information is not submitted as required under  
10 this section and under the rules of the state public defender,  
11 the claim for compensation may be denied until the information  
12 is provided. Upon submitting the required information, the  
13 state public defender may approve reasonable and necessary  
14 compensation, as provided for in the administrative rules and  
15 the law.

16 Sec. 14. Section 815.11, Code 2001, is amended to read as  
17 follows:

18 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

19 Costs incurred under chapter 229A, 665, or 822, or section  
20 232.141, subsection 3, paragraph "c", or sections 814.9,  
21 814.10, 814.11, 815.4, 815.5, ~~815.6~~ 815.7, and 815.10, 908.1,  
22 and 908.11, or the rules of criminal procedure on behalf of an  
23 indigent shall be paid from funds appropriated by the general  
24 assembly to the office of the state public defender in the  
25 department of inspections and appeals for those purposes.  
26 Costs incurred under other provisions of the Code or  
27 administrative rules are not payable from these funds.

28 Sec. 15. NEW SECTION. 815.14 FEE FOR PUBLIC DEFENDER.

29 When determining the amount of restitution for each case  
30 under section 910.3, the expense of the public defender shall  
31 be calculated at the same hourly rate of compensation  
32 specified under section 815.7. However, the expense of the  
33 public defender shall not exceed the fee limitations  
34 established in section 13B.4.

5 EXPLANATION

1 This bill relates to the representation of indigent persons  
2 and to the duties of the state public defender.

3 The bill permits the state public defender to deny an  
4 indigent defense claim requesting payment from the state if  
5 the claim is not payable as an indigent defense claim, or if  
6 it is not payable under the contract between the attorney and  
7 the state public defender, or if the appointment was obtained  
8 improperly by the attorney. The bill also permits the state  
9 public defender to deny portions of a claim if it is not  
10 within the scope of representation of the indigent person.  
11 Current law permits the state public defender to deny a claim  
12 only if it is not timely filed or incomplete, and to deny  
13 those portions that are excessive.

14 The bill provides that an attorney seeking judicial review  
15 of any action denying or reducing an indigent defense claim  
16 must file a motion within 20 days of the denial or reduction  
17 of the claim by the state public defender. The bill requires  
18 the state public defender be notified 10 days prior to the  
19 hearing on the motion. The bill permits the attorney or state  
20 public defender to appear at the hearing by telephone and that  
21 the party appearing by telephone shall be responsible for  
22 initiating and paying for the telephone charges.

23 The bill provides that in reviewing a claim for  
24 compensation to determine if a claim is reasonable and  
25 necessary, the state public defender may consider whether the  
26 attorney was retained or agreed to represent the indigent  
27 person prior to appointment. The bill requires the attorney  
28 to provide the state public defender with any representation  
29 agreement and any information on moneys earned or paid prior  
30 to appointment. The bill makes confidential all attorney-  
31 client information submitted to the state public defender  
32 regarding the representation prior to appointment.

33 The bill strikes the section requiring the state public  
34 defender to annually report to the general assembly the amount  
35 of funds recouped from the collection of assessed court-

1 appointed attorney fees and public defender expenses.

2 The bill strikes the Code provision requiring the state  
3 public defender to provide a written proposal to the justice  
4 systems appropriation subcommittee detailing the reasons for  
5 establishing or abolishing a local public defender office.  
6 The provision stricken by the bill requires that if the state  
7 public defender proposes to abolish a local public defender  
8 office before the regular session of the general assembly, the  
9 state public defender must notify the general assembly of such  
10 action. The provision stricken by the bill further requires  
11 that, if within the first 90 days of session, the general  
12 assembly fails to act on the proposal, the local public  
13 defender office shall be abolished.

14 The bill provides that a public defender or any other  
15 attorney appointed to represent an indigent person is immune  
16 from liability for representing the person, unless it is found  
17 that the attorney provided ineffective assistance of counsel  
18 and it is the proximate cause of the injury or damage to the  
19 person. Current law provides that an appointed attorney is  
20 immune from liability unless the conviction of an indigent  
21 person resulted from ineffective assistance of counsel.

22 The bill provides that if the public defender is unable to  
23 represent a person because of a temporary overload of cases or  
24 a conflict of interest, the court shall appoint the designee  
25 of the public defender. The bill provides that if there is no  
26 designee available, the court shall appoint a contract  
27 attorney, and if a contract attorney is unavailable, the court  
28 shall appoint a noncontract attorney. Current law provides  
29 that if the public defender has a temporary overload of cases  
30 or a conflict of interest, the court shall first attempt to  
31 appoint a contract attorney; however, if a contract attorney  
32 is unavailable, then appoint a noncontract attorney.

33 The bill provides that the court shall first attempt to  
34 appoint the appellate defender, if available, to represent an  
5 indigent person on appeal for denial of postconviction relief.

1 The bill provides that an attorney appointed to represent  
2 an indigent person shall obtain court approval prior to  
3 exceeding the fee limitations established pursuant to Code  
4 section 13B.4, subsection 4. The bill provides that an  
5 attorney may exceed the fee limitations if good cause is  
6 shown. The bill also provides that an attorney may obtain  
7 court approval after exceeding the fee limitations, if good  
8 cause is shown. The bill provides that failure to timely file  
9 an application to exceed the fee limitations after exceeding  
10 the fees does not constitute good cause.

11 The bill provides that costs incurred under provisions of  
12 the Code not enumerated and administrative rules, including  
13 fees to material witnesses and fees associated with arrests of  
14 alleged parole violators, certain rescissions of parole, and  
15 probation violations, are not payable out of indigent defense  
16 funds.

17 The bill provides that when determining the amount of  
18 restitution for each case, the expense of the public defender  
19 shall be calculated at the same hourly rate of compensation  
20 specified under Code section 815.7, but shall not exceed the  
21 fee limitations in Code section 13B.4.

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## SENATE FILE 2301

S-5106

1 Amend Senate File 2301 as follows:  
2 1. Page 2, by inserting after line 33, the  
3 following:  
4 "Sec. \_\_\_\_\_. Section 13B.8, subsection 4, Code 2001,  
5 is amended to read as follows:  
6 4. The state public defender shall provide  
7 separate and suitable office space, furniture,  
8 equipment, computers, computer networks, support  
9 staff, and supplies for the each office of the local  
10 public defender out of funds appropriated to the  
11 department state public defender for this purpose.  
12 Sec. \_\_\_\_\_. Section 13B.8, Code 2001, is amended by  
13 adding the following new subsection:  
14 NEW SUBSECTION. 5. An employee of a local public  
15 defender office shall not have access to any  
16 confidential client information in any other local  
17 public defender office, and the state public defender  
18 shall not have access to such confidential  
19 information."  
20 2. Page 3, by inserting after line 13, the  
21 following:  
22 "Sec. \_\_\_\_\_. Section 13B.9, subsection 3, Code 2001,  
23 is amended to read as follows:  
24 3. The local public defender shall handle every  
25 case to which the local public defender is appointed  
26 if the local public defender can reasonably handle the  
27 case. The local public defender shall be responsible  
28 for assigning cases to individual attorneys within the  
29 local public defender office and for making decisions  
30 concerning cases in which the local public defender  
31 has been appointed."

By JEFF LAMBERTI

S-5106 FILED MARCH 5, 2002

*Adopted*  
*3-11-02*  
*(P. 558)*



1 Section 1. Section 13B.4, subsection 4, paragraph c, Code  
2 2001, is amended to read as follows:

3 c. The state public defender may review any claim for  
4 payment of indigent defense costs and may take any of the  
5 following actions:

6 (1) If the charges are appropriate and reasonable, approve  
7 the claim for payment.

8 (2) ~~Deny the claim, if the claim is not timely filed,~~  
9 under any of the following circumstances:

10 (a) If it is not timely.

11 (b) If it is not payable as an indigent defense claim  
12 under chapter 815.

13 (c) If it is not payable under the contract between the  
14 claimant and the state public defender.

15 (d) If the appointment of the claimant was obtained in  
16 violation of section 814.11 or 815.10.

17 (3) Request additional information or return the claim to  
18 the attorney, if the claim is incomplete.

19 (4) If any portion of the claim is excessive, notify the  
20 attorney that the claim is excessive and will be reduced to an  
21 amount which is not excessive, and reduce and approve the  
22 balance of the claim.

23 (5) If any portion of the claim is not payable within the  
24 scope of appointment of the attorney, notify the attorney that  
25 a portion of the claim is not within the scope of appointment  
26 and is not payable, deny those portions of the claim that are  
27 not payable, and approve the balance of the claim.

28 Sec. 2. Section 13B.4, subsection 4, paragraph d, Code  
29 2001, is amended by striking the paragraph and inserting in  
30 lieu thereof the following:

31 d. Notwithstanding chapter 17A, the attorney may seek  
32 review of any action or intended action denying or reducing  
33 any claim by filing a motion with the court with jurisdiction  
34 over the original appointment for review.

35 (1) The motion must be filed within twenty days of any

1 action taken by the state public defender.

2 (2) The state public defender shall be provided with at  
3 least ten days' notice of any hearing on the motion.

4 (3) The state public defender or the attorney may  
5 participate by telephone. The party appearing by telephone  
6 shall be responsible for initiating and paying for all  
7 telephone charges.

8 (4) The filing of a motion shall not delay the payment of  
9 the amount approved by the state public defender.

10 (5) If a claim or portion of the claim is denied, the  
11 action of the state public defender shall be affirmed unless  
12 the action conflicts with an administrative rule or the law.

13 (6) If the claim is reduced for being excessive, the  
14 attorney shall have the burden to establish by a preponderance  
15 of the evidence that the amount of compensation and expenses  
16 is reasonable and necessary to competently represent the  
17 client.

18 Sec. 3. Section 13B.4, subsection 5, Code 2001, is amended  
19 by striking the subsection and inserting in lieu thereof the  
20 following:

21 5. In reviewing a claim for compensation submitted by an  
22 attorney who had been retained or agreed to represent an  
23 indigent person prior to appointment, the state public  
24 defender may consider any moneys earned or paid to the  
25 attorney prior to the appointment in determining whether the  
26 claim is reasonable and necessary or excessive. The attorney  
27 shall provide the state public defender with a copy of any  
28 representation agreement, and information on any moneys earned  
29 or paid to the attorney prior to the appointment.

30 Sec. 4. Section 13B.4, subsection 7, Code 2001, is amended  
31 by striking the subsection.

32 Sec. 5. Section 13B.8, subsection 1, unnumbered paragraph  
33 2, Code 2001, is amended by striking the unnumbered paragraph.

34 Sec. 6. Section 13B.8, subsection 4, Code 2001, is amended  
35 to read as follows:

1     4. The state public defender shall provide separate and  
2 suitable office space, furniture, equipment, computers,  
3 computer networks, support staff, and supplies for the each  
4 office of the local public defender out of funds appropriated  
5 to the department state public defender for this purpose.

6     Sec. 7. Section 13B.8, Code 2001, is amended by adding the  
7 following new subsection:

8     NEW SUBSECTION. 5. An employee of a local public defender  
9 office shall not have access to any confidential client  
10 information in any other local public defender office, and the  
11 state public defender shall not have access to such  
12 confidential information.

13     Sec. 8. Section 13B.9, subsection 2, Code 2001, is amended  
14 to read as follows:

15     2. An appointed attorney appointed under this section is  
16 not liable to a person represented by the attorney pursuant-to  
17 this-chapter for damages as a result of a conviction in a  
18 criminal case unless the court determines in a postconviction  
19 appeal proceeding that the person's conviction resulted from  
20 ineffective assistance of counsel, and the ineffective  
21 assistance of counsel is the proximate cause of the damage.  
22 In juvenile or civil proceedings, an attorney appointed under  
23 this section is not liable to a person represented by the  
24 attorney for damages unless it has been determined that the  
25 attorney has provided ineffective assistance of counsel and  
26 the ineffective assistance of counsel claim is the proximate  
27 cause of the damage.

28     Sec. 9. Section 13B.9, subsection 3, Code 2001, is amended  
29 to read as follows:

30     3. The local public defender shall handle every case to  
31 which the local public defender is appointed if the local  
32 public defender can reasonably handle the case. The local  
33 public defender shall be responsible for assigning cases to  
34 individual attorneys within the local public defender office  
35 and for making decisions concerning cases in which the local

1 public defender has been appointed.

2 Sec. 10. Section 13B.9, subsection 4, Code 2001, is  
3 amended to read as follows:

4 4. If a conflict of interest arises or if the local public  
5 defender is unable to handle a case because of a temporary  
6 overload of cases, the local public defender shall return the  
7 case to the court. ~~The court shall first appoint a contract~~  
8 ~~attorney. Appointments by the court shall be on a rotational~~  
9 ~~or equalization basis considering the experience of the~~  
10 ~~attorney and the difficulty of the case.~~ If the case is  
11 returned and the state public defender has filed a successor  
12 designation, the court shall appoint the successor designee.  
13 If there is no successor designee on file, the court shall  
14 make the appointment pursuant to section 815.10.

15 Sec. 11. Section 13B.9, subsection 5, Code 2001, is  
16 amended by striking the subsection.

17 Sec. 12. Section 22.7, Code Supplement 2001, is amended by  
18 adding the following new subsection:

19 NEW SUBSECTION. 43. Information provided to the court and  
20 state public defender pursuant to section 13B.4, subsection 5;  
21 section 814.11, subsection 6; or section 815.10, subsection 5.

22 Sec. 13. Section 814.11, Code 2001, is amended to read as  
23 follows:

24 814.11 INDIGENT'S RIGHT TO COUNSEL.

25 1. An indigent defendant person is entitled to appointed  
26 counsel on the appeal of all indictable offenses cases if the  
27 person is entitled to appointment of counsel under section  
28 815.9.

29 2. The If the appeal involves an indictable offense or  
30 denial of postconviction relief, the appointment shall be made  
31 to the state appellate defender unless the state appellate  
32 defender is unable to handle the case due to a conflict of  
33 interest or because of a temporary overload of cases.

34 3. If the appeal is other than an indictable offense or  
35 denial of postconviction relief or if the state appellate

1 defender is unable to handle the case, the court shall appoint  
2 an attorney who has a contract with the state public defender  
3 to handle such an appeal.

4 4. If the court determines that no contract attorney is  
5 available to handle the appeal, the court may appoint a  
6 noncontract attorney ~~who has agreed to handle the case, but~~  
7 the. The order of appointment shall include a specific  
8 finding that no contract attorney was available.

9 5. The appointment of ~~noncontract attorneys~~ an attorney  
10 shall be on a rotational or equalization basis, considering  
11 the experience of the attorney and the difficulty of the case.

12 6. An attorney who has been retained or has agreed to  
13 represent a person on appeal and subsequently applies to the  
14 court for appointment to represent that person on appeal  
15 because the person is indigent shall notify the state public  
16 defender of the application. Upon the filing of the  
17 application, the attorney shall provide the state public  
18 defender with a copy of any representation agreement, and  
19 information on any moneys earned or paid to the attorney prior  
20 to the appointment.

21 7. An attorney appointed under this section is not liable  
22 to a person represented by the attorney for damages as a  
23 result of a conviction in a criminal case unless the court  
24 determines in a postconviction proceeding that the person's  
25 conviction resulted from ineffective assistance of counsel,  
26 and the ineffective assistance of counsel is the proximate  
27 cause of the damage. In juvenile or civil proceedings, an  
28 attorney appointed under this section is not liable to a  
29 person represented by the attorney for damages unless it has  
30 been determined that the attorney has provided ineffective  
31 assistance of counsel and the ineffective assistance of  
32 counsel claim is the proximate cause of the damage.

33 Sec. 14. Section 815.9, subsection 8, Code 2001, is  
34 amended to read as follows:

35 8. If a person is granted an appointed attorney or is

1 ~~receiving~~ has received legal assistance in accordance with  
2 this section and the person is employed, the person shall  
3 execute an assignment of wages. An order for assignment of  
4 income, in a reasonable amount to be determined by the court,  
5 shall ~~also~~ be entered by the court. The state public defender  
6 shall prescribe forms for use in wage assignments and court  
7 orders entered under this ~~section~~ subsection.

8 Sec. 15. Section 815.10, Code 2001, is amended to read as  
9 follows:

10 815.10 APPOINTMENT OF COUNSEL BY COURT.

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 juvenile  
21 cases, the court may directly appoint an existing nonprofit  
22 corporation established for and engaged in the provision of  
23 legal services for juveniles. An appointment shall not be  
24 made unless the person is determined to be indigent under  
25 section 815.9. Only one attorney shall be appointed in all  
26 cases, except that in class "A" felony cases the court may  
27 appoint two attorneys.

28 2. ~~An-attorney-other-than-a-public-defender-who-is~~  
29 ~~appointed-by-the-court-under-this-section-shall-apply-to-the~~  
30 ~~state-public-defender-for-compensation-and-for-reimbursement~~  
31 ~~of-costs-incurred.--The-amount-of-compensation-due-shall-be~~  
32 ~~determined-in-accordance-with-any-indigent-defense-contract-or~~  
33 ~~pursuant-to-section-815-7.~~ If the state public defender or  
34 the state public defender's designee is unable to represent an  
35 indigent person, the court shall appoint an attorney who has a

1 contract with the state public defender to represent the  
2 person.

3 ~~3. The state public defender shall adopt rules which~~  
4 ~~specify the information which shall be included with all~~  
5 ~~claims for compensation submitted by court appointed attorneys~~  
6 ~~under this section. The rules shall require that a court~~  
7 ~~appointed attorney shall obtain court approval of a claim~~  
8 ~~prior to exceeding the fee limitations established pursuant to~~  
9 ~~section 13B.4. However, a court appointed attorney may~~  
10 ~~request court approval after exceeding a fee limitation if~~  
11 ~~good cause is shown. The order approving a claim that exceeds~~  
12 ~~the fee limitation shall be included in the information~~  
13 ~~submitted under this section. If the information required~~  
14 ~~under this section and the rules of the state public defender~~  
15 ~~is not submitted, the claim may be denied until the~~  
16 ~~information is provided. If the information required under~~  
17 ~~this section and the rules of the state public defender is~~  
18 ~~submitted with the claim, the state public defender may~~  
19 ~~approve reasonable and proper compensation to the court~~  
20 ~~appointed attorney in the manner provided in the rules. If~~  
21 the court determines that no contract attorney is available to  
22 represent the person, the court may appoint a noncontract  
23 attorney. The order of appointment shall include a specific  
24 finding that no contract attorney was available.

25 4. The appointment of an attorney shall be on a rotational  
26 or equalization basis, considering the experience of the  
27 attorney and the difficulty of the case.

28 5. An attorney who has been retained or has agreed to  
29 represent a person and subsequently applies to the court for  
30 appointment to represent that person because the person is  
31 indigent shall notify the state public defender of the  
32 application. Upon the filing of the application, the attorney  
33 shall provide the state public defender with a copy of any  
34 representation agreement, and information on any moneys earned  
35 or paid to the attorney prior to the appointment.

1 6. An attorney appointed under this section is not liable  
2 to a person represented by the attorney for damages as a  
3 result of a conviction in a criminal case unless the court  
4 determines in a postconviction proceeding that the person's  
5 conviction resulted from ineffective assistance of counsel,  
6 and the ineffective assistance of counsel is the proximate  
7 cause of the damage. In juvenile or civil proceedings, an  
8 attorney appointed under this section is not liable to a  
9 person represented by the attorney for damages unless it has  
10 been determined that the attorney has provided ineffective  
11 assistance of counsel, and the ineffective assistance of  
12 counsel claim is the proximate cause of the damage.

13 Sec. 16. NEW SECTION. 815.10A CLAIMS FOR COMPENSATION.

14 1. An attorney other than a public defender who has been  
15 appointed by the court under this chapter must apply to the  
16 state public defender for compensation and reimbursement of  
17 expenses incurred in the representation of an indigent person.

18 2. An attorney shall obtain court approval prior to  
19 exceeding the fee limitations established by the state public  
20 defender pursuant to section 13B.4. An attorney may exceed  
21 the fee limitations, if good cause is shown. An attorney may  
22 obtain court approval after exceeding the fee limitations, if  
23 good cause is shown. The order approving an application to  
24 exceed the fee limitations shall be effective from the date of  
25 filing the application unless the court order provides an  
26 alternative effective date. Failure to timely file an  
27 application to exceed a fee limitation after exceeding the  
28 fees shall not constitute good cause. The application and the  
29 court order approving the application to exceed fee  
30 limitations shall be submitted with any claim for  
31 compensation.

32 3. If the information is not submitted as required under  
33 this section and under the rules of the state public defender,  
34 the claim for compensation may be denied until the information  
35 is provided. Upon submitting the required information, the

1 state public defender may approve reasonable and necessary  
2 compensation, as provided for in the administrative rules and  
3 the law.

4 Sec. 17. Section 815.11, Code 2001, is amended to read as  
5 follows:

6 815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

7 Costs incurred under chapter 229A, 665, or 822, or section  
8 232.141, subsection 3, paragraph "c", or sections 814.9,  
9 814.10, 814.11, 815.4, 815.5, ~~815.6~~, 815.7, and 815.10, 908.1,  
10 and 908.11, or the rules of criminal procedure on behalf of an  
11 indigent shall be paid from funds appropriated by the general  
12 assembly to the office of the state public defender in the  
13 department of inspections and appeals for those purposes.  
14 Costs incurred under other provisions of the Code or  
15 administrative rules are not payable from these funds.

16 Sec. 18. NEW SECTION. 815.14 FEE FOR PUBLIC DEFENDER.

17 When determining the amount of restitution for each case  
18 under section 910.3, the expense of the public defender shall  
19 be calculated at the same hourly rate of compensation  
20 specified under section 815.7. However, the expense of the  
21 public defender shall not exceed the fee limitations  
22 established in section 13B.4.

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## SENATE FILE 2301

H-8333

1 Amend Senate File 2301, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, lines 15 and 16, by striking the words  
4 and figures "in violation of section 814.11 or 815.10"  
5 and inserting the following: "without complying with  
6 section 814.11, subsection 6, or section 815.10,  
7 subsection 5".

8 2. Page 2, line 5, by striking the words "The  
9 party appearing by telephone" and inserting the  
10 following: "If the state public defender participates  
11 by telephone, the state public defender".

12 3. Page 9, lines 9 and 10, by striking the words  
13 and figures ", 908.1, and 908.11, or the rules of  
14 criminal procedure" and inserting the following: "ex  
15 the rules of criminal procedure, 908.1, and 908.11,".

By SHEY of Linn

H-8333 FILED MARCH 19, 2002

*W/D*  
*3/20/02*  
*(p. 905)*

## SENATE FILE 2301

## H-8334

1 Amend Senate File 2301, as amended, passed, and  
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting before line 1 the  
4 following:

5 "Section 1. Section 13B.4, subsection 1, Code  
6 2001, is amended to read as follows:

7 1. The state public defender shall coordinate the  
8 provision of legal representation of all indigents  
9 under arrest or charged with a crime, seeking  
10 postconviction relief, against whom a contempt action  
11 is pending, in proceedings under chapter 229A, on  
12 appeal in criminal cases, on appeal in proceedings to  
13 obtain postconviction relief when ordered to do so by  
14 the district court in which the judgment or order was  
15 issued, and on a reopening of a sentence proceeding,  
16 and may provide for the representation of indigents in  
17 proceedings instituted pursuant to ~~chapter 908~~ section  
18 908.11. The state public defender shall not engage in  
19 the private practice of law."

20 2. Page 1, lines 15 and 16, by striking the words  
21 "in violation of section 814.11 or 815.10" and  
22 inserting the following: "without complying with  
23 section 814.11, subsection 6, or section 815.10,  
24 subsection 5".

25 3. Page 2, line 5, by striking the words "The  
26 party appearing by telephone" and inserting the  
27 following: "If the state public defender participates  
28 by telephone, the state public defender".

29 4. Page 9, line 9, by striking the figure  
30 "908.1".

31 5. Page 9, line 10, by striking the words and  
32 figure "and 908.11, or the rules of criminal  
33 procedure" and inserting the following: "~~or the rules~~  
34 ~~of criminal procedure~~ or 908.11".

35 6. Page 9, by inserting after line 22 the  
36 following:

37 "Sec. \_\_\_\_ . Section 908.2, unnumbered paragraph 1,  
38 Code 2001, is amended to read as follows:

39 An officer making an arrest of an alleged parole  
40 violator shall take the arrested person before a  
41 magistrate without unnecessary delay for an initial  
42 appearance. At that time the alleged parole violator  
43 shall be furnished with a written notice of the  
44 claimed violation, ~~shall be advised of the right to~~  
45 ~~appointed counsel under rule 26 of the rules of~~  
46 ~~criminal procedure~~, and shall be given notice that a  
47 parole revocation hearing will take place and that its  
48 purpose is to determine whether the alleged parole  
49 violation occurred and whether the alleged violator's  
50 parole should be revoked.

H-8334

-1-

**H-8334**

Page 2

1 Sec. \_\_\_\_ . Section 908.4, Code 2001, is amended to  
2 read as follows:

3 908.4 PAROLE REVOCATION HEARING.

4 1. The parole revocation hearing shall be  
5 conducted by an administrative parole and probation  
6 judge who is an attorney. The revocation hearing  
7 shall determine the following:

8 ~~1.~~ a. Whether the alleged parole violation  
9 occurred.

10 ~~2.~~ b. Whether the violator's parole should be  
11 revoked.

12 2. The administrative parole and probation judge  
13 shall make a verbatim record of the proceedings. The  
14 alleged violator shall not have the right to appointed  
15 counsel, shall be informed of the evidence against the  
16 violator, shall be given an opportunity to be heard,  
17 shall have the right to present witnesses and other  
18 evidence, and shall have the right to cross-examine  
19 adverse witnesses, except if the judge finds that a  
20 witness would be subjected to risk or harm if the  
21 witness's identity were disclosed. The revocation  
22 hearing may be conducted electronically."

23 7. By renumbering as necessary.

By SHEY of Linn

H-8334 FILED MARCH 19, 2002

*Adapted*

*3-20-02*

*(P. 905)*

**HOUSE AMENDMENT TO  
SENATE FILE 2301**

**S-5237**

1 Amend Senate File 2301, as amended, passed, and  
2 reprinted by the Senate, as follows:  
3 1. Page 1, by inserting before line 1 the  
4 following:  
5 "Section 1. Section 13B.4, subsection 1, Code  
6 2001, is amended to read as follows:  
7 1. The state public defender shall coordinate the  
8 provision of legal representation of all indigents  
9 under arrest or charged with a crime, seeking  
10 postconviction relief, against whom a contempt action  
11 is pending, in proceedings under chapter 229A, on  
12 appeal in criminal cases, on appeal in proceedings to  
13 obtain postconviction relief when ordered to do so by  
14 the district court in which the judgment or order was  
15 issued, and on a reopening of a sentence proceeding,  
16 and may provide for the representation of indigents in  
17 proceedings instituted pursuant to ~~chapter 908~~ section  
18 908.11. The state public defender shall not engage in  
19 the private practice of law."  
20 2. Page 1, lines 15 and 16, by striking the words  
21 "in violation of section 814.11 or 815.10" and  
22 inserting the following: "without complying with  
23 section 814.11, subsection 6, or section 815.10,  
24 subsection 5".  
25 3. Page 2, line 5, by striking the words "The  
26 party appearing by telephone" and inserting the  
27 following: "If the state public defender participates  
28 by telephone, the state public defender".  
29 4. Page 9, line 9, by striking the figure  
30 "908.1,".  
31 5. Page 9, line 10, by striking the words and  
32 figure "and 908.11, or the rules of criminal  
33 procedure" and inserting the following: "~~or the rules~~  
34 ~~of criminal procedure or 908.11~~".  
35 6. Page 9, by inserting after line 22 the  
36 following:  
37 "Sec. \_\_\_\_ . Section 908.2, unnumbered paragraph 1,  
38 Code 2001, is amended to read as follows:  
39 An officer making an arrest of an alleged parole  
40 violator shall take the arrested person before a  
41 magistrate without unnecessary delay for an initial  
42 appearance. At that time the alleged parole violator  
43 shall be furnished with a written notice of the  
44 claimed violation, ~~shall be advised of the right to~~  
45 ~~appointed counsel under rule 26 of the rules of~~  
46 ~~criminal procedure,~~ and shall be given notice that a  
47 parole revocation hearing will take place and that its  
48 purpose is to determine whether the alleged parole  
49 violation occurred and whether the alleged violator's  
50 parole should be revoked.

**S-5237**

S-5237

Page 2

1 Sec. \_\_\_\_ . Section 908.4, Code 2001, is amended to  
2 read as follows:

3 908.4 PAROLE REVOCATION HEARING.

4 1. The parole revocation hearing shall be  
5 conducted by an administrative parole and probation  
6 judge who is an attorney. The revocation hearing  
7 shall determine the following:

8 ~~1.~~ a. Whether the alleged parole violation  
9 occurred.

10 ~~2.~~ b. Whether the violator's parole should be  
11 revoked.

12 2. The administrative parole and probation judge  
13 shall make a verbatim record of the proceedings. The  
14 alleged violator shall not have the right to appointed  
15 counsel, shall be informed of the evidence against the  
16 violator, shall be given an opportunity to be heard,  
17 shall have the right to present witnesses and other  
18 evidence, and shall have the right to cross-examine  
19 adverse witnesses, except if the judge finds that a  
20 witness would be subjected to risk or harm if the  
21 witness's identity were disclosed. The revocation  
22 hearing may be conducted electronically."

23 7. By renumbering as necessary.

RECEIVED FROM THE HOUSE

S-5237 FILED MARCH 21, 2002

*Senate Concurred*  
*3.25-02*  
*(p. 781)*

# Legislative Fiscal Bureau

## Fiscal Note

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SF 2301 as amended and passed by the House – Representation of Indigent Probationers and Parolees (LSB 5230 SV)

Analyst: Beth Lenstra (Phone: (515) 281-6301) (beth.lenstra@legis.state.ia.us)

Fiscal Note Version – Amended and Passed by the House

Requested by Senator O. Gene Maddox

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### Description

Senate File 2301 as amended and passed by the House 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

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March 25, 2002

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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.

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SENATE FILE 2301

AN ACT  
RELATING TO REPRESENTATION OF INDIGENT PERSONS AND THE DUTIES  
OF THE STATE PUBLIC DEFENDER.

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

Section 1. Section 13B.4, subsection 1, Code 2001, is amended to read as follows:

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under chapter 229A, on appeal in criminal cases, on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and on a reopening of a sentence proceeding, and may provide for the representation of indigents in proceedings instituted pursuant to ~~chapter-908~~ section 908.11. The state public defender shall not engage in the private practice of law.

Sec. 2. Section 13B.4, subsection 4, paragraph c, Code 2001, is amended to read as follows:

c. The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) ~~Deny the claim, if the claim is not timely filed,~~  
Deny the claim, if the claim is not timely filed,  
under any of the following circumstances:

(a) If it is not timely.

(b) If it is not payable as an indigent defense claim under chapter 815.

(c) If it is not payable under the contract between the claimant and the state public defender.

(d) If the appointment of the claimant was obtained without complying with section 814.11, subsection 6, or section 815.10, subsection 5.

(3) Request additional information or return the claim to the attorney, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the attorney that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

(5) If any portion of the claim is not payable within the scope of appointment of the attorney, notify the attorney that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

Sec. 3. Section 13B.4, subsection 4, paragraph d, Code 2001, is amended by striking the paragraph and inserting in lieu thereof the following:

d. Notwithstanding chapter 17A, the attorney may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

(1) The motion must be filed within twenty days of any action taken by the state public defender.

(2) The state public defender shall be provided with at least ten days' notice of any hearing on the motion.

(3) The state public defender or the attorney may participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.

(4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with an administrative rule or the law.

(6) If the claim is reduced for being excessive, the attorney shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary to competently represent the client.

Sec. 4. Section 13B.4, subsection 5, Code 2001, is amended by striking the subsection and inserting in lieu thereof the following:

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

Sec. 5. Section 13B.4, subsection 7, Code 2001, is amended by striking the subsection.

Sec. 6. Section 13B.8, subsection 1, unnumbered paragraph 2, Code 2001, is amended by striking the unnumbered paragraph.

Sec. 7. Section 13B.8, subsection 4, Code 2001, is amended to read as follows:

4. The state public defender shall provide separate and suitable office space, furniture, equipment, computers, computer networks, support staff, and supplies for the each office of the local public defender out of funds appropriated to the department state public defender for this purpose.

Sec. 8. Section 13B.8, Code 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 5. An employee of a local public defender office shall not have access to any confidential client

information in any other local public defender office, and the state public defender shall not have access to such confidential information.

Sec. 9. Section 13B.9, subsection 2, Code 2001, is amended to read as follows:

2. An appointed attorney appointed under this section is not liable to a person represented by the attorney pursuant to this chapter for damages as a result of a conviction in a criminal case unless the court determines in a postconviction appeal proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 10. Section 13B.9, subsection 3, Code 2001, is amended to read as follows:

3. The local public defender shall handle every case to which the local public defender is appointed if the local public defender can reasonably handle the case. The local public defender shall be responsible for assigning cases to individual attorneys within the local public defender office and for making decisions concerning cases in which the local public defender has been appointed.

Sec. 11. Section 13B.9, subsection 4, Code 2001, is amended to read as follows:

4. If a conflict of interest arises or if the local public defender is unable to handle a case because of a temporary overload of cases, the local public defender shall return the case to the court. The court shall first appoint a contract attorney. Appointments by the court shall be on a rotational or equalization basis considering the experience of the

~~attorney-and-the-difficulty-of-the-case.~~ If the case is returned and the state public defender has filed a successor designation, the court shall appoint the successor designee. If there is no successor designee on file, the court shall make the appointment pursuant to section 815.10.

Sec. 12. Section 13B.9, subsection 5, Code 2001, is amended by striking the subsection.

Sec. 13. Section 22.7, Code Supplement 2001, is amended by adding the following new subsection:

NEW SUBSECTION. 43. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5.

Sec. 14. Section 814.11, Code 2001, is amended to read as follows:

814.11 INDIGENT'S RIGHT TO COUNSEL.

1. An indigent defendant person is entitled to appointed counsel on the appeal of all indictable-offenses cases if the person is entitled to appointment of counsel under section 815.9.

2. The If the appeal involves an indictable offense or denial of postconviction relief, the appointment shall be made to the state appellate defender unless the state appellate defender is unable to handle the case due to a conflict of interest or because of a temporary overload of cases.

3. If the appeal is other than an indictable offense or denial of postconviction relief or if the state appellate defender is unable to handle the case, the court shall appoint an attorney who has a contract with the state public defender to handle such an appeal.

4. If the court determines that no contract attorney is available to handle the appeal, the court may appoint a ~~noncontract attorney who has agreed to handle the case, but the.~~ The order of appointment shall include a specific finding that no contract attorney was available.

5. The appointment of ~~noncontract-attorneys~~ an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

6. An attorney who has been retained or has agreed to represent a person on appeal and subsequently applies to the court for appointment to represent that person on appeal because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

7. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 15. Section 815.9, subsection 8, Code 2001, is amended to read as follows:

8. If a person is granted an appointed attorney or ~~is~~ receiving has received legal assistance in accordance with this section and the person is employed, the person shall execute an assignment of wages. An order for assignment of income, in a reasonable amount to be determined by the court, shall also be entered by the court. The state public defender shall prescribe forms for use in wage assignments and court orders entered under this section subsection.

Sec. 16. Section 815.10, Code 2001, is amended to read as follows:

815.10 APPOINTMENT OF COUNSEL BY COURT.

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

2. ~~An attorney other than a public defender who is appointed by the court under this section shall apply to the state public defender for compensation and for reimbursement of costs incurred. The amount of compensation due shall be determined in accordance with any indigent defense contract or pursuant to section 815.7.~~ If the state public defender or the state public defender's designee is unable to represent an indigent person, the court shall appoint an attorney who has a contract with the state public defender to represent the person.

3. ~~The state public defender shall adopt rules which specify the information which shall be included with all claims for compensation submitted by court-appointed attorneys under this section. The rules shall require that a court-appointed attorney shall obtain court approval of a claim~~

~~prior to exceeding the fee limitations established pursuant to section 13B.4. However, a court-appointed attorney may request court approval after exceeding a fee limitation if good cause is shown. The order approving a claim that exceeds the fee limitation shall be included in the information submitted under this section. If the information required under this section and the rules of the state public defender is not submitted, the claim may be denied until the information is provided. If the information required under this section and the rules of the state public defender is submitted with the claim, the state public defender may approve reasonable and proper compensation to the court-appointed attorney in the manner provided in the rules. If the court determines that no contract attorney is available to represent the person, the court may appoint a noncontract attorney. The order of appointment shall include a specific finding that no contract attorney was available.~~

4. The appointment of an attorney shall be on a rotational or equalization basis, considering the experience of the attorney and the difficulty of the case.

5. An attorney who has been retained or has agreed to represent a person and subsequently applies to the court for appointment to represent that person because the person is indigent shall notify the state public defender of the application. Upon the filing of the application, the attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. An attorney appointed under this section is not liable to a person represented by the attorney for damages as a result of a conviction in a criminal case unless the court determines in a postconviction proceeding that the person's conviction resulted from ineffective assistance of counsel, and the ineffective assistance of counsel is the proximate cause of the damage. In juvenile or civil proceedings, an

attorney appointed under this section is not liable to a person represented by the attorney for damages unless it has been determined that the attorney has provided ineffective assistance of counsel, and the ineffective assistance of counsel claim is the proximate cause of the damage.

Sec. 17. NEW SECTION. 815.10A CLAIMS FOR COMPENSATION.

1. An attorney other than a public defender who has been appointed by the court under this chapter must apply to the state public defender for compensation and reimbursement of expenses incurred in the representation of an indigent person.

2. An attorney shall obtain court approval prior to exceeding the fee limitations established by the state public defender pursuant to section 13B.4. An attorney may exceed the fee limitations, if good cause is shown. An attorney may obtain court approval after exceeding the fee limitations, if good cause is shown. The order approving an application to exceed the fee limitations shall be effective from the date of filing the application unless the court order provides an alternative effective date. Failure to timely file an application to exceed a fee limitation after exceeding the fees shall not constitute good cause. The application and the court order approving the application to exceed fee limitations shall be submitted with any claim for compensation.

3. If the information is not submitted as required under this section and under the rules of the state public defender, the claim for compensation may be denied until the information is provided. Upon submitting the required information, the state public defender may approve reasonable and necessary compensation, as provided for in the administrative rules and the law.

Sec. 18. Section 815.11, Code 2001, is amended to read as follows:

815.11 APPROPRIATIONS FOR INDIGENT DEFENSE.

Costs incurred under chapter 229A, 665, or 822, or section 232.141, subsection 3, paragraph "c", or sections 814.9, 814.10, 814.11, 815.4, 815.5, ~~815.6~~, 815.7, and 815.10, ~~or the rules of criminal procedure or 908.11~~ on behalf of an indigent shall be paid from funds appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals for those purposes. Costs incurred under other provisions of the Code or administrative rules are not payable from these funds.

Sec. 19. NEW SECTION. 815.14 FEE FOR PUBLIC DEFENDER.

When determining the amount of restitution for each case under section 910.3, the expense of the public defender shall be calculated at the same hourly rate of compensation specified under section 815.7. However, the expense of the public defender shall not exceed the fee limitations established in section 13B.4.

Sec. 20. Section 908.2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

An officer making an arrest of an alleged parole violator shall take the arrested person before a magistrate without unnecessary delay for an initial appearance. At that time the alleged parole violator shall be furnished with a written notice of the claimed violation, ~~shall be advised of the right to appointed counsel under rule 26 of the rules of criminal procedure~~, and shall be given notice that a parole revocation hearing will take place and that its purpose is to determine whether the alleged parole violation occurred and whether the alleged violator's parole should be revoked.

Sec. 21. Section 908.4, Code 2001, is amended to read as follows:

908.4 PAROLE REVOCATION HEARING.

1. The parole revocation hearing shall be conducted by an administrative parole and probation judge who is an attorney. The revocation hearing shall determine the following:

1. a. Whether the alleged parole violation occurred.

2- b. Whether the violator's parole should be revoked.

2. The administrative parole and probation judge shall make a verbatim record of the proceedings. The alleged violator shall not have the right to appointed counsel, shall be informed of the evidence against the violator, shall be given an opportunity to be heard, shall have the right to present witnesses and other evidence, and shall have the right to cross-examine adverse witnesses, except if the judge finds that a witness would be subjected to risk or harm if the witness's identity were disclosed. The revocation hearing may be conducted electronically.

---

MARY E. KRAMER  
President of the Senate

---

BRENT SIEGRIST  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2301, Seventy-ninth General Assembly.

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MICHAEL E. MARSHALL  
Secretary of the Senate

Approved 4/4, 2002

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THOMAS J. VILSACK  
Governor