

1 HB658  
2 118453-1  
3 By Representatives Knight and Black  
4 RFD: Government Appropriations  
5 First Read: 03-MAR-10

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8 SYNOPSIS: Existing law provides for indigent defense  
9 systems used in appellate, circuit, district, and  
10 municipal courts with the local presiding circuit  
11 judge, commission, or governing body administering  
12 the systems pursuant to rule of the Alabama Supreme  
13 Court.

14 This bill would amend existing law and  
15 create the Alabama Indigent Defense Commission to  
16 provide for the defense of indigent defendants in  
17 trial or appellate court proceedings and to further  
18 provide for legal representation and related  
19 services in all other cases subject to this act  
20 pursuant to rules and procedures established by the  
21 commission and in accordance with the Budget  
22 Management Act.

23 This bill would provide for members, terms  
24 of office, duties, and responsibilities of the  
25 commission.

26 This bill would establish the Office of  
27 Indigent Defense Services.

1                   This bill would provide for a director,  
2                   staff, duties, and responsibilities of the Office  
3                   of Indigent Defense Services.

4                   This bill would provide for an indigent  
5                   defense advisory board in each judicial circuit and  
6                   would provide for the composition, meetings,  
7                   expenses, powers, and duties of the board.

8                   Existing law provides for a determination of  
9                   indigency and provides for defense counsel.

10                  This bill would provide for the trial or  
11                  appellate judge to assign two counsel in capital  
12                  cases subject to established requirements and the  
13                  approval of the Office of Indigent Defense  
14                  Services.

15                  Existing law provides for compensation of  
16                  appointed counsel as provided by law or rule  
17                  promulgated by the Alabama Supreme Court.

18                  This bill would provide for compensation as  
19                  provided by law or rule or regulation adopted by  
20                  the Alabama Indigent Defense Commission.

21                  Existing law provides \$40 per hour for  
22                  out-of-court time and \$60 per hour for in-court  
23                  time for appointed counsel representing an indigent  
24                  person at trial and provides that the bill for  
25                  compensation of an appointed counsel representing  
26                  an indigent person at the trial court level be  
27                  approved by a circuit judge and then submitted by

1 the clerk of the trial court to the Alabama  
2 Administrative Office of Courts and then to the  
3 state Comptroller for audit and forwarded to the  
4 State Treasurer for payment.

5 This bill would provide \$85 per hour for  
6 appointed counsel representing an indigent person  
7 in a noncapital case at the trial level and \$100  
8 per hour for appointed counsel representing an  
9 indigent person in a capital case at the trial  
10 level, and provide that the bill for compensation  
11 of an appointed counsel be submitted by the clerk  
12 of the trial court to the Office of Indigent  
13 Defense Services for audit and approval and  
14 forwarded to the state Comptroller for payment.

15 Existing law provides \$60 per hour for  
16 appointed counsel representing an indigent person  
17 on appeal and subsequent petition for writ of  
18 certiorari with the bill for compensation of  
19 appointed counsel to be submitted by the clerk of  
20 the appellate court to the state Comptroller for  
21 audit and, if approved, forwarded to the State  
22 Treasurer for payment.

23 This bill would provide \$85 per hour for  
24 appointed counsel representing an indigent person  
25 on appeal; and \$100 per hour for appointed counsel  
26 representing an indigent person on appeal from a  
27 capital conviction with the bill for compensation

1 of appointed counsel to be submitted by the clerk  
2 of the appellate court to the Office of Indigent  
3 Defense Services for audit and approval and  
4 forwarded to the state Comptroller for payment.

5 Existing law provides that appointed counsel  
6 representing an indigent person in postconviction  
7 proceedings receive \$60 per hour for time expended  
8 in court and \$40 per hour for out-of-court time.

9 This bill would provide \$85 per hour for  
10 appointed counsel representing an indigent person  
11 in a postconviction proceeding; and \$100 per hour  
12 for appointed counsel representing an indigent  
13 person in a postconviction proceeding from a  
14 capital conviction with the bill for compensation  
15 of appointed counsel to be submitted by the clerk  
16 of the appellate court to the Office of Indigent  
17 Defense Services for audit and approval and  
18 forwarded to the state Comptroller for payment.

19 Existing law provides for the indigent  
20 defense commission in any county or circuit to  
21 select contract counsel as a method of providing  
22 indigent defense and provides for each contract  
23 counsel to receive compensation as set by the  
24 commission. Each contract must be approved by the  
25 presiding circuit judge.

26 This bill would allow the Alabama Indigent  
27 Defense Commission, after consultation with the

1 circuit indigent defense advisory board and, if no  
2 advisory board exists, the bar association of the  
3 circuit and the presiding circuit judge, to  
4 establish a contract counsel program for all or  
5 part of the circuit and may provide for the  
6 contract counsel to be employed under terms,  
7 conditions, and compensation set by the Office of  
8 Indigent Defense Services.

9 Under existing law, the indigent defense  
10 commission in a judicial circuit, with the approval  
11 of the presiding circuit judge, may select a public  
12 defender system with salary set by the commission  
13 and approved by the Director of the Administrative  
14 Office of Courts. A public defender may serve for a  
15 term not to exceed six years and may be removed for  
16 cause.

17 This bill would provide that the Alabama  
18 Indigent Defense Commission, after consultation  
19 with the circuit indigent defense advisory board  
20 and, if no advisory board exists, the bar  
21 association of the affected circuit and the  
22 presiding circuit judge, may select a public  
23 defender system for all or part of the subject  
24 circuit, and may provide for compensation. A public  
25 defender may serve for a term not to exceed six  
26 years and may be removed for cause.

1 Existing law provides that the indigent  
2 defense commission of each circuit, subject to  
3 approval by the Administrative Director of Courts,  
4 may approve the expenditures of the public  
5 defender.

6 This bill would provide that the Office of  
7 Indigent Defense Services approve expenditures  
8 pursuant to procedures adopted by the commission.

9 This bill would provide for the employees of  
10 a public defender to receive the same benefits as  
11 state employees.

12 This bill would provide for the operating  
13 expenses of a public defender to be paid from funds  
14 appropriated annually from the Fair Trial Tax Fund  
15 or other funds appropriated by the Legislature for  
16 this purpose and would establish a minimum funding  
17 level below which funding could not fall.

18 This bill would repeal current law governing  
19 the present methods for selecting indigent defense  
20 systems.

21  
22 A BILL

23 TO BE ENTITLED

24 AN ACT

25  
26 To create the Alabama Indigent Defense Commission as  
27 an independent agency of the judicial branch of state

1 government; to provide for the duties and powers of the  
2 commission; to provide for the appointment and terms of its  
3 members; to create the Office of Indigent Defense Services to  
4 operate at the direction of the Alabama Indigent Defense  
5 Commission; to amend Sections 12-19-252, 15-12-1, 15-12-4,  
6 15-12-5, 15-12-6, 15-12-21, 15-12-22, 15-12-23, 15-12-26,  
7 15-12-27, 15-12-40, 15-12-41, 15-12-42, 15-12-43, 15-12-44,  
8 15-12-45, and 15-12-46 of the Code of Alabama 1975, relating  
9 to the defense of indigents; to provide for the director,  
10 staff, duties, and responsibilities of the Office of Indigent  
11 Defense Services; to provide for an Indigent Defense Advisory  
12 Board in each judicial circuit; to provide for the assignment  
13 of counsel in capital cases; to provide further for  
14 compensation of appointed counsel; to provide further for  
15 contract counsel; to provide for the employment contract,  
16 compensation, and attorney-client communications of the  
17 contract to supersede the Alabama Rules of Criminal Procedure;  
18 to provide further for a public defender system; to provide  
19 further for expenditures, employees, and operating expenses of  
20 the public defender offices; to make an appropriation subject  
21 to minimum funding levels for indigent defense services in  
22 each of the judicial circuits; and to repeal Sections 15-12-2,  
23 15-12-3, and 15-12-24.1 of the Code of Alabama 1975.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

25 Section 1. The Legislature finds and declares the  
26 following:



1           (1) The purpose of this act is to provide for the  
2 defense of those indigent defendants who have been found by a  
3 court to be unable to pay for their defense in a trial or  
4 appellate court proceeding. When a court determines that a  
5 person is unable to pay for his or her defense, it shall be  
6 the responsibility of the court, subject to the establishment  
7 of the Indigent Defense Commission as set forth in this act,  
8 to provide that person with counsel and the other necessary  
9 expenses of representation.

10           (2) Additionally, the further purposes of this act  
11 are as follows:

12           a. Establish financial accountability for indigent  
13 defense services.

14           b. Improve the quality of representation and ensure  
15 the independence of counsel.

16           c. Deliver indigent defense services in the most  
17 efficient and cost-effective manner without sacrificing  
18 quality representation.

19           d. Establish minimum funding levels below which  
20 indigent defense services would fall below constitutionally  
21 mandated acceptable standards for quality representation of  
22 indigent defendants.

23           e. Establish uniform policies and procedures for the  
24 delivery of indigent defense services and enhance oversight of  
25 the determination of indigency, the oversight of the indigent  
26 defense systems in the judicial circuits, and the delivery of  
27 counsel and related services.

1           f. Enhance the integrity and efficiency of the  
2 judicial process related to indigent criminal cases.

3           g. Generate reliable statistical information in  
4 order to evaluate the services provided and funds expended  
5 hereunder.

6           Section 2. There is created as an independent state  
7 agency, the Alabama Indigent Defense Commission, which is  
8 placed under and subject to the control of the judicial branch  
9 of government.

10           Section 3. (a) The commission shall consist of the  
11 following members:

12           (1) Two members appointed by the Chief Justice of  
13 the Alabama Supreme Court who shall be members of the  
14 judiciary, one of whom should have significant experience in  
15 juvenile court proceedings.

16           (2) Two members appointed by the Governor.

17           (3) One member appointed by the Lieutenant Governor.

18           (4) One member appointed by the Speaker of the House  
19 of Representatives.

20           (5) One member appointed by the President Pro  
21 Tempore of the Senate.

22           (6) Two members who shall be attorneys appointed by  
23 the Alabama State Bar Association, one with significant  
24 experience in criminal defense and one with significant  
25 experience in juvenile court proceedings.

1           (7) Two members who shall be attorneys with  
2 significant experience in criminal defense appointed by the  
3 Alabama Criminal Defense Lawyers Association.

4           (8) One member who shall be an attorney appointed by  
5 the President of the Alabama Lawyers Association.

6           (9) Two members appointed by the commission, one of  
7 whom shall not be an attorney and one of whom shall have a  
8 significant financial background.

9           (b) The terms of office of the members appointed  
10 pursuant to subsection (a) shall be as follows:

11           (1) The initial appointments by the commission shall  
12 be for four years.

13           (2) The initial appointments by the Governor, by the  
14 Lieutenant Governor, by the Speaker of the House, and by the  
15 President Pro Tempore of the Senate shall be for three years.

16           (3) The initial appointments by the Chief Justice,  
17 by the Alabama State Bar Association, by the Alabama Criminal  
18 Defense Lawyers Association, and by the Alabama Lawyers  
19 Association shall be for two years.

20           (4) Initial appointments to the commission shall be  
21 made within 90 days following the effective date of this act.  
22 At the expiration of the terms of these initial appointments,  
23 successor terms shall be for four years and shall be made by  
24 the appointing authorities making the initial appointments as  
25 designated in subsection (a). New terms of office shall  
26 commence on the first day of the fiscal year for which the  
27 appointments are made. No person shall serve for more than two

1 consecutive four-year terms plus any initial term of less than  
2 four years.

3 (c) Persons appointed to the commission shall have  
4 substantial experience in the defense of criminal cases,  
5 juvenile cases, or termination of parental rights hearings.  
6 Any member of the judiciary shall have demonstrated a strong  
7 commitment to quality representation in indigent defense  
8 matters. No person shall be appointed to the commission who,  
9 previous to his or her consideration for appointment to the  
10 commission, has not demonstrated a strong commitment to  
11 quality representation in indigent defense matters. No active  
12 prosecutors, law enforcement officials, or active employees of  
13 these persons may be appointed to or serve on the commission.  
14 No active judicial officials or active employees of these  
15 persons may be appointed to or serve on the commission, except  
16 the judicial members as provided in subdivision (1) of  
17 subsection (a). No active employees of the Office of Indigent  
18 Defense Services may be appointed to or serve on the  
19 commission.

20 (d) All members of the commission shall be entitled  
21 to vote on any matters coming before the commission unless  
22 otherwise prohibited by statute, court rules, or rules adopted  
23 by the commission. Voting by proxy shall not be allowed.

24 (e) Each member of the commission shall serve until  
25 his or her successor in office has been appointed. Vacancies  
26 shall be filled by the appointing authority for the unexpired  
27 term. Appointments shall be made within 90 days from the date

1 notice of the vacancy is mailed by first class mail by the  
2 Director of the Office of Indigent Defense Services to the  
3 appointing authority. If the appointing authority fails to  
4 fill the vacancy within this 90-day period, the appointment  
5 shall be made by a majority vote of the commission. Removal of  
6 commission members shall be in accordance with policies and  
7 procedures adopted by the commission.

8 (f) A quorum for purposes of conducting commission  
9 business shall be a majority of the members of the commission.

10 (g) The commission shall elect a chair from the  
11 members of the commission for a term of not more than four  
12 years or the remainder of the term of the member-elected  
13 chair. A member may serve more than one term as chair. An  
14 appointee of the Chief Justice shall convene the first meeting  
15 and shall serve as acting chair until the appointments  
16 specified in subdivision (9) of subsection (a) have been made.  
17 No later than 30 days after its first meeting, the commission  
18 shall make the appointments specified in subdivision (9) of  
19 subsection (a). At the next meeting of the commission  
20 following the appointments, the members of the commission  
21 shall elect a chair.

22 (h) Commission members shall serve without  
23 compensation.

24 (i) Members of the commission shall be entitled to  
25 reimbursement for expenses while on official business of the  
26 commission or attending its meetings. Expenses shall be paid  
27 out of funds available to the commission for travel and shall

1 be reimbursed in accordance with Sections 36-7-20 to 36-7-22,  
2 inclusive, Code of Alabama 1975.

3 (j) The commission shall meet quarterly and at other  
4 times upon the call of the chair. All meetings shall be in  
5 accordance with the Alabama Open Meetings Act.

6 Section 4. (a) The commission shall develop and  
7 improve programs to provide legal representation to indigents.

8 (b) The commission shall appoint the Director of the  
9 Office of Indigent Defense Services, who shall be chosen on  
10 the basis of training, experience, and other qualifications as  
11 determined by the commission, and who shall serve at the  
12 pleasure of the commission. The person selected as director,  
13 in addition to the above qualifications and experience, shall  
14 have significant experience in the defense of indigent  
15 clients.

16 (c) The commission shall develop standards governing  
17 the provision of defense services under this act. The  
18 standards shall include, but not be limited to, standards for:

19 (1) Providing fiscal responsibility and  
20 accountability in indigent defense representation.

21 (2) Maintaining and operating indigent defense  
22 systems, whether appointed counsel, contract counsel, public  
23 defender, or appellate defender offices or some combination of  
24 the above.

25 (3) Prescribing minimum experience, training, and  
26 other qualifications for appointed counsel, contract counsel,  
27 and public defenders.

1           (4) Caseload management for appointed counsel,  
2 contract counsel, and public defenders.

3           (5) Performance for appointed counsel, contract  
4 counsel, and public defenders.

5           (6) Criteria for independent, competent, and  
6 efficient representation of clients whose cases present  
7 conflicts of interest.

8           (7) Providing and compensating experts and others  
9 who provide services related to legal representation of  
10 indigents.

11           (8) Determining indigency and partial indigency.

12           (d) The commission shall determine the methods for  
13 delivering indigent defense services in the trial courts in  
14 each county or circuit, or parts of the county or circuit, and  
15 in the appellate courts of the state. The methods established  
16 for delivering defense services may include, but are not  
17 limited to, appointed counsel systems, contract counsel  
18 systems, and part-time or full-time public defender systems.

19           (e) The commission shall determine the method of  
20 providing indigent defense services in the appellate courts,  
21 which may include state appellate defender offices for capital  
22 and noncapital cases and postconviction representation in  
23 capital and noncapital cases. If a method is selected by the  
24 commission whereby someone other than the trial counsel shall  
25 serve as the appellate counsel of the appellant, the  
26 commission, to the extent possible, shall see that the system  
27 provides for the continuous representation of the appellant

1 from the time the trial counsel is permitted to withdraw. In  
2 determining the method by which indigent defense services  
3 shall be provided in the appellate courts, the commission  
4 shall consult with the Alabama Supreme Court, the Court of  
5 Criminal Appeals, and the Court of Civil Appeals.

6 (f) This act does not govern the provision of  
7 indigent defense services to municipal courts, and this act  
8 does not prohibit any of the systems or methods by which legal  
9 services are now or are in the future provided to indigent  
10 defendants in the municipal courts of this state.

11 (g) The commission shall annually approve and  
12 recommend to the Legislature a unified budget for indigent  
13 defense systems including the Office of Indigent Defense  
14 Services. The commission shall establish a minimum funding  
15 level for indigent defense services in each judicial circuit,  
16 or a portion thereof, as set forth herein.

17 (h) The commission shall adopt other rules and  
18 procedures it deems necessary for the conduct of business by  
19 the commission and the Office of Indigent Defense Services.

20 Section 5. (a) The Office of Indigent Defense  
21 Services is established to carry out the administrative duties  
22 of the commission. The commission shall appoint a director who  
23 shall serve at the pleasure of the commission and establish  
24 all other employee positions as are needed for the efficient  
25 conduct of the business of the office. The director shall be  
26 responsible for the hiring and firing of all employees of the  
27 office. The director and other employees shall be compensated



1 in an amount to be determined by the commission. Salaries  
2 shall be paid at the same time and in the same manner that  
3 salaries of other state employees are paid. The director and  
4 other employees of the Office of Indigent Defense Services  
5 shall be entitled to annual and sick leave, insurance,  
6 retirement, and other state employee benefits, including  
7 cost-of-living raises and bonuses authorized by the  
8 Legislature for state employees.

9 (b) The office may enter into contracts, own  
10 property, and accept funds, grants, and gifts from any public  
11 or private source to pay expenses incident to implementing its  
12 purposes.

13 (c) The director shall attend all commission  
14 meetings except those relating to removal of the director or  
15 allegations of misconduct of the director. The director shall  
16 not vote on any matter decided by the commission.

17 (d) (1) The office shall be responsible for  
18 implementing in each judicial circuit the system determined  
19 and established by the commission for providing legal  
20 representation and related services for indigent defendants.

21 (2) The office shall develop policies and procedures  
22 for determining whether a person is an indigent defendant, and  
23 those policies and procedures shall be applied uniformly  
24 throughout the state. This act may not be construed to prevent  
25 the office from establishing guidelines for determining  
26 partial indigency and establishing policies and procedures for  
27 providing indigent defense services to persons determined to

1 be partially indigent, including policies and procedures  
2 governing recoupment for the Fair Trial Tax Fund. In  
3 accordance with the policies and procedures established by the  
4 office, the court shall determine in each case whether a  
5 person is an indigent defendant. If the court determines that  
6 a person is an indigent defendant, counsel shall be appointed  
7 as required by Section 15-12-5, Code of Alabama 1975.

8 (3) The office shall allocate and disburse funds  
9 appropriated for legal representation and related services in  
10 cases subject to this act pursuant to rules and procedures  
11 established by the commission and in accordance with the  
12 Budget Management Act. The office shall also have the  
13 authority to approve monetary allocations requested by and for  
14 appointed counsel, contract counsel, and public defender  
15 offices.

16 (4) The office shall establish a minimum funding  
17 level for providing indigent defense services in each judicial  
18 circuit or any portion thereof. The initial minimum funding  
19 level shall be established by determining the average annual  
20 total of all expenditures for each judicial circuit, or a  
21 portion thereof, for indigent defense services paid out of the  
22 Fair Trial Tax Fund, the General Fund, or any other sources of  
23 funding over the past five fiscal years. Once established, the  
24 minimum funding level for indigent defense services in each  
25 judicial circuit, or a portion thereof, shall serve as the  
26 minimum funding level for the annual budgetary requirements of  
27 statewide indigent defense services as provided in this act.

1 The minimum funding level may increase annually as a result of  
2 additional funding sources being established, but may not fall  
3 below the initial minimum funding level established by the  
4 office following the passage of this act.

5 (e) In addition to any other duties and  
6 responsibilities that may be assigned to the director by the  
7 commission, he or she shall have the following duties and  
8 authority with respect to all indigent defense services,  
9 subject to the direction of the commission:

10 (1) Prepare and submit budget recommendations for  
11 state appropriations necessary for the maintenance and  
12 operation of the state indigent defense services including the  
13 operation of the commission, the office, local indigent  
14 defense systems, appellate defender services, and, if  
15 established, the appellate defender office, and request  
16 annually a sum certain necessary to be appropriated from the  
17 State General Fund and the Fair Trial Tax Fund pursuant to  
18 Section 12-19-252, Code of Alabama 1975, and in accordance  
19 with this act.

20 (2) Prepare reports and collect and compile  
21 statistical data and all other information on the operations,  
22 costs, and needs of the office, and any other information the  
23 commission may require. The Director of the Office of Indigent  
24 Defense Services shall prepare and submit an annual report on  
25 the work of the commission to the Chief Justice.

26 (3) Assist the commission in developing rules and  
27 standards for the delivery of services under this act.

1           (4) Administer and coordinate the operations of the  
2 office and supervise compliance with standards adopted by the  
3 commission.

4           (5) Subject to policies and procedures established  
5 by the commission, hire professional, technical, and support  
6 personnel as deemed necessary for the efficient operation of  
7 the Office of Indigent Defense Services.

8           (6) Keep and maintain proper financial records.

9           (7) Apply for and accept on behalf of the Office of  
10 Indigent Defense Services any funds that may become available  
11 from government grants, private gifts, donations, bequests, or  
12 otherwise from any source.

13           (8) Coordinate the services of the Office of  
14 Indigent Defense Services with any and all federal, county, or  
15 private programs established to provide assistance to indigent  
16 defendants, and consult with professional bodies concerning  
17 the improvement of the administration of indigent defense  
18 services.

19           (9) Offer or approve training programs for attorneys  
20 and others involved in the legal representation of persons  
21 subject to this act.

22           (10) Approve and administer the processing of all  
23 claims from private counsel relative to appointments to handle  
24 indigent defense cases, effective the first day of the fiscal  
25 year next following the effective date of this act.

26           (11) Administer the processing of all contracts for  
27 contract counsel relating to handling indigent criminal cases,

1 effective the first day of the fiscal year next following the  
2 effective date of this act.

3 (12) Administer the processing of all monetary  
4 allocations requested by and for a public defender office  
5 relating to the annual operation of the requesting public  
6 defender's office, effective the first day of the fiscal year  
7 next following the effective date of this act.

8 (13) Perform other duties as the commission may  
9 assign.

10 Section 6. Sections 12-19-252, 15-12-1, 15-12-4,  
11 15-12-5, 15-12-6, 15-12-21, 15-12-22, 15-12-23, 15-12-26,  
12 15-12-27, 15-12-40, 15-12-41, 15-12-42, 15-12-43, 15-12-44,  
13 15-12-45, and 15-12-46 of the Code of Alabama 1975, are  
14 amended to read as follows:

15 "§12-19-252.

16 "There is hereby appropriated from the Fair Trial  
17 Tax Fund, annually, such amount as may be necessary to pay the  
18 fees of counsel, court reporters, clerks, registers, and such  
19 other necessary nonoverhead expenses of indigent defense as  
20 are provided by law.

21 "There is also hereby appropriated from the Fair  
22 Trial Tax Fund, annually, such amount not exceeding ~~\$50,000.00~~  
23 fifty thousand dollars (\$50,000) as may be necessary to pay  
24 the quarterly withdrawals of the ~~State~~ state Comptroller for  
25 the expenses of administering such indigent defense.

26 "In addition thereto, there is also appropriated  
27 annually out of the General Fund in the State Treasury a sum

1 equal to the amount by which the cost of such necessary  
2 expenses of indigent defense, as provided by law, exceeds the  
3 amount available for such purpose in the Fair Trial Tax Fund.  
4 Funding for the operation of the Indigent Defense Commission  
5 shall be appropriated from the Fair Trial Tax Fund.

6 "If the county maintains a public defender, there  
7 shall be paid a reasonable share of the cost of maintaining  
8 ~~such the~~ office, the amount appropriated for ~~such the~~ purpose  
9 to be prorated to the several counties maintaining public  
10 ~~defender's~~ defender offices on the basis of the case load of  
11 the respective public defender offices.

12 "§15-12-1.

13 "When used in this chapter, the following terms  
14 shall have the following meanings:

15 "~~(2)~~ (1) APPOINTED COUNSEL. Any attorney licensed to  
16 practice law in the State of Alabama who is appointed by the  
17 court to represent an indigent defendant.

18 "(2) COMMISSION. The Alabama Indigent Defense  
19 Commission.

20 "(3) CONTRACT COUNSEL. Any attorney licensed to  
21 practice law in the State of Alabama, or a firm, association,  
22 corporation, or partnership of lawyers so licensed, executing  
23 a contract for the provision of indigent defense services.

24 "~~(1)~~ (4) INDIGENT DEFENDANT. Any person involved in ~~a~~  
25 ~~criminal or juvenile~~ any proceeding in the trial or appellate  
26 courts of the state for ~~which proceeding~~ whom legal  
27 representation by counsel is constitutionally required or is

1 authorized or required by statute or court rule, including  
2 parents of children during the termination of parental rights  
3 hearings, who under oath or affirmation states that he or she  
4 is unable to pay for his or her defense, and who is found by  
5 the court to be financially unable to pay for his or her  
6 defense.

7 "(5) INDIGENT DEFENSE SERVICES. Those services that  
8 are necessary for the legal defense of an indigent defendant.

9 "~~(5)~~(6) INDIGENT DEFENSE SYSTEM. Any method or  
10 mixture of methods for providing legal representation to an  
11 indigent defendant, including use of appointed counsel, use of  
12 contract counsel, or use of public defenders, ~~or any~~  
13 alternative method meeting constitutional requirements.

14 "(7) MINIMUM FUNDING LEVEL. The minimum funding  
15 level is that level of funding established by the Office of  
16 Indigent Defense Services, based on the average annual  
17 expenditure for indigent defense services in each judicial  
18 circuit, or a portion thereof, during the preceding five  
19 fiscal years. The minimum funding level shall serve as a floor  
20 below which the providing of indigent defense services would  
21 be adversely affected and the quality of representation would  
22 fall below constitutionally mandated levels.

23 "(8) NONOVERHEAD EXPENSES. Nonoverhead expenses are  
24 the reasonable expenses incurred during and directly related  
25 to an appointed counsel's legal representation of an indigent  
26 defendant. Nonoverhead expenses do not include office overhead  
27 expenses, such as professional license fees; malpractice,

1 casualty, health, general liability, and workers' compensation  
2 insurance; office salaries; ad valorem taxes; office supplies;  
3 depreciation of office equipment and furniture; continuing  
4 legal education expenses, including travel and lodging;  
5 utilities; bank fees and interest on loans; and professional  
6 fees.

7 "(9) OFFICE. The Office of Indigent Defense  
8 Services.

9 "(4)(10) PUBLIC DEFENDER. Any attorney licensed to  
10 practice law in the State of Alabama, other than contract  
11 counsel or appointed counsel, who receives a salary for  
12 representing an indigent defendant.

13 "(11) TRIAL COURT. Any district or circuit court of  
14 the State of Alabama, not including municipal or probate  
15 courts of the State of Alabama.

16 "§15-12-4.

17 "(a) Creation. - In each judicial circuit, the  
18 presiding circuit judge shall ~~appoint~~ establish an indigent  
19 defense ~~commission~~ advisory board.

20 "(b) Composition; qualifications, appointment, term  
21 of office and removal of members; vacancies. - The indigent  
22 defense ~~commission~~ advisory board shall be composed of five  
23 members who are residents of the judicial circuit in which  
24 they are appointed. ~~There shall be two members who are~~  
25 ~~attorneys licensed to practice law in Alabama, one member who~~  
26 ~~is a member of a county commission within the circuit, one~~  
27 ~~member who is the mayor or a member of the governing body of a~~



1 ~~municipality within the circuit, and one member who is a~~  
2 ~~nonlawyer citizen, including the presiding circuit judge as~~  
3 ~~the chair, a district judge, a local bar president, and two~~  
4 ~~other attorneys having significant criminal defense experience~~  
5 ~~selected by the local bar.~~ Each member shall serve for a term  
6 of ~~six years~~ one year from the date of appointment, unless  
7 removed for cause by the presiding circuit judge after notice  
8 and a hearing, and members may be reappointed. Vacancies on  
9 the ~~commission~~ advisory board shall be filled by the presiding  
10 judge.

11 "(c) Compensation and expenses of members. - Members  
12 of the indigent defense ~~commission~~ advisory board shall serve  
13 without compensation; except, that necessary travel expenses  
14 in connection with ~~commission~~ advisory board business shall be  
15 paid by the state Office of Indigent Defense Services in the  
16 same manner as for state employees generally.

17 "(d) Meetings generally; quorum; chair. - The  
18 indigent defense ~~commission~~ advisory board shall meet at least  
19 once annually and shall meet whenever so requested by the  
20 presiding circuit judge or the chair of the board appointed by  
21 the presiding circuit judge. Three members shall constitute a  
22 quorum for conducting business. ~~One member shall be designated~~  
23 ~~a chair by majority vote of the members.~~

24 "(e) Powers and duties. - The indigent defense  
25 ~~commission~~ advisory board shall perform the following duties  
26 and have the following powers:

1           ~~"(1) It shall advise the presiding circuit judge on~~  
2 ~~the indigent defense system to be utilized in each county of~~  
3 ~~the circuit.~~

4           ~~"(2) It shall advise the presiding circuit judge on~~  
5 ~~the operation and administration of indigent defense systems~~  
6 ~~within the circuit.~~

7           ~~"(3) It shall select the public defender by majority~~  
8 ~~vote, if a public defender system is established within the~~  
9 ~~circuit, determine the budget for the public defender and~~  
10 ~~supervise the operation of the public defender office. It may~~  
11 ~~remove the public defender for cause after notice and a~~  
12 ~~hearing.~~

13           ~~"(4) It shall select, in accordance with procedures~~  
14 ~~promulgated by the Administrative Director of Courts, one or~~  
15 ~~more contract counsel by majority vote, if a contract counsel~~  
16 ~~system is established within the circuit; contract with such~~  
17 ~~entities, subject to the approval of the presiding circuit~~  
18 ~~judge; and determine the compensation to be paid to contract~~  
19 ~~counsel under each contract, subject to the review of the~~  
20 ~~Administrative Director of Courts and the approval of the~~  
21 ~~State Comptroller. Notwithstanding this section or any other~~  
22 ~~law to the contrary, no presiding judge or indigent defense~~  
23 ~~commission shall by rule, regulation, or otherwise prohibit a~~  
24 ~~circuit court judge or a district court judge from appointing~~  
25 ~~any attorney licensed in Alabama to represent an indigent~~  
26 ~~defendant.~~

1           "It shall recommend to the Director of the Office of  
2 Indigent Defense Services and the commission the system or  
3 systems of indigent defense to be utilized in each county of  
4 the circuit. The five members of the local advisory board  
5 shall have the right to be heard and entitled to vote on any  
6 matters coming before the commission on the delivery of  
7 indigent defense services in that circuit. Any systems or  
8 system of indigent defense programs in any circuit or portion  
9 of the circuit shall be approved by a majority of the  
10 commission which shall include for this purpose the five  
11 members of the local advisory board. If the five members of  
12 the local advisory board in a circuit vote unanimously in  
13 favor of one method of delivery of indigent defense services  
14 in their circuit, that method shall be selected if, upon vote  
15 by the commission, three or more members of the commission  
16 affirmatively vote for the method unanimously voted for by the  
17 local advisory board. In all other instances, the method of  
18 delivery of indigent services shall be selected by a simple  
19 majority of the combined votes of the commission members and  
20 the local advisory board.

21           "§15-12-5.

22           "(a) Judicial role in determining indigency. - The  
23 trial judge ~~first having cognizance of a criminal or juvenile~~  
24 ~~proceeding in his court~~ shall determine if ~~an accused person a~~  
25 ~~person in his or her court~~ or petitioner for postconviction  
26 relief is an indigent defendant as defined in Section 15-12-1.  
27 Upon appeal from a trial court to ~~the~~ a state appellate courts

1 court, the trial judge ~~or the presiding circuit judge who~~  
2 presided over the proceedings on appeal shall determine if the  
3 appellant is an indigent defendant as defined in Section  
4 15-12-1. ~~In~~ If an indigency determination is necessary in any  
5 proceeding initiated originally in a state appellate court ~~or~~  
6 ~~in any case appealed to a state appellate court without a~~  
7 ~~determination of indigency~~, the presiding judge or chief  
8 justice of the appellate court shall determine if the  
9 appellant or petitioner is an indigent defendant as defined in  
10 Section 15-12-1.

11 "(b) Criteria for determining indigency. - In  
12 determining indigency, the judge shall recognize ability to  
13 pay as a variable depending on the nature, extent, and  
14 liquidity of assets, the disposable net income of the  
15 defendant, the nature of the offense, the effort and skill  
16 required to gather pertinent information, and the length and  
17 complexity of the proceedings.

18 "(c) Investigation of indigency. - In determining  
19 the fact of indigency a judge may require an investigation and  
20 report by a district attorney, public defender, sheriff,  
21 probation officer, or other officer of the court. ~~Provided,~~  
22 ~~further, that the~~ The trial court judge ~~shall~~, in all cases  
23 requiring a determination of indigency, shall require the  
24 accused to execute an affidavit of substantial hardship on a  
25 form approved by the ~~Supreme Court~~ commission. The completed  
26 affidavit of substantial hardship and the subsequent order of  
27 the court either denying or granting court appointed counsel

1 to the accused shall become a part of the official court  
2 record in the case.

3 "(d) Provision of defense counsel. - The judge  
4 making a determination of indigency shall provide legal  
5 representation for the indigent defendant. To the extent  
6 possible, judges shall provide continuity in legal  
7 representation. In capital cases, the trial court, after  
8 consultation with the office, shall assign at least two  
9 defense counsel in each case. At least one member of each  
10 capital defense team, where practicable, shall be a member of  
11 the bar in that circuit. All attorneys appointed in capital  
12 cases shall meet the requirements established by the  
13 commission for appointment in capital cases.

14 "§15-12-6.

15 "Compensation of counsel appointed to represent  
16 indigent defendants shall be paid by the state in such amounts  
17 as otherwise provided by law. The procedure for approval and  
18 payment for ~~such these~~ services shall be as provided by law or  
19 rule ~~as may be promulgated by the Supreme Court~~ or regulation  
20 adopted by the commission.

21 "§15-12-21.

22 "(a) If it appears to the trial court that ~~a~~ an  
23 indigent defendant is entitled to counsel, that the indigent  
24 defendant does not expressly waive the right to assistance of  
25 counsel, and that the indigent defendant is not able  
26 financially or otherwise to obtain the assistance of counsel,  
27 the court shall appoint counsel to represent and assist the

1 indigent defendant. It shall be the duty of the appointed  
2 counsel, as an officer of the court and as a member of the  
3 bar, to represent and assist the indigent defendant to the  
4 best of his or her ability.

5 ~~"(b) If it appears to the trial court in a  
6 delinquency case, need of supervision case, or other judicial  
7 proceeding in which a juvenile is a party, that the juvenile  
8 is entitled to counsel and that the juvenile is not able  
9 financially or otherwise to obtain the assistance of counsel  
10 or that appointed counsel is otherwise required by law, the  
11 court shall appoint counsel to represent and assist the  
12 juvenile or act in the capacity of guardian ad litem for the  
13 juvenile. It shall be the duty of the appointed counsel, as an  
14 officer of the court and as a member of the bar, to represent  
15 and assist the juvenile to the best of his or her ability.~~

16 ~~"(c) If it appears to the trial court that the  
17 parents, guardian, or custodian of a juvenile who is a party  
18 in a judicial proceeding, are entitled to counsel and the  
19 parties are unable to afford counsel, upon request, the court  
20 shall appoint counsel to represent and assist the parents,  
21 guardian, or custodian. It shall be the duty of the appointed  
22 counsel, as an officer of the court and as a member of the  
23 bar, to represent and assist the parties to the best of his or  
24 her ability.~~

25 ~~"(d) (b) Counsel appointed in cases described in  
26 subsections subsection (a), (b), and (c), including cases  
27 tried de novo in circuit court on appeal from a juvenile~~

1 proceeding, shall be entitled to receive for their services a  
2 fee to be approved by the ~~trial court~~ office. The amount of  
3 the fee shall be based on the number of hours spent by the  
4 attorney in working on the case and shall be ~~computed at the~~  
5 ~~rate of fifty dollars (\$50) per hour for time expended in~~  
6 ~~court and thirty dollars (\$30) per hour for time reasonably~~  
7 ~~expended out of court in the preparation of the case.~~  
8 ~~Effective October 1, 2000, the amount of the fee shall be~~  
9 ~~based on the number of hours spent by the attorney in working~~  
10 ~~on the case and shall be computed at the rate of sixty dollars~~  
11 ~~(\$60) per hour for time expended in court and forty dollars~~  
12 ~~(\$40) per hour for time reasonably expended out of court in~~  
13 ~~the preparation of the case~~ eighty-five dollars (\$85) per hour  
14 for time spent in the defense of noncapital cases and one  
15 hundred dollars (\$100) per hour for time spent in defense of  
16 capital cases. The total fees paid to any one attorney in any  
17 one case, from the time of appointment through the trial of  
18 the case, including motions for new trial, shall not exceed  
19 the following:

20 "(1) In cases where the original charge is a capital  
21 offense or a charge which carries a possible sentence of life  
22 without parole, there shall be no limit on the total fee.

23 "(2) Except for cases covered by subdivision (1), in  
24 cases where the original charge is a Class A felony, the total  
25 fee shall not exceed ~~three thousand five hundred dollars~~  
26 ~~(\$3,500)~~ four thousand five hundred dollars (\$4,500).

1           "(3) In cases where the original charge is a Class B  
2 felony, the total fee shall not exceed ~~two thousand five~~  
3 ~~hundred dollars (\$2,500)~~ three thousand five hundred dollars  
4 (\$3,500).

5           "(4) In cases where the original charge is a Class C  
6 felony, the total fee shall not exceed ~~one thousand five~~  
7 ~~hundred dollars (\$1,500)~~ three thousand dollars (\$3,000).

8           "(5) In juvenile cases, the total fee shall not  
9 exceed ~~two thousand dollars (\$2,000)~~ four thousand dollars  
10 (\$4,000).

11           "(6) In all other cases, the total fee shall not  
12 exceed ~~one thousand dollars (\$1,000)~~ one thousand five hundred  
13 dollars (\$1,500).

14           "Notwithstanding the above, the trial court for good  
15 cause shown may approve an attorney's fee in excess of the  
16 maximum amount allowed. Counsel shall also be entitled to be  
17 reimbursed for any nonoverhead expenses reasonably incurred in  
18 the defense of his or her client, with any expense in excess  
19 of three hundred dollars (\$300) ~~to be being~~ approved in  
20 advance by the trial court. ~~Preapproved expert fees shall be~~  
21 ~~billed at the time the court is notified that all work by the~~  
22 ~~expert has been completed, and shall be paid forthwith. Once~~  
23 ~~an expert has been paid for services on a particular case,~~  
24 ~~that expert shall not be allowed to receive further payment on~~  
25 ~~the case. Retrials of any case shall be considered a new case.~~  
26 The reasonableness of the reimbursable expenses of an attorney  
27 shall be determined by the trial court at the time



1 reimbursement is requested. Reimbursable expenses shall not  
2 include overhead expenses. Fees and expenses of all experts or  
3 investigators, or both, and others rendering defense service  
4 to be used by counsel for an indigent defendant shall be  
5 approved in advance by the trial court. Retrials of any case  
6 shall be considered a new case for billing purposes. Upon  
7 review, the director may authorize interim payment of the  
8 attorney fees or expenses, or both.

9           "~~(e)~~(c) Within a reasonable time after the  
10 conclusion of the trial or ruling on a motion for a new trial  
11 or after an acquittal or other judgment disposing of the case,  
12 not to exceed 90 days, counsel shall submit ~~to the trial court~~  
13 a bill for services rendered, not to exceed the amount  
14 provided in subsection ~~(d)~~(b). If counsel has submitted a bill  
15 in excess of the amount allowed in subsection ~~(d)~~(b), a sworn  
16 affidavit shall be attached to the bill stating the basis of  
17 the claim of the counsel for additional ~~money~~ hours spent in  
18 defense of the case, and setting out the good cause required  
19 by subsection ~~(d)~~(b). ~~The bill, after approval by the trial~~  
20 ~~court, shall be submitted by the clerk of the court to the~~  
21 ~~state Comptroller for audit and, if approved by the~~  
22 ~~Comptroller,~~ The bill for compensation of appointed counsel  
23 shall be submitted to the clerk of the court and then to the  
24 office. An audit shall be made and if approved, that office  
25 shall be forwarded forward such bill to the ~~State Treasurer~~  
26 state Comptroller for payment.

27           "§15-12-22.

1           "(a) In all ~~criminal~~ cases wherein a an indigent  
2 defendant has ~~been convicted of a serious offense in which an~~  
3 appeal which lies directly to ~~the Supreme Court or Court of~~  
4 ~~Criminal Appeals~~ an appellate court and the indigent defendant  
5 expresses his or her desire to appeal ~~the conviction~~, the  
6 court shall cause to be entered upon its minutes a recital of  
7 notice of appeal, and the court shall then ascertain and make  
8 findings in reference to the appeal concerning those items  
9 listed in Section 15-12-20.

10           "(b) If it appears that the indigent defendant  
11 desires to appeal and is unable financially or otherwise to  
12 obtain the assistance of counsel on appeal and the indigent  
13 defendant expresses the desire for assistance of counsel, the  
14 trial court shall appoint counsel to represent and assist the  
15 indigent defendant on appeal. The presiding judge of the court  
16 to which the appeal is taken shall have authority to appoint  
17 counsel in the event the trial court fails to appoint and in  
18 the event it becomes necessary to further provide for counsel.  
19 It shall be the duty of the appointed counsel, as an officer  
20 of the court and as a member of the bar, to represent and  
21 assist the indigent defendant in the appeal.

22           "~~(c) If it appears that a juvenile who is a party to~~  
23 ~~an appeal is otherwise required by law or by rule of court to~~  
24 ~~be represented by appointed counsel, the trial court shall~~  
25 ~~appoint counsel to represent and assist the juvenile on~~  
26 ~~appeal. The presiding judge of the court to which the appeal~~  
27 ~~is taken shall have authority to appoint counsel in the event~~

1 ~~the trial court fails to appoint and in the event it becomes~~  
2 ~~necessary to further provide for counsel. It shall be the duty~~  
3 ~~of the counsel, as an officer of the court and as a member of~~  
4 ~~the bar, to represent and assist the juvenile in the appeal.~~

5 ~~"(d)(c) Counsel appointed to defend any indigent~~  
6 ~~defendant for the appeal from a decision in any ~~criminal or~~~~  
7 ~~juvenile trial court proceeding, excluding cases tried de novo~~  
8 ~~in circuit court on appeal from a juvenile proceeding, shall~~  
9 ~~be entitled to receive for their services a fee to be approved~~  
10 ~~by the appellate court office.~~

11 ~~"(1) The amount of the fee shall be based on the~~  
12 ~~number of hours spent by the counsel in working on the appeal~~  
13 ~~and shall be ~~computed at the rate of fifty dollars (\$50) per~~~~  
14 ~~hour eighty-five dollars (\$85) per hour for time spent in the~~  
15 ~~appeal of noncapital convictions and one hundred dollars~~  
16 ~~(\$100) per hour for time spent in the appeal of capital~~  
17 ~~convictions for time reasonably expended in the prosecution of~~  
18 ~~the appeal, and any subsequent petition for writ of~~  
19 ~~certiorari.~~

20 ~~"(2) Effective October 1, 2000, the amount of the~~  
21 ~~fee shall be based on the number of hours spent by the~~  
22 ~~attorney in working on the prosecution of the appeal and shall~~  
23 ~~be computed at the rate of sixty dollars (\$60) per hour for~~  
24 ~~time reasonably expended in the prosecution of the appeal, and~~  
25 ~~any subsequent petition for writ of certiorari.~~

26 ~~"(3) The (2) Except in the appeal of capital~~  
27 ~~convictions or other cases for which the defendant has been~~

1 sentenced to life without the possibility of parole, the total  
2 fees awarded to any one attorney in any appeal and any  
3 subsequent petition for writ of certiorari, to the Court of  
4 Criminal Appeals or the Court of Civil Appeals shall not,  
5 however, exceed two thousand dollars (\$2,000) two thousand  
6 five hundred dollars (\$2,500), and shall be in addition to any  
7 fees awarded on the trial court level. In those cases where  
8 the state takes a pretrial appeal, appointed counsel shall be  
9 entitled to bill separately for services on the pretrial and  
10 post-trial appeals, up to two thousand dollars (\$2,000) two  
11 thousand five hundred dollars (\$2,500) for each appeal. In  
12 those cases where a petition for writ of certiorari is filed  
13 in the Alabama Supreme Court, counsel shall be entitled to  
14 bill separately for all services rendered after the Court of  
15 Criminal Appeals or the Court of Civil Appeals overrules the  
16 application for rehearing, or after the decision of the Court  
17 of Criminal Appeals or the Court of Civil Appeals in the case  
18 of a pretrial appeal, up to a separate limit of two thousand  
19 dollars (\$2,000) two thousand five hundred dollars (\$2,500)  
20 over and above any funds received for services rendered in the  
21 Court of Criminal Appeals or the Court of Civil Appeals.  
22 Notwithstanding the above, the appellate court for good cause  
23 shown may approve an attorney's fee in excess of the maximum  
24 amount allowed. The counsel shall also be entitled to be  
25 reimbursed for any expenses reasonably incurred, other than  
26 overhead expenses, in preparing and handling the appeal, to be  
27 approved in advance by the ~~appellate court~~ office.

1           "(3) In the appeal of capital convictions or other  
2 cases for which the defendant has been sentenced to life  
3 without the possibility of parole, the total fees awarded to  
4 any one attorney shall not exceed fifteen thousand dollars  
5 (\$15,000) and shall be in addition to any fees awarded at the  
6 trial court level. Any amounts billed in those cases in which  
7 the state has taken a pretrial appeal shall not be counted  
8 against the fifteen thousand dollar (\$15,000) limit imposed.  
9 Counsel shall be reimbursed for any nonoverhead expenses  
10 reasonably incurred in preparing and handling the appeal, to  
11 be approved for reasonableness by the office. Notwithstanding  
12 the above, the appellate court for good cause shown may  
13 approve an attorney's fee in excess of the maximum amount  
14 allowed.

15           ~~"(e)(d)~~ Within a reasonable time after the  
16 disposition of the appeal, not to exceed 90 days, counsel  
17 shall submit ~~to the appellate court~~ a bill for services  
18 rendered, not to exceed the amount provided in subsection ~~(d)~~  
19 ~~(c),~~ and the bill, ~~when approved by the presiding judge or~~  
20 ~~chief justice of the appellate court,~~ shall be submitted by  
21 the clerk of the appellate court to the ~~state Comptroller~~  
22 office for audit review and approval and, if approved, ~~by the~~  
23 ~~Comptroller, forwarded~~ office shall forward the bill to the  
24 ~~State Treasurer~~ state Comptroller for payment. If counsel has  
25 submitted a bill in excess of the amount allowed in subsection  
26 (c), a sworn affidavit shall be attached to the bill stating  
27 the basis of the claim for additional hours spent in appealing

1 the case, and setting out the good cause required by  
2 subsection (c).

3 "§15-12-23.

4 "(a) In proceedings filed in the district or circuit  
5 court involving the life and liberty of those charged with or  
6 convicted of serious criminal offenses including proceedings  
7 for habeas corpus or other ~~post conviction~~ postconviction  
8 remedies, and in post-trial motions or appeals in the  
9 proceedings, the trial or presiding judge or chief justice of  
10 the court in which the proceedings may be commenced or pending  
11 may appoint counsel to represent and assist those persons  
12 charged or convicted if it appears to the court that the  
13 person charged or convicted is unable financially or otherwise  
14 to obtain the assistance of counsel and desires the assistance  
15 of counsel and it further appears that counsel is necessary in  
16 the opinion of the judge to assert or protect the right of the  
17 person.

18 "(b) In proceedings filed in the district or circuit  
19 court involving the life and liberty of those persons charged  
20 or adjudicated for juvenile offenses including proceedings for  
21 habeas corpus or other ~~post conviction~~ postconviction  
22 remedies, and in post-trial motions or appeals in the  
23 proceedings, the trial or presiding judge or chief justice of  
24 the court in which the proceedings may be commenced or pending  
25 may appoint counsel to represent and assist those ~~juveniles~~  
26 persons so charged or ~~convicted~~ adjudicated if it appears to  
27 the court that the ~~juvenile~~ person charged or ~~convicted~~

1 adjudicated is unable financially or otherwise to obtain the  
2 assistance of counsel and it further appears that counsel is  
3 necessary in the opinion of the judge to assert or protect the  
4 rights of the person, or court appointed counsel is otherwise  
5 required by law or rule of court.

6 "(c) It shall be the duty of ~~such~~ the counsel as  
7 provided in subsections (a) and (b) to represent and assist  
8 the person in the proceedings.

9 "(d) The counsel appointed in the proceedings shall  
10 be entitled to receive for his or her services a fee to be  
11 approved by the ~~judge appointing him or her~~ office. The amount  
12 of the fee shall be based on the number of hours spent by  
13 counsel ~~in working on the proceedings and shall be computed at~~  
14 ~~the rate of fifty dollars (\$50) per hour for time expended in~~  
15 ~~court and thirty dollars (\$30) per hour for time reasonably~~  
16 ~~expended in preparation of the proceedings. Effective October~~  
17 ~~1, 2000, the.~~ The fee shall be computed at the rate of sixty  
18 ~~dollars (\$60)~~ eighty-five dollars (\$85) per hour for time  
19 spent in postconviction representation of noncapital  
20 convictions and one hundred dollars (\$100) per hour for time  
21 ~~expended in court and forty dollars (\$40) per hour for time~~  
22 ~~reasonably expended in preparation of the proceedings. The~~  
23 spent in postconviction representation of capital convictions.  
24 Except in capital convictions, the total fees to counsel for  
25 ~~the proceedings shall not exceed one thousand dollars~~  
26 ~~(\$1,000).~~ one thousand five hundred dollars (\$1,500). In  
27 capital convictions, the total fees shall not exceed fifteen

1 thousand dollars (\$15,000) for work performed at the trial  
2 court level. Fees awarded for work performed in appeals in  
3 capital convictions to the Court of Criminal Appeals and the  
4 Alabama Supreme Court shall not exceed fifteen thousand  
5 dollars (\$15,000).

6 "(e) Counsel shall also be entitled to be reimbursed  
7 for any nonoverhead expenses reasonably incurred at the trial  
8 court level in representing the indigent defendant in the  
9 proceedings, with any expenses in excess of three hundred  
10 dollars (\$300) to be approved in advance by the office. Fees  
11 and expenses of all experts, investigators, and others  
12 providing defense services shall be approved in advance by the  
13 office. Upon review, the office may authorize interim payment  
14 of the attorney fees or expenses, or both.

15 "(e)(f) Claim for the fee shall be submitted,  
16 approved, and paid in the same manner as provided in  
17 subsection (e) (d) of Section 15-12-22.

18 "§15-12-26.

19 "(a) ~~In any county or circuit where a contract~~  
20 ~~counsel system is chosen as a method of providing indigent~~  
21 ~~defense, the circuit indigent defense commission shall choose~~  
22 ~~one or more contract counsel. The commission may establish~~  
23 ~~that a contract counsel system be used as the method to~~  
24 ~~provide indigent defense services within the circuit or part~~  
25 ~~thereof.~~

26 "(b) If the commission chooses to employ the  
27 contract counsel system within the circuit or part thereof,



1 the commission shall adopt procedures for accepting  
2 applications for the contract through the Office of Indigent  
3 Defense Services.

4 "(c) The commission shall award the contracts to an  
5 attorney, firm, association, corporation, or partnership of  
6 lawyers. The five members of the local advisory board shall  
7 have the right to be heard and entitled to vote on the  
8 awarding of a contract within its circuit.

9 ~~"(b)(d) Each contract counsel chosen shall be~~  
10 ~~employed pursuant to a contract containing terms and~~  
11 ~~conditions as deemed necessary between the attorney, firm,~~  
12 ~~association, corporation, or partnership, as the case may be,~~  
13 ~~and the circuit indigent defense commission. The contract~~  
14 ~~shall be subject to the approval of the presiding circuit~~  
15 ~~judge. Unless the contract is disapproved by the presiding~~  
16 ~~circuit judge within 30 days of the execution of the contract~~  
17 ~~on behalf of the circuit indigent defense commission, the~~  
18 ~~contract shall be deemed approved Indigent Defense Commission.~~

19 "§15-12-27.

20 "Any provision of this chapter to the contrary  
21 notwithstanding, each judicial circuit establishing a contract  
22 counsel system shall be required to follow those procedures  
23 established for the selection of contract counsel established  
24 by the office and shall receive compensation as set  
25 established by the circuit indigent defense commission,  
26 reviewed by the Administrative Director of Courts, and

1 approved by the State Comptroller, to be paid from the Fair  
2 Trial Tax Fund or other funds as provided by law commission.

3 "§15-12-40.

4 "In any county or circuit where a public defender  
5 system is chosen as a method of providing indigent defense,  
6 the indigent defense commission shall choose a public  
7 defender.

8 "(a) The commission may establish a public defender  
9 office as the method to provide indigent defense services  
10 within the circuit.

11 "(b) For each new term, and to fill any vacancy, the  
12 commission may select and appoint a public defender for the  
13 circuit. The five members of the local advisory board shall  
14 have the right to be heard and entitled to vote on the  
15 selection and appointment of a public defender for the  
16 circuit. Attorneys appointed hereunder as public defenders  
17 shall be licensed to practice law in Alabama at the time of  
18 the appointment or by the time they assume office.

19 "§15-12-41.

20 "(a) The public defender shall be appointed for a  
21 fixed term not to exceed six years, subject to reappointment  
22 by the commission, and may be removed from office for cause by  
23 the indigent defense commission.

24 "(b) The indigent defense commission may require  
25 that the public defender serve full time or part time.

26 "§15-12-42.

1           "The public defender shall have the following powers  
2 and duties:

3           "(1) Within his or her geographic jurisdiction, the  
4 public defender shall provide defense services to indigent  
5 defendants ~~charged with misdemeanors and felonies and referred~~  
6 ~~to him by the court~~ as defined in Section 15-12-1.

7           "(2) The public defender ~~shall~~, at the request and  
8 with the consent of a municipal governing body and the  
9 ~~indigent defense~~ commission, shall represent indigent  
10 defendants in a municipal court within his or her geographic  
11 jurisdiction.

12           "(3) The public defender ~~may~~, with consent of the  
13 ~~indigent defense~~ commission, may represent an indigent  
14 defendant in a state appellate court.

15           "~~(4) The public defender may, if empowered by the~~  
16 ~~presiding circuit judge and the indigent defense commission,~~  
17 ~~administer the system of appointing private counsel for~~  
18 ~~indigent defendants within his geographic jurisdiction.~~

19           "§15-12-43.

20           "(a) The public defender shall receive a salary set  
21 by the ~~indigent defense commission and approved by the~~  
22 ~~Administrative Director of Courts~~ commission. The salary shall  
23 not exceed the state salary paid to a district attorney in the  
24 circuit and shall be paid in the same manner as employees of  
25 the state.

26           "(b) All salary and expenses of a public defender  
27 shall be paid by the state out of the ~~fair trial tax fund~~ Fair

1 Trial Tax Fund or other funds appropriated by the Legislature  
2 for such purposes; ~~except,~~ that in counties authorized to  
3 impose a court cost for defender services, the county shall  
4 fund defender services from the revenues of ~~said~~ the court  
5 cost, and the state shall pay a reasonable share of the cost  
6 of maintaining such office, such reasonable share to be  
7 determined by the ~~Administrative Director of Courts~~  
8 commission.

9 "§15-12-44.

10 "The public defender shall keep such records and  
11 make ~~such~~ reports on matters related to the operation of the  
12 office of the public defender as are required by the ~~indigent~~  
13 ~~defense commission; except, that~~ director. The attorney-client  
14 communications involving the defender or attorneys employed by  
15 him or her shall remain confidential.

16 "§15-12-45.

17 ~~The indigent defense commission, subject to the~~  
18 ~~approval of the Administrative Director of Courts, (a) The~~  
19 director, in compliance with procedures adopted by the  
20 commission, may approve expenditures for attorneys,  
21 investigators, other personnel, and nonpersonnel expenses of  
22 the public defender. Authorized employees of the public  
23 defender offices shall be entitled to annual and sick leave,  
24 insurance, retirement, and other state employee benefits,  
25 including cost-of-living raises and bonuses authorized by the  
26 Legislature for state employees.

1           "(b) The operating expenses and staff salaries and  
2 benefits for the offices of the public defenders shall be  
3 approved in advance by the office as part of an annual budget  
4 for the subject public defender's office and, once the budget  
5 is approved, shall be paid by the state from funds  
6 appropriated annually from the Fair Trial Tax Fund or other  
7 funds appropriated by the Legislature for this purpose. The  
8 expenses shall include, but not be limited to, the salary,  
9 benefits, and expenses of all eligible employees and  
10 positions, training and education, travel, research,  
11 equipment, and supplies.

12           "(c) Each public defender may employ assistant  
13 public defenders, investigators, and other staff, full time or  
14 part time, as authorized by the commission. Assistants,  
15 investigators, and other staff shall be appointed by the  
16 public defender and serve at the pleasure of the public  
17 defender.

18           "§15-12-46.

19           "Nothing in this article shall be construed to  
20 exclude establishment of appointed counsel or contract counsel  
21 systems, or both, parallel to a public defender system or to  
22 preclude judges from appointing counsel for indigent  
23 defendants where there is a conflict of interest involving the  
24 public defender or if the public defender is unable to provide  
25 prompt and adequate representation."

26           Section 7. Section 15-12-2 of the Code of Alabama  
27 1975, providing for the determination as to indigent defense

1 systems to be used in circuit, district, and municipal courts;  
2 Section 15-12-3 of the Code of Alabama 1975, providing for the  
3 presiding circuit judges to administer the circuit indigent  
4 defense system; and Section 15-12-24.1 of the Code of Alabama  
5 1975, providing for withdrawals from the Fair Trial Tax Fund  
6 to pay expenses of the state Comptroller for administering the  
7 defense of indigents are specifically repealed.

8 Section 8. The Director of the Administrative Office  
9 of Courts shall assist the Chair of the Alabama Indigent  
10 Defense Commission in retaining the initial Director of  
11 Indigent Defense Services of the commission. The Director of  
12 the Administrative Office of Courts shall recruit and  
13 interview prospective candidates and shall submit at least  
14 three names to the commission for its consideration. The  
15 commission may hire its initial Director of Indigent Defense  
16 Services from the list or may request the chair of the  
17 commission and the Director of the Administrative Office of  
18 Courts to submit additional names.

19 Section 9. Persons holding the position of public  
20 defender or appellate defender on the effective date of this  
21 act shall be entitled to serve the remainder of their terms of  
22 office.

23 Section 10. This act shall become effective on the  
24 first day of the third month following its passage and  
25 approval by the Governor, or its otherwise becoming law.