

1 HB379  
2 192374-4  
3 By Representatives England and Jones  
4 RFD: Judiciary  
5 First Read: 06-FEB-18

1 ENGROSSED

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3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT  
7

8 To amend Section 15-12-21, 15-12-22, and 22-52-14 of  
9 the Code of Alabama 1975, relating to the payment of court  
10 appointed attorneys; to authorize the court to waive the  
11 maximum fee limit in certain cases; to remove the cap for  
12 appeals of capital murder convictions; and authorize the court  
13 to appoint an attorney to represent an incapacitated person  
14 prior to the filing of a petition; to amend Section 15-12-4,  
15 Code of 1975, relating to voluntary indigent defense advisory  
16 boards, to provide civil immunity for actions taken by the  
17 advisory board.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 15-12-21, 15-12-22, ~~and~~  
20 22-52-14, and 15-12-4 of the Code of Alabama 1975, is amended  
21 to read as follows:

22 "§15-12-21.

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

1 through another indigent defense system for the circuit, the  
2 court shall appoint counsel to represent and assist the  
3 defendant. It shall be the duty of the appointed counsel, as  
4 an officer of the court and as a member of the bar, to  
5 represent and assist the indigent defendant to the best of his  
6 or her ability.

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

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

1           "(d) If the appropriate method for providing  
2 indigent defense services is by appointed counsel in a case  
3 described in subsections (a), (b), and (c), including cases  
4 tried de novo in circuit court on appeal from a juvenile  
5 proceeding, appointed counsel shall be entitled to receive for  
6 their services a fee to be approved by the trial court. The  
7 amount of the fee shall be based on the number of hours spent  
8 by the attorney in working on the case. The amount of the fee  
9 shall be based on the number of hours spent by the attorney in  
10 working on the case and shall be computed at the rate of  
11 seventy dollars (\$70) per hour for time reasonably expended on  
12 the case. The total fees paid to any one attorney in any one  
13 case, from the time of appointment through the trial of the  
14 case, including motions for new trial, shall not exceed the  
15 following:

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

19           "(2) Except for cases covered by subdivision (1), in  
20 cases where the original charge is a Class A felony, the total  
21 fee shall not exceed four thousand dollars (\$4,000).

22           "(3) In cases where the original charge is a Class B  
23 felony, the total fee shall not exceed three thousand dollars  
24 (\$3,000).

25           "(4) In cases where the original charge is a Class C  
26 or Class D felony, the total fee shall not exceed two thousand  
27 dollars (\$2,000).

1           "(5) In juvenile cases, the total fee shall not  
2 exceed two thousand five hundred dollars (\$2,500).

3           "(6) In all other cases, the total fee shall not  
4 exceed one thousand five hundred dollars (\$1,500).

5           "(e) (1) The Beginning October 1, 2018 through  
6 September 30, 2020, the maximum amount of the total fees set  
7 forth above in subdivisions (2), (3), and (4) of subsection  
8 (d) may be waived by the trial court and the Director of  
9 Indigent Defense Services for good cause shown. The maximum  
10 amount of the total fees set forth above in subdivision (5) of  
11 subsection (d) may be waived by the trial court and the  
12 Director of Indigent Defense Services for good cause shown in  
13 juvenile dependency cases for guardians ad litem representing  
14 children. The director shall adopt guidelines, procedures, and  
15 forms to aid the trial court in determining whether a case  
16 merits a waiver.

17           "(2) If the court determines that a waiver of the  
18 maximum amount is appropriate, the court shall submit to the  
19 director both a memorandum setting forth the factors it  
20 considered in making its determination that a waiver was  
21 appropriate and a completed copy of any form adopted by the  
22 director. If the director concurs with the determination of  
23 the court that a waiver of the maximum amount is appropriate,  
24 the director shall waive the maximum amount.

25           "(3) No later than five days after the end of each  
26 calendar quarter, the director shall forward to the Director  
27 of the Department of Finance a written memorandum describing

1 each of the cases for which the waiver of the maximum amount  
2 was approved, the total amount above the maximum amount  
3 approved, and his or her determination that all waivers  
4 granted in the immediately preceding quarter were appropriate.  
5 In no event shall the total fee exceed twice the allowable fee  
6 for the original charge.

7 "(f) Counsel shall also be entitled to be reimbursed  
8 for any nonoverhead expenses reasonably incurred in the  
9 representation of his or her client, with any expense in  
10 excess of three hundred dollars (\$300) subject to advance  
11 approval by the trial court as necessary for the indigent  
12 defense services and as a reasonable cost or expense.

13 Reimbursable expenses shall not include overhead expenses.  
14 Fees and expenses of all experts, investigators, and others  
15 rendering indigent defense services to be used by counsel for  
16 an indigent defendant shall be approved in advance by the  
17 trial court as necessary for the indigent defense services and  
18 as a reasonable cost or expense. Retrials of any case shall be  
19 considered a new case for billing purposes. Upon review, the  
20 director may authorize interim payment of the attorney fees or  
21 expenses, or both.

22 "~~(e)~~ (g) Within a reasonable time after the  
23 conclusion of the trial or ruling on a motion for a new trial  
24 or after an acquittal or other judgment disposing of the case,  
25 not to exceed 90 days, counsel shall submit a bill for  
26 services rendered to the office. The bill shall be accompanied  
27 by a certification by the trial court that counsel provided

1 representation to the indigent defendant, that the matter has  
2 been concluded, and that to the best of his or her knowledge  
3 the bill is reasonable based on the defense provided. The  
4 trial court need not approve the items included on the bill or  
5 the amount of the bill, but may provide any information  
6 requested by the office or the indigent defense advisory board  
7 relating to the representation. The bill for compensation of  
8 appointed counsel shall be submitted to the office. After  
9 review and approval, the office shall recommend to the  
10 Comptroller that the bill be paid. The office may forward the  
11 bill to the indigent defense advisory board for review and  
12 comment prior to approval. The Comptroller shall remit payment  
13 in a timely manner not to exceed 90 days from submission. ~~In~~  
14 ~~the event that payment is not made within 90 days of~~  
15 ~~submission, counsel shall be entitled to receive interest at a~~  
16 ~~rate of six percent until such payment is issued.~~

17 "§15-12-22.

18 "(a) In all criminal cases wherein an indigent  
19 defendant has an appeal which lies directly to an appellate  
20 court and the indigent defendant expresses his or her desire  
21 to appeal, the court shall cause to be entered upon its  
22 minutes a recital of notice of appeal.

23 "(b) If it appears that the indigent defendant  
24 desires to appeal and is unable financially or otherwise to  
25 obtain the assistance of counsel on appeal and the indigent  
26 defendant expresses the desire for assistance of counsel, the  
27 trial court shall appoint counsel to represent and assist the

1 indigent defendant on appeal, through the indigent defense  
2 system for such cases. The presiding judge of the court to  
3 which the appeal is taken shall have authority to appoint  
4 counsel through the indigent defense system for such cases in  
5 the event the trial court fails to appoint and in the event it  
6 becomes necessary to further provide for counsel. It shall be  
7 the duty of the counsel, as an officer of the court and as a  
8 member of the bar, to represent and assist the indigent  
9 defendant in the appeal.

10 "(c) If appointed counsel is the appropriate method  
11 selected for an indigent defendant for the appeal from a  
12 decision in any trial court proceeding, he or she shall be  
13 entitled to receive for his or her services a fee to be  
14 approved by the office.

15 "The amount of the fee shall be based on the number  
16 of hours spent by the counsel in working on the appeal.

17 "(1) The amount of the fee shall be based on the  
18 number of hours spent by the attorney in working on the  
19 prosecution of the appeal and shall be computed at the rate of  
20 seventy dollars (\$70) per hour for time reasonably expended in  
21 the prosecution of the appeal, and any subsequent petition for  
22 writ of certiorari.

23 "(2) The total fees awarded to any one attorney in  
24 any appeal and any subsequent petition for writ of certiorari,  
25 shall not, however, exceed two thousand five hundred dollars  
26 (\$2,500), and shall be in addition to any fees awarded on the  
27 trial court level. In those cases where the state takes a



1 pretrial appeal, appointed counsel shall be entitled to bill  
2 separately for services on the pretrial and post-trial  
3 appeals, up to two thousand five hundred dollars (\$2,500) for  
4 each appeal. In those cases where a petition for writ of  
5 certiorari is filed in the Alabama Supreme Court, counsel  
6 shall be entitled to bill separately for all services rendered  
7 after the Court of Criminal Appeals or the Court of Civil  
8 Appeals overrules the application for rehearing, or after the  
9 decision of the Court of Criminal Appeals or the Court of  
10 Civil Appeals in the case of a pretrial appeal, up to a  
11 separate limit of two thousand five hundred dollars (\$2,500).  
12 Notwithstanding the foregoing provisions of this subdivision,  
13 the maximum amounts set forth above in this subdivision may be  
14 waived by the appropriate appellate court and the director for  
15 good cause shown. Counsel shall also be entitled to be  
16 reimbursed for any nonoverhead expenses reasonably incurred in  
17 the representation of his or her client, with any expense in  
18 excess of three hundred dollars (\$300) subject to advance  
19 approval by the appellate court as necessary for the indigent  
20 defense services and as a reasonable cost or expense and shall  
21 be paid directly by the office upon submission from the  
22 attorney. Reimbursable expenses shall not include overhead  
23 expenses. Fees and expenses of all experts, investigators, and  
24 others rendering indigent defense services to be used by  
25 counsel for an indigent defendant shall be approved in advance  
26 by the appellate court as necessary for the indigent defense  
27 services and as a reasonable cost or expense. Upon review, the

1 director may authorize interim payment of the attorney fees or  
2 expenses, or both.

3 "(3) Notwithstanding anything in this section to the  
4 contrary, beginning October 1, 2018 through September 30,  
5 2020, there shall be no maximum amount of fees for services  
6 billed by an appointed attorney for the appeal of a capital  
7 murder conviction.

8 ~~"(3)~~ (4) Within a reasonable time after the  
9 disposition of the appeal, not to exceed 90 days, counsel  
10 shall submit a bill for services rendered to the office for  
11 review and approval and, if approved, the office shall  
12 recommend the bill for payment by the Comptroller. The  
13 Comptroller shall remit payment in a timely manner.

14 "§22-52-14.

15 "In any commitment proceeding, the fees of any  
16 attorney appointed by the probate judge to act as advocate for  
17 the petition, including any fees incurred for the preparation  
18 and filing of the petition, and any attorney or guardian ad  
19 litem appointed by the probate judge for the person sought to  
20 be committed shall be set at the rates established by Section  
21 15-12-21; and any expert employed to offer expert testimony,  
22 in such amounts as found to be reasonable by the probate  
23 judge; and all other costs allowable by law shall be paid by  
24 the state general fund upon order of the probate judge;  
25 except, that if the petition is denied and the petitioner is  
26 not indigent and is not a law enforcement officer or other  
27 public official acting within the line and scope of his

1 duties, all costs may be taxed against the petitioner, or if  
2 the petition is granted and the person sought to be committed  
3 is not indigent, the probate judge may order all costs paid  
4 from the estate of the person committed."

5 "§15-12-4.

6 "(a) Creation. In each judicial circuit, a voluntary  
7 indigent defense advisory board shall be established.

8 "(b) Composition; qualifications, appointment, term  
9 of office, and removal of members; vacancies. - The voluntary  
10 indigent defense advisory board shall be composed of five  
11 members who are residents of the judicial circuit in which  
12 they are appointed, including the presiding circuit judge as  
13 the chair, the president of the local circuit bar association  
14 and three other attorneys all selected by the bar commissioner  
15 or commissioners for that circuit. The membership of the  
16 voluntary indigent defense advisory board in each judicial  
17 circuit shall be inclusive and reflect the racial, gender, and  
18 economic diversity of the judicial circuit. In a multi-county  
19 circuit, the bar commissioner or commissioners shall select  
20 the president of a county bar association existing within the  
21 circuit to serve on the indigent defense advisory board. Each  
22 member shall serve for a term of one year from the date of  
23 appointment and members may be reappointed. Vacancies on the  
24 indigent defense advisory board shall be filled by the  
25 presiding judge.

26 "(c) Compensation and expenses of members. Members  
27 of the voluntary indigent defense advisory board shall serve

1 without compensation; except, that necessary travel expenses  
2 in connection with advisory board business shall be paid by  
3 the office in the same manner as for state employees  
4 generally.

5 "(d) Meetings generally; quorum; chair. The  
6 voluntary indigent defense advisory board shall meet at least  
7 once quarterly and shall meet whenever so requested by the  
8 presiding circuit judge or by two members of the board. Three  
9 members shall constitute a quorum for conducting business.

10 "(e) Powers and duties. The voluntary indigent  
11 defense advisory board shall perform the following duties and  
12 have the following powers:

13 "(1) Analyze, study, and determine the method of  
14 indigent defense systems to be used in the circuit. The  
15 director may appeal the determination of the indigent defense  
16 advisory board to the Indigent Defense Review Panel. The  
17 Indigent Defense Review Panel shall make a decision in a  
18 timely manner, which decision shall be deemed final.

19 "(2) Provide to the director any information  
20 reasonably requested regarding the indigent defense systems  
21 used or recommended for the circuit.

22 "(3) At the request of the director, review and  
23 provide comment on any statements or bills rendered or  
24 submitted for the provision of indigent defense services in  
25 the circuit.

1                   "(f) Members of the advisory board shall have the  
2 same immunities afforded to state agents as provided in  
3 Section 36-1-12.

4                   Section 2. This act shall become effective on  
5 October 1, 2018 following its passage and approval by the  
6 Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-  
ferred to the House of Representa-  
tives committee on Judiciary ..... 06-FEB-18

Read for the second time and placed  
on the calendar with 1 substitute  
and 1 amendment..... 08-MAR-18

Read for the third time and passed  
as amended..... 15-MAR-18

Yeas 89, Nays 2, Abstains 3

Jeff Woodard  
Clerk