

1 SB74
2 181758-2
3 By Senators Figures, Dunn, Coleman-Madison, Whatley, Ward,
4 Waggoner, Beasley, Smith, Singleton, Orr and Marsh
5 RFD: Judiciary
6 First Read: 07-FEB-17

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8 SYNOPSIS: Under existing law, the maximum fee that
9 counsel may collect when appointed to represent an
10 indigent client in a juvenile case is \$2,500.

11 This bill would authorize the trial court to
12 certify a fee in the amount of up to \$5,000 in
13 certain juvenile dependency cases for guardians ad
14 litem representing children. This bill would
15 require a court waiving the limit to enter an order
16 specifying the reasons for the waiver.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

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22 To amend Section 15-12-21 of the Code of Alabama
23 1975, relating to indigent defense services; to authorize the
24 trial court to certify a fee of up to \$5,000 in certain
25 juvenile dependency cases for guardians ad litem representing
26 children.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 15-12-21 of the Code of Alabama
2 1975, is amended to read as follows:

3 "§15-12-21.

4 "(a) If it appears to the trial court that an
5 indigent defendant is entitled to counsel, that the indigent
6 defendant does not expressly waive the right to assistance of
7 counsel, and that the indigent defendant is not able
8 financially or otherwise to obtain the assistance of counsel
9 through another indigent defense system for the circuit, the
10 court shall appoint counsel to represent and assist the
11 defendant. It shall be the duty of the appointed counsel, as
12 an officer of the court and as a member of the bar, to
13 represent and assist the indigent defendant to the best of his
14 or her ability.

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

26 "(c) If it appears to the trial court that the
27 parents, guardian, or custodian of a juvenile who is a party

1 in a judicial proceeding, are entitled to counsel and the
2 parties are unable to afford counsel, upon request, the court
3 shall appoint counsel to represent and assist the parents,
4 guardian, or custodian. It shall be the duty of the appointed
5 counsel, as an officer of the court and as a member of the
6 bar, to represent and assist the parties to the best of his or
7 her ability.

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

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

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

4 "(3) In cases where the original charge is a Class B
5 felony, the total fee shall not exceed three thousand dollars
6 (\$3,000).

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

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

12 Notwithstanding the foregoing provision of this subdivision,
13 the maximum amount set forth above may be waived by the trial
14 court and the director for good cause shown in juvenile
15 dependency cases for guardians ad litem representing children.
16 In the event the trial court certifies a total fee in an
17 amount over two thousand five hundred dollars (\$2,500), the
18 trial court shall enter a written order setting forth the
19 factors it considered in making its determination. In no event
20 shall the total fee exceed five thousand dollars (\$5,000).

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

23 "Counsel shall also be entitled to be reimbursed for
24 any nonoverhead expenses reasonably incurred in the
25 representation of his or her client, with any expense in
26 excess of three hundred dollars (\$300) subject to advance
27 approval by the trial court as necessary for the indigent

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

11 "(e) Within a reasonable time after the conclusion
12 of the trial or ruling on a motion for a new trial or after an
13 acquittal or other judgment disposing of the case, not to
14 exceed 90 days, counsel shall submit a bill for services
15 rendered to the office. The bill shall be accompanied by a
16 certification by the trial court that counsel provided
17 representation to the indigent defendant, that the matter has
18 been concluded, and that to the best of his or her knowledge
19 the bill is reasonable based on the defense provided. The
20 trial court need not approve the items included on the bill or
21 the amount of the bill, but may provide any information
22 requested by the office or the indigent defense advisory board
23 relating to the representation. The bill for compensation of
24 appointed counsel shall be submitted to the office. After
25 review and approval, the office shall recommend to the
26 Comptroller that the bill be paid. The office may forward the
27 bill to the indigent defense advisory board for review and

1 comment prior to approval. The Comptroller shall remit payment
2 in a timely manner not to exceed 90 days from submission. In
3 the event that payment is not made within 90 days of
4 submission, counsel shall be entitled to receive interest at a
5 rate of six percent until such payment is issued."

6 Section 2. This act shall become effective on the
7 first day of the third month following its passage and
8 approval by the Governor, or its otherwise becoming law.