

1 SB116
2 181656-1
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 07-FEB-17

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8 SYNOPSIS: Under existing law, the maximum fee that
9 counsel appointed to represent an indigent
10 defendant may collect is based on the degree of
11 severity of the original charge or the type of case
12 to which the counsel is appointed. Under existing
13 law, where the original charge is a Class A felony,
14 appointed counsel may collect a maximum of \$4,000
15 for legal services.

16 This bill would authorize the court or the
17 Director of Indigent Defense Services to waive the
18 \$4,000 maximum in certain cases where the original
19 charge was a Class A felony. This bill would
20 require a court waiving the limit to enter an order
21 specifying the reasons for the waiver. This bill
22 would also require the director to submit a memo to
23 the state Finance Director explaining the reasons
24 for any waiver granted by the director.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Section 15-12-21 of the Code of Alabama
4 1975, relating to indigent defense services; to authorize the
5 court or the Director of Indigent Defense Services to waive
6 the maximum fee of four thousand dollars (\$4,000) in certain
7 cases where the original charge is a Class A felony; and to
8 specify the procedure for documenting the waiver.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Section 15-12-21 of the Code of Alabama
11 1975, is amended to read as follows:

12 "§15-12-21.

13 "(a) If it appears to the trial court that an
14 indigent defendant is entitled to counsel, that the indigent
15 defendant does not expressly waive the right to assistance of
16 counsel, and that the indigent defendant is not able
17 financially or otherwise to obtain the assistance of counsel
18 through another indigent defense system for the circuit, the
19 court shall appoint counsel to represent and assist the
20 defendant. It shall be the duty of the appointed counsel, as
21 an officer of the court and as a member of the bar, to
22 represent and assist the indigent defendant to the best of his
23 or her ability.

24 "(b) If it appears to the trial court in a
25 delinquency case, need of supervision case, or other judicial
26 proceeding in which a juvenile is a party, that the juvenile
27 is entitled to counsel and that the juvenile is not able

1 financially or otherwise to obtain the assistance of counsel
2 or that appointed counsel is otherwise required by law, the
3 court shall appoint counsel to represent and assist the
4 juvenile or act in the capacity of guardian ad litem for the
5 juvenile. It shall be the duty of the appointed counsel, as an
6 officer of the court and as a member of the bar, to represent
7 and assist the juvenile to the best of his or her ability.

8 "(c) If it appears to the trial court that the
9 parents, guardian, or custodian of a juvenile who is a party
10 in a judicial proceeding, are entitled to counsel and the
11 parties are unable to afford counsel, upon request, the court
12 shall appoint counsel to represent and assist the parents,
13 guardian, or custodian. It shall be the duty of the appointed
14 counsel, as an officer of the court and as a member of the
15 bar, to represent and assist the parties to the best of his or
16 her ability.

17 "(d) If the appropriate method for providing
18 indigent defense services is by appointed counsel in a case
19 described in subsections (a), (b), and (c), including cases
20 tried de novo in circuit court on appeal from a juvenile
21 proceeding, appointed counsel shall be entitled to receive for
22 their services a fee to be approved by the trial court. The
23 amount of the fee shall be based on the number of hours spent
24 by the attorney in working on the case. The amount of the fee
25 shall be based on the number of hours spent by the attorney in
26 working on the case and shall be computed at the rate of
27 seventy dollars (\$70) per hour for time reasonably expended on

1 the case. The total fees paid to any one attorney in any one
2 case, from the time of appointment through the trial of the
3 case, including motions for new trial, shall not exceed the
4 following:

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

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

11 Notwithstanding the foregoing, the maximum amount may be
12 waived by the trial court or by the director for good cause
13 shown. In the event the maximum amount is waived by the court,
14 the court shall enter a written order setting forth the
15 factors it considered in making its determination that such a
16 waiver was appropriate. In the event the maximum amount is
17 waived by the director, the director shall forward to the
18 state Finance Director a written memo setting forth the
19 factors considered by the director in making his or her
20 determination that such a waiver was appropriate. In no event
21 shall the total fee exceed eight thousand dollars (\$8,000).

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

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

20 "(e) Within a reasonable time after the conclusion
21 of the trial or ruling on a motion for a new trial or after an
22 acquittal or other judgment disposing of the case, not to
23 exceed 90 days, counsel shall submit a bill for services
24 rendered to the office. The bill shall be accompanied by a
25 certification by the trial court that counsel provided
26 representation to the indigent defendant, that the matter has
27 been concluded, and that to the best of his or her knowledge

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

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