

1 SB440
2 130195-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 26-APR-11

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 create the Office of
15 Indigent Defense Services to provide for the
16 defense of those indigent defendants who have been
17 found by a court to be unable to pay for their
18 defense or representation in a trial or appellate
19 court proceeding.

20 This bill would provide for a director,
21 staff, duties, and responsibilities of the office.

22 This bill would provide for an indigent
23 defense advisory board in each judicial circuit and
24 would provide for the composition, meetings,
25 expenses, powers, and duties of the board.

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

This bill would provide for compensation as provided by law or rule adopted by the Director of the Office of Indigent Defense Services.

Existing law provides for \$40 per hour for out-of-court time and \$60 per hour for in-court time for appointed counsel representing an indigent person at trial postconviction proceedings and provides that the bill for compensation of an appointed counsel representing an indigent person at the trial court level be approved by a circuit judge, submitted to the Administrative Office of Courts, submitted to the Comptroller for audit, and forwarded to the State Treasurer for payment.

This bill would provide for \$75 per hour for appointed counsel representing an indigent defendant and compensation for any nonoverhead expenses reasonably incurred in the representation of his or her client in any trial court or appellate proceeding, provided that any expense in excess of \$300 be approved in advance by the trial court and the Director of the Office of Indigent Defense Services, with the bill for compensation of an appointed counsel to be submitted to the office

1 for review and approval and the office shall
2 recommend to the Comptroller that the bill be paid.

3 Existing law provides that in any county or
4 circuit where a contract counsel system is chosen
5 as a method of providing indigent defense, the
6 indigent defense commission shall choose one or
7 more contract counsel and each contract counsel
8 shall receive compensation as set by the
9 commission.

10 This bill would allow the Director of the
11 Office of Indigent Defense Services to establish a
12 contract counsel system to be used as the method to
13 provide indigent defense system within a circuit or
14 part of a circuit, provided that the indigent
15 defense advisory board is consulted on the
16 selection and appointment of contract counsel for
17 the circuit.

18 Under existing law, the indigent defense
19 commission in a judicial circuit, with the approval
20 of the presiding circuit judge, may select a public
21 defender system with salary set by the commission
22 and approved by the Director of the Administrative
23 Office of Courts. A public defender may serve for a
24 term not to exceed six years and may be removed for
25 cause.

26 This bill would provide that the Director of
27 the Office of Indigent Defense Services, upon

1 consultation with the indigent defense advisory
2 board, may establish a public defender office with
3 salary set by the Director of the Office of
4 Indigent Defense Services. A public defender may
5 serve for a term not to exceed six years, subject
6 to reappointment by the Director of the Office of
7 Indigent Defense Services, with the advice and
8 comment of the indigent defense advisory board and
9 may be removed for cause by the Director of the
10 Office of Indigent Defense Services.

11 Under existing law, the indigent defense
12 commission of each circuit, subject to approval by
13 the Administrative Director of Courts, may approve
14 the expenditures of the public defender.

15 This bill would provide that the Director of
16 the Office of Indigent Defense Services approve
17 expenditures of the public defender.

18 This bill would provide for employees of a
19 public defender to receive state employee benefits.

20 This bill would provide for the operating
21 expenses of a public defender's office to be
22 approved in advance by the Director of the Office
23 of Indigent Defense Services as part of an annual
24 budget for the subject public defender's office and
25 that the expenses be paid out of the Fair Trial Tax
26 Fund or other funds appropriated by the Legislature
27 for this purpose.

1 This bill would repeal current law governing
2 the present methods for selecting indigent defense
3 systems.

4
5 A BILL

6 TO BE ENTITLED

7 AN ACT

8
9 To amend Sections 12-19-252, 15-12-1, 15-12-4,
10 15-12-5, 15-12-6, 15-12-20, 15-12-21, 15-12-22, 15-12-23,
11 15-12-26, 15-12-27, 15-12-29, 15-12-40, 15-12-41, 15-12-42,
12 15-12-43, 15-12-44, 15-12-45, and 15-12-46, Code of Alabama
13 1975, relating to the defense of indigents; to create the
14 Office of Indigent Defense Services to operate as a division
15 of the Department of Finance and at the direction of the
16 Director of Finance; to provide for the director, staff,
17 duties, and responsibilities of the Office of Indigent Defense
18 Services; to provide for an indigent defense advisory board in
19 each judicial circuit; to provide further for compensation of
20 appointed counsel; to provide further for contract counsel; to
21 provide for the employment contract, compensation, and
22 attorney-client communications of public defenders to
23 supersede part of the Alabama Rules of Criminal Procedure; to
24 provide further for a public defender system; to provide
25 further for the expenditures, employee, and operating expenses
26 of the public defender offices; and to repeal Sections

1 15-12-2, 15-12-3, 15-12-24 and 15-12-24.1 of the Code of
2 Alabama 1975.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. The Legislature finds and declares the
5 following:

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

15 (2) Additionally, this act:

16 a. Establishes financial accountability for indigent
17 defense services.

18 b. Improves the quality of representation and
19 ensures the independence of counsel.

20 c. Delivers indigent defense services in the most
21 efficient and cost-effective manner.

22 d. Establishes uniform policies and procedures for
23 the delivery of indigent defense services and enhances
24 oversight of the determination of indigency, the oversight of
25 the indigent defense systems in judicial circuits, and the
26 delivery of counsel and related services.

e. Enhances the integrity and efficiency of the judicial process related to indigent criminal cases.

f. Generates reliable statistical information in order to evaluate the services provided and funds expended hereunder.

Section 2. There is created within the Department of Finance, the Office of Indigent Defense Services, which is subject to the control of the Director of Finance.

Section 3. (a) The office shall develop and improve programs to provide legal representation to indigents.

(b) The office shall have a director, who shall be chosen by and serve at the pleasure of the Director of Finance on the basis of training, experience, and other qualifications. The person selected as Director of the Office of Indigent Defense Services, in addition to the above qualifications and experience, shall be an attorney licensed to practice law in the State of Alabama. The director shall be chosen from a list of three qualified candidates nominated by the Alabama State Bar Board of Bar Commissioners within 60 days of a vacancy occurring. The Director of Finance shall serve as the Director of Indigent Defense Services on an interim basis if a vacancy exists. If the Alabama State Bar Board of Bar Commissioners fails to provide a list as required, then the director shall be chosen by the Director of Finance from a list of the three qualified candidates provided by the Governor.

(c) The director shall develop standards governing the provision of defense services under this act. The standards shall include, but not be limited to, the following:

(1) Providing fiscal responsibility and accountability in indigent defense preparation.

(2) Maintaining and operating indigent defense systems, whether appointed counsel, contract counsel, public defender, or appellate defender offices, some combination of the above, or any other method which meets the goals set forth in this act.

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

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

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

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

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

(8) Determining indigency and partial indigency.

(d) The director shall determine the methods for delivering indigent defense services in the trial courts in each county or circuit, or parts of the county or circuit,

with the advice and input of the indigent defense advisory board. The methods established for delivering defense services may include, but are not limited to, appointed counsel systems, contract counsel systems, and part-time or full-time public defender systems; however, contract counsel and public defender systems shall be preferred.

(e) The director shall determine the methods of providing indigent defense service in the appellate courts, which may include state appellate defender offices for capital and noncapital cases, and postconviction representation in capital and noncapital cases. If a method is selected by the director whereby someone other than the trial counsel shall serve as the appellate counsel for the appellant, the director, to the extent possible, shall see that the system provides for the continuous representation of the appellant from the time the trial counsel is permitted to withdraw. In determining the method by which indigent defense services shall be provided in the appellate courts, the director shall consult with the Alabama Supreme Court, the Court of Criminal Appeals, and the Court of Civil Appeals.

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

(g) The director shall annually approve and recommend a budget for indigent defense systems to the Director of Finance.

(h) The director shall adopt other rules and procedures he or she deems necessary for the conduct of business by the Office of Indigent Defense Services.

Section 4. (a) The Office of Indigent Defense Services is established to carry out the administrative duties relating to the provision of indigent defense services. The director shall use existing employees of the Department of Finance and its existing offices, as assigned by the Director of Finance. The director's salary shall not exceed the state salary paid to a district attorney and be paid at the same time and in the same manner that salaries of other state employees are paid. The Director of the Office of Indigent Defense Services shall be entitled to annual and sick leave, insurance, retirement, and other state employee benefits, including cost-of-living raises authorized by the Legislature for state employees.

(b) The director may enter into contracts, and accept funds, grants, and charitable donations from any public or private source to pay expenses incident to implementing the purposes of the Office of Indigent Defense Services.

(c) (1) The director shall be responsible for implementing in each judicial circuit the system for providing legal representation and related services for indigent

defendants, with preference being contract counsel or public defenders.

(2) The director shall develop policies and procedures for determining whether a person is an indigent defendant, and those policies and procedures shall be applied uniformly throughout the state. This act may not be construed to prevent the office from establishing guidelines for determining partial indigency and establishing policies and procedures for providing indigent defense services to persons determined to be partially indigent, including policies and procedures governing recoupment fees and expenses expended in conjunction with the indigent defense services. In accordance with the policies and procedures established by the office, the court shall determine in each case whether a person is an indigent defendant. If the court determines that a person is an indigent defendant, indigent defense services shall be provided as required by Section 15-12-5, Code of Alabama 1975.

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

(d) In addition to any other duties and responsibilities of the director, the director shall have the following duties and authority with respect to all indigent

defense services, subject to the approval of the Director of Finance:

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

(2) Prepare reports and collect and compile statistical data and all other information on the operations, costs, and needs of the office, and any other information which may be required. The director shall prepare and submit an annual report on the work of the office to the Chief Justice and the Governor.

(3) Develop rules and standards for the delivery of services under this act.

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

(5) Recommend to the Director of Finance the hiring of professional, technical, and support personnel as deemed necessary for the efficient operation of the Office of Indigent Defense Services.

(6) Keep and maintain proper financial records of the office and of the indigent defense services provided.

(7) Apply for and accept on behalf of the office any funds that may become available from government grants, gifts, donations, bequests, or otherwise from any source.

(8) Coordinate the services of the office with any and all federal, county, or private programs established to provide assistance to indigent defendants, and consult with professional bodies concerning the improvement of the administration of indigent defense services.

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

(10) Approve and administer the processing of all claims from private counsel relative to appointments to indigent defense cases.

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

(12) Administer the processing of all monetary allocations requested by and for a public defender's office relating to the annual operation of the requesting public defender's office.

Section 5. There is created the Indigent Defense Review Panel which shall consist of three members who each shall serve a three-year term. One member shall be appointed by the President of the Alabama State Bar; one member shall be appointed by the President of the Alabama Circuit Judges

1 Association; and one member shall be appointed by the
2 President of the District Judges Association. They shall serve
3 staggered terms. The initial appointee by the President of the
4 District Judges Association shall serve a one-year term and
5 the initial appointee of the President of the Circuit Judges
6 Association shall serve a two-year term. The appointees shall
7 be members of the association for which the appointing
8 authority serves as president. If the director does not follow
9 the recommendation of the indigent defense advisory board, the
10 board may appeal that decision to the Indigent Defense Review
11 Panel.

17 "§12-19-252.

1 the salaries, benefits, and other necessary expenses involved
2 in administering the Office of Indigent Defense Services.

3 " In addition thereto, there is also appropriated
4 annually out of the General Fund in the State Treasury a sum
5 equal to the amount by which the cost of such necessary
6 expenses of indigent defense, as provided by law, exceeds the
7 amount available for such purpose in the Fair Trial Tax Fund.

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

14 "§15-12-1.

15 " When used in this chapter, the following terms
16 shall have the following meanings:

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

20 " ~~(3)~~ (2) 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 " (3) DIRECTOR. The Director of the Office of
25 Indigent Defense Services.

26 " ~~(1) INDIGENT DEFENDANT.~~ Any person involved in a
27 criminal or juvenile proceeding in the trial or appellate

courts of the state for which proceeding representation by counsel is constitutionally required, who under oath or affirmation states that he or she is unable to pay for his or her defense, and who is found by the court to be financially unable to pay for his or her defense.

"(4) INDIGENT DEFENSE SERVICES. Those legal services that are necessary for representation of an indigent defendant.

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

"(6) NONOVERHEAD EXPENSES. The reasonable expenses incurred during and directly related to an appointed counsel's legal representation of an indigent defendant including, but not limited to, mileage, postage, and reasonable costs of photocopying. Nonoverhead expenses do not include office overhead expenses, such as professional license fees; malpractice, casualty, health, general disability, and workers' compensation insurance; office salaries; ad valorem taxes; office supplies; office rent; depreciation of office equipment and furniture; continuing legal education expenses, including travel and lodging; utilities; bank fees and interest on loans; professional fees; and other overhead expenses or costs.

1 "(7) OFFICE. The Office of Indigent Defense
2 Services.

3 "(4) (8) PUBLIC DEFENDER. Any attorney licensed to
4 practice law in the State of Alabama, other than contract
5 counsel or appointed counsel, who receives a salary for
6 representing an indigent defendant.

7 "(9) TRIAL COURT. Any juvenile, district, or circuit
8 court of the State of Alabama, not including municipal or
9 probate courts of the State of Alabama.

10 "§15-12-4.

11 "(a) Creation. - In each judicial circuit, the
12 presiding circuit judge shall appoint an an indigent defense
13 commission advisory board shall be established.

14 "(b) Composition; qualifications, appointment, term
15 of office and removal of members; vacancies. - The indigent
16 defense commission advisory board shall be composed of five
17 members who are residents of the judicial circuit in which
18 they are appointed, including the presiding circuit judge as
19 the chair, the president of the local bar association existing
20 within the circuit and three other attorneys all selected by
21 the Bar Commissioner or commissioners for that circuit. There
22 shall be two members who are attorneys licensed to practice
23 law in Alabama, one member who is a member of a county
24 commission within the circuit, one member who is the mayor or
25 a member of the governing body of a municipality within the
26 circuit, and one member who is a nonlawyer citizen. Each
27 member shall serve for a term of six years one year from the

1 date of appointment, unless removed for cause by the presiding
2 circuit judge after notice and a hearing, and members may be
3 reappointed. Vacancies on the commission indigent defense
4 advisory board shall be filled by the presiding judge.

5 " (c) Compensation and expenses of members. - Members
6 of the indigent defense commission advisory board shall serve
7 without compensation; except, that necessary travel expenses
8 in connection with commission advisory board business shall be
9 paid by the state office in the same manner as for state
10 employees generally.

11 " (d) Meetings generally; quorum; chair. - The
12 indigent defense commission advisory board shall meet at least
13 once annually quarterly and shall meet whenever so requested
14 by the presiding circuit judge or by two members of the board.
15 Three members shall constitute a quorum for conducting
16 business. One member shall be designated a chair by majority
17 vote of the members.

18 " (e) Powers and duties. - The indigent defense
19 commission advisory board shall perform the following duties
20 and have the following powers:

21 " (1) It shall advise the presiding circuit judge on
22 the indigent defense system to be utilized in each county of
23 the circuit.

24 " (2) It shall advise the presiding circuit judge on
25 the operation and administration of indigent defense systems
26 within the circuit.

1 "(3) It shall select the public defender by majority
2 vote, if a public defender system is established within the
3 circuit, determine the budget for the public defender and
4 supervise the operation of the public defender office. It may
5 remove the public defender for cause after notice and a
6 hearing.

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

21 "(1) Analyze, study, and recommend to the director
22 the method or indigent defense systems to be used in the
23 circuit.

24 "(2) Provide to the director any information
25 reasonably requested regarding the indigent defense systems
26 used or recommended for the circuit.

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

5 "(4) Appeal any decision of the director regarding
6 indigent defense systems for the circuit which is contrary to
7 the recommendation of the indigent defense advisory board to
8 the Indigent Defense Review Panel.

9 "§15-12-5.

10 "(a) Judicial role in determining indigency. - The
11 trial judge ~~first having cognizance of a criminal or juvenile~~
12 ~~proceeding in his court shall determine, if an accused person~~
13 ~~or petitioner for postconviction relief in accordance with the~~
14 ~~policies and procedures established by the Office of Indigent~~
15 ~~Defense Services, if a person in his or her court is an~~
16 ~~indigent defendant, any time the trial judge deems appropriate~~
17 ~~or necessary. Upon appeal from a the trial court to the state~~
18 ~~appellate courts court, the trial judge or the presiding~~
19 ~~circuit judge who presided over the proceedings on appeal~~
20 shall determine if the appellant is an indigent defendant in
21 accordance with the policies and procedures established by the
22 Office of Indigent Defense Services. ~~In~~ If an indigency
23 determination is necessary in any proceeding initiated
24 originally in a state appellate court or in any case appealed
25 to a state appellate court without a determination of
26 indigency, the presiding judge or chief justice of the

1 appellate court shall determine if the appellant or petitioner
2 is an indigent defendant.

3 "(b) Criteria for determining indigency. - In
4 determining indigency, the judge shall recognize ability to
5 pay as a variable depending on the nature, extent and
6 liquidity of assets, the disposable net income of the
7 defendant, the nature of the offense, the effort and skill
8 required to gather pertinent information and the length and
9 complexity of the proceedings.

10 "(c) Investigation of indigency. - In determining
11 the fact of indigency a judge may require an investigation and
12 report by a district attorney, public defender, sheriff,
13 probation officer or other officer of the court. Provided,
14 further, that the trial ~~court~~ judge shall, in all cases
15 requiring a determination of indigency, require the accused to
16 execute an affidavit of substantial hardship on a form
17 approved by the ~~Supreme Court~~ director. The completed
18 affidavit of substantial hardship and the subsequent order of
19 the court either denying or granting ~~court appointed counsel~~
20 indigent defense services to the ~~accused~~ indigent defendant
21 shall become a part of the official court record in the case.

22 "(d) Provision of defense ~~counsel~~ services. - The
23 judge making a determination of indigency shall provide ~~legal~~
24 ~~representation~~ indigent defense services for the indigent
25 defendant through an indigent defense system provided for the
26 circuit; however, if no indigent defense system exists, then
27 the judge may provide indigent defense services otherwise in

1 accordance with the act adding this provision. To the extent
2 possible, judges shall provide continuity in legal
3 representation.

4 "§15-12-6.

5 "Compensation of counsel appointed to represent
6 indigent defendants shall be paid by the state in such amounts
7 as otherwise provided by law. The procedure for approval and
8 payment for such services shall be as provided by law or rule
9 as may be promulgated by the ~~Supreme Court~~ director.

10 "§15-12-20.

11 "In all criminal cases, including paternity cases,
12 and civil and criminal nonsupport cases which may result in
13 the jailing of the defendant, in any court of this state
14 created by authority of the Constitution of 1901, as amended,
15 when a defendant is entitled to counsel as provided by law,
16 the trial judge shall before arraignment ascertain from the
17 accused, or otherwise:

18 "(1) Whether or not the defendant has arranged to be
19 represented by counsel;

20 "(2) Whether or not the defendant desires the
21 assistance of counsel; and

22 "(3) Whether or not the defendant is able
23 financially or otherwise to obtain the assistance of counsel
24 in accordance with policies and procedures established by the
25 Office of Indigent Defense Services.

26 "§15-12-21.

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

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

23 "(c) If it appears to the trial court that the
24 parents, guardian, or custodian of a juvenile who is a party
25 in a judicial proceeding, are entitled to counsel and the
26 parties are unable to afford counsel, upon request, the court
27 shall appoint counsel to represent and assist the parents,

1 guardian, or custodian. 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 parties to the best of his or
4 her ability.

5 (d) If the appropriate method for providing indigent
6 defense services is by appointed counsel in a case described
7 in subsections (a), (b), and (c) including cases tried de novo
8 in circuit court on appeal, he or she shall be entitled to
9 receive for his or her services a fee to be approved by the
10 director. The amount of the fee shall be based on the number
11 of hours spent by the attorney in working on the case at the
12 rate of seventy-five dollars (\$75) per hour.

13 ~~"(d) Counsel appointed in cases described in~~
14 ~~subsections (a), (b), and (c), including cases tried de novo~~
15 ~~in circuit court on appeal from a juvenile proceeding, shall~~
16 ~~be entitled to receive for their services a fee to be approved~~
17 ~~by the trial court. The amount of the fee shall be based on~~
18 ~~the number of hours spent by the attorney in working on the~~
19 ~~case and shall be computed at the rate of fifty dollars (\$50)~~
20 ~~per hour for time expended in court and thirty dollars (\$30)~~
21 ~~per hour for time reasonably expended out of court in the~~
22 ~~preparation of the case. Effective October 1, 2000, the amount~~
23 ~~of the fee shall be based on the number of hours spent by the~~
24 ~~attorney in working on the case and shall be computed at the~~
25 ~~rate of sixty dollars (\$60) per hour for time expended in~~
26 ~~court and forty dollars (\$40) per hour for time reasonably~~
27 ~~expended out of court in the preparation of the case. The~~

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

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

7 "(2) Except for cases covered by subdivision (1), in
8 cases where the original charge is a Class A felony, the total
9 fee shall not exceed three thousand five hundred dollars
10 (\$3,500).

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

14 "(4) In cases where the original charge is a Class C
15 felony, the total fee shall not exceed one thousand five
16 hundred dollars (\$1,500).

17 "(5) In juvenile cases, the total fee shall not
18 exceed two thousand dollars (\$2,000).

19 "(6) In all other cases, the total fee shall not
20 exceed one thousand dollars (\$1,000).

21 "Notwithstanding the above, the court for good cause
22 shown may approve an attorney's fee in excess of the maximum
23 amount allowed. Counsel shall also be entitled to be
24 reimbursed for any nonoverhead expenses reasonably incurred in
25 the defense representation of his or her client, with any
26 expense in excess of three hundred dollars (\$300) being to be
27 approved in advance by the trial court as necessary for the

1 indigent defense services and by the director as a reasonable
2 cost or expense. Reimbursable expenses shall not include
3 overhead expenses. Preapproved expert fees Fees and expenses
4 of all experts, investigators, and others rendering indigent
5 defense services to be used by counsel for an indigent
6 defendant shall be billed at the time the court is notified
7 that all work by the expert has been completed, and shall be
8 paid forthwith approved in advance by the trial court as
9 necessary for the indigent defense services and by the
10 director as a reasonable cost or expense and shall be paid
11 directly by the office upon submission from the attorney. Once
12 an expert has been paid for services on a particular case,
13 that expert shall not be allowed to receive further payment on
14 the case. Retrials of any case shall be considered a new case
15 for billing purposes. Upon review, the director may authorize
16 interim payment of the attorney fees or expenses, or both.

17 "(e) Within a reasonable time after the conclusion
18 of the trial or ruling on a motion for a new trial or after an
19 acquittal or other judgment disposing of the case, not to
20 exceed 90 days, counsel shall submit ~~to the trial court~~ a bill
21 for services rendered, ~~not to exceed the amount provided in~~
22 ~~subsection (d) to the office.~~ ~~If~~ The bill shall be accompanied
23 by a certification by the trial court that counsel has
24 submitted a bill in excess of the amount allowed in subsection
25 (d), a sworn affidavit shall be attached to the bill stating
26 the basis of the claim of the counsel for additional money,
27 and setting out the good cause required by subsection (d)

1 provided representation to the indigent defendant and that the
2 matter has been concluded. The trial court need not approve
3 the items included on the bill or the amount of the bill, but
4 may provide any information requested by the office or the
5 indigent defense advisory board relating to the
6 representation. The bill, after approval by the trial court,
7 for compensation of appointed counsel shall be submitted by
8 the clerk of the court to the state office. After review and
9 approval, the office shall recommend to the Comptroller for
10 audit and, if approved by the Comptroller, shall be forwarded
11 to the State Treasurer for payment that the bill be paid. The
12 office may forward the bill to the indigent defense advisory
13 board for review and comment prior to approval.

14 "§15-12-22.

15 "(a) In all criminal cases wherein a an indigent
16 defendant has been convicted of a serious offense in which an
17 appeal which lies directly to the Supreme Court or Court of
18 Criminal Appeals an appellate court and the indigent defendant
19 expresses his or her desire to appeal the conviction, the
20 court shall cause to be entered upon its minutes a recital of
21 notice of appeal, and the court shall then ascertain and make
22 findings in reference to the appeal concerning those items
23 listed in Section 15-12-20.

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

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

11 "(c) If it appears that a juvenile who is a party to
12 an appeal is otherwise required by law or by rule of court to
13 be represented by appointed counsel, the trial court shall
14 appoint counsel to represent and assist the juvenile on
15 appeal. The presiding judge of the court to which the appeal
16 is taken shall have authority to appoint counsel in the event
17 the trial court fails to appoint and in the event it becomes
18 necessary to further provide for counsel. It shall be the duty
19 of the counsel, as an officer of the court and as a member of
20 the bar, to represent and assist the juvenile in the appeal.

21 "(d) (c) Counsel appointed to defend any If appointed
22 counsel is the appropriate method selected for an indigent
23 defendant for the appeal from a decision in any criminal or
24 juvenile trial court proceeding, excluding cases tried de novo
25 in circuit court on appeal from a juvenile proceeding, he or
26 she shall be entitled to receive for their his or her services
27 a fee to be approved by the appellate court office.

1 "(1) The amount of the fee shall be based on the
2 number of hours spent by the counsel in working on the appeal
3 and shall be computed at the rate of fifty dollars (\$50) at
4 the rate of seventy-five dollars (\$75) per hour for time
5 reasonably expended in the prosecution of the appeal, and any
6 subsequent petition for writ of certiorari.

7 "(2) Effective October 1, 2000, the amount of the
8 fee shall be based on the number of hours spent by the
9 attorney in working on the prosecution of the appeal and shall
10 be computed at the rate of sixty dollars (\$60) per hour for
11 time reasonably expended in the prosecution of the appeal, and
12 any subsequent petition for writ of certiorari.

13 "(3) (2) The total fees awarded to any one attorney
14 in any appeal and any subsequent petition for writ of
15 certiorari, shall not, however, exceed two thousand dollars
16 (\$2,000), and shall be in addition to any fees awarded on the
17 trial court level. In those cases where the state takes a
18 pretrial appeal, appointed counsel shall be entitled to bill
19 separately for services on the pretrial and post-trial
20 appeals, up to two thousand dollars (\$2,000) for each appeal.
21 In those cases where a petition for writ of certiorari is
22 filed in the Alabama Supreme Court, counsel shall be entitled
23 to bill separately for all services rendered after the Court
24 of Criminal Appeals or the Court of Civil Appeals overrules
25 the application for rehearing, or after the decision of the
26 Court of Criminal Appeals or the Court of Civil Appeals in the
27 case of a pretrial appeal, up to a separate limit of two

1 thousand dollars (\$2,000) over and above any funds received
2 for services rendered in the Court of Criminal Appeals. The
3 counsel Counsel shall also be entitled to be reimbursed for
4 any nonoverhead expenses reasonably incurred in preparing and
5 handling the appeal, to be approved in advance by the
6 appellate court the representation of his or her client, with
7 any expense in excess of three hundred dollars (\$300) being
8 approved in advance by the trial court as necessary for the
9 indigent defense services and by the director as a reasonable
10 cost or expense and shall be paid directly by the office upon
11 submission from the attorney. Reimbursable expenses shall not
12 include overhead expenses. Fees and expenses of all experts,
13 investigators, and others rendering indigent defense services
14 to be used by counsel for an indigent defendant shall be
15 approved in advance by the trial court as necessary for the
16 indigent defense services and by the director as a reasonable
17 cost or expense. Retrials of any case shall be considered a
18 new case for billing purposes. Upon review, the director may
19 authorize interim payment of the attorney fees or expenses, or
20 both.

21 "(e) (3) Within a reasonable time after the
22 disposition of the appeal, not exceeding 90 days, counsel
23 shall submit to the appellate court a bill for services
24 rendered, not to exceed the amount provided in subsection (d),
25 and the bill, when approved by the presiding judge or chief
26 justice of the appellate court, shall be submitted by the
27 clerk of the appellate court to the state Comptroller for

1 audit and, if approved by the Comptroller, forwarded to the
2 State Treasurer for payment to the office for review and
3 approval and, if approved, the office shall recommend the bill
4 for payment by the Comptroller.

5 "§15-12-23.

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

21 "(b) In proceedings filed in the district or circuit
22 court involving the life and liberty of those persons charged
23 or adjudicated for juvenile offenses including proceedings for
24 habeas corpus or other post conviction remedies, and in
25 post-trial motions or appeals in the proceedings, the trial or
26 presiding judge or chief justice of the court in which the
27 proceedings may be commenced or pending may appoint counsel

1 through the indigent defense system for such cases to
2 represent and assist those ~~juveniles~~ persons so charged or
3 convicted adjudicated if it appears to the court that the
4 juvenile person charged or ~~convicted~~ adjudicated is unable
5 financially or otherwise to obtain the assistance of counsel
6 and it further appears that counsel is necessary in the
7 opinion of the judge to assert or protect the rights of the
8 person, or court appointed counsel is otherwise required by
9 law or rule of court.

10 "(c) It shall be the duty of ~~such the~~ counsel as
11 provided in subsections (a) and (b) as an officer of the court
12 and a member of the bar to represent and assist the ~~person~~
13 indigent defendant in the proceedings.

14 "(d) ~~The Any appointed~~ counsel appointed in the
15 proceedings shall be entitled to receive for his or her
16 services a fee to be approved by the ~~judge appointing him or~~
17 ~~her office~~. The amount of the fee shall be based on the number
18 of hours spent by counsel ~~in working on the proceedings and~~
19 ~~shall be computed at the rate of fifty dollars (\$50)~~
20 seventy-five dollars (\$75) per hour for time reasonably
21 expended in court and ~~thirty dollars (\$30)~~ per hour for time
22 reasonably expended in preparation of the proceedings.

23 Effective October 1, 2000, the fee shall be computed at the
24 rate of ~~sixty dollars (\$60)~~ per hour for time expended in
25 court and ~~forty dollars (\$40)~~ per hour for time reasonably
26 expended in preparation of the proceedings. The total fees to
27 counsel for the proceedings shall not exceed one thousand

1 dollars (\$1,000) the matter. Counsel shall also be entitled to
2 be reimbursed for any nonoverhead expenses reasonably incurred
3 in the representation of his or her client, with any expense
4 in excess of three hundred dollars (\$300) being approved in
5 advance by the trial court as necessary for the indigent
6 defense services and by the director as a reasonable cost or
7 expense. Reimbursable expenses shall not include overhead
8 expenses. Fees and expenses of all experts, investigators, and
9 others rendering indigent defense services to be used by
10 counsel for an indigent defendant shall be approved in advance
11 by the trial court as necessary for the indigent defense
12 services and by the director as a reasonable cost or expense.
13 Retrials of any case shall be considered a new case for
14 billing purposes. Upon review, the director may authorize
15 interim payment of the attorney fees or expenses, or both.

16 "(e) Claim for the fee shall be submitted, approved,
17 and paid in the same manner as provided in subsection (e)
18 subdivision (3) of Section 15-12-22.

19 "§15-12-26.

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

26 The indigent defense advisory board shall have the right to be

1 heard on the selection and appointment of contract counsel for
2 the circuit.

3 "(b) If an indigent defense advisory board chooses
4 to explore a contract counsel system within a circuit or part
5 thereof, the indigent defense advisory board shall follow the
6 procedures of the director for requesting and accepting
7 applications or proposals for such contracts and shall make a
8 recommendation for contract counsel to the director. The
9 indigent defense advisory board shall also provide the
10 director with any other information reasonably requested by
11 the director regarding such contract counsel.

12 "(c) The director shall award the contracts to an
13 attorney, firm, association, corporation, or partnership of
14 lawyers.

15 "(b) (d) Each contract counsel chosen by the director
16 shall be employed pursuant to a contract containing terms and
17 conditions as deemed necessary between the attorney, firm,
18 association, corporation, or partnership, as the case may be,
19 and the circuit indigent defense commission office. The
20 contract shall be subject to the approval of the presiding
21 circuit judge. Unless the contract is disapproved by the
22 presiding circuit judge within 30 days of the execution of the
23 contract on behalf of the circuit indigent defense commission,
24 the contract shall be deemed approved.

25 "§15-12-27.

26 "Any provision of this chapter to the contrary
27 notwithstanding, each ~~contract counsel~~ shall receive

1 compensation as set by the circuit indigent defense
2 commission, reviewed by the Administrative Director of Courts,
3 and approved by the State Comptroller, to be paid from the
4 Fair Trial Tax Fund or other funds as provided by law judicial
5 circuit desiring a contract counsel system shall be required
6 to follow those procedures established for the selection of
7 contract counsel established by the director.

8 "§15-12-29.

9 "Sections 15-12-26, 15-12-27, and 15-12-28 shall not
10 be construed to preclude judges from appointing counsel for
11 indigent defendants, or from assigning representation of an
12 indigent defendant to other contract counsel where there is a
13 conflict of interest involving the contract counsel, or if the
14 contract counsel is unable to provide prompt and adequate
15 representation, and the indigent defense systems chosen do not
16 provide any other alternative. Sections 15-12-26, 15-12-27,
17 and 15-12-28 shall not be construed to supersede any provision
18 of the Alabama Rules of Criminal Procedure or any other
19 provision of law relating to public defenders.

20 "§15-12-40.

21 "In any county or circuit where a public defender
22 system is chosen The director may establish a public defender
23 office as a method of to providing provide indigent defense,
24 the indigent defense commission shall choose a public defender
25 services within a circuit or any part thereof.

26 "For each new term, and to fill any vacancy, the
27 director may select and appoint a public defender for a

1 circuit. The indigent defense advisory board shall have the
2 right to be heard on the selection and appointment of a public
3 defender for the circuit. Attorneys appointed hereunder as
4 public defenders shall be licensed to practice law in Alabama
5 at the time of the appointment or by the time he or she
6 assumes office.

7 "§15-12-41.

8 "(a) The public defender shall be appointed for a
9 fixed term not to exceed six years, subject to reappointment
10 by the director, with the advice and comment of the indigent
11 defense advisory board and may be removed from office for
12 cause by the ~~indigent defense commission director~~.

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

15 "§15-12-42.

16 "The public defender shall have the following powers
17 and duties:

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

22 (2) The public defender ~~shall~~, at the request and
23 with the consent of a municipal governing body and the
24 ~~indigent defense commission office, shall~~ represent indigent
25 defendants in a municipal court within his or her geographic
26 jurisdiction.

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

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

8 "§15-12-43.

9 "(a) The public defender shall receive a salary set
10 by the ~~indigent defense commission~~ and ~~approved by the~~
11 ~~Administrative Director of Courts~~ director. The salary shall
12 not exceed the state salary paid to a district attorney and
13 shall be paid in the same manner as employees of the state.

14 "(b) All salary and expenses of a public defender
15 shall be paid by the state out of the fair trial tax fund or
16 other funds appropriated by the Legislature for such purposes;
17 except, that in counties authorized to impose a court cost for
18 defender services, the county shall fund defender services
19 from the revenues of said court cost, and the state shall pay
20 a reasonable share of the cost of maintaining such office,
21 such reasonable share to be determined by the ~~Administrative~~
22 ~~Director of Courts~~ director.

23 "§15-12-44.

24 "The public defender shall keep such records and
25 make such reports on matters related to the operation of the
26 office of the public defender as are required by the ~~indigent~~
27 ~~defense commission~~ director.~~, except, that~~ The attorney-client

1 communications involving the defender or attorneys employed by
2 him or her shall remain confidential.

3 "§15-12-45.

4 "(a) The indigent defense commission, subject to the
5 approval of the Administrative Director of Courts, director
6 may approve expenditures for attorneys, investigators, other
7 personnel and nonpersonnel expenses of the public defender.
8 Authorized employees of the public defender offices shall be
9 entitled to annual and sick leave, insurance, retirement, and
10 other state employee benefits, including cost-of-living
11 raises, authorized by the Legislature for state employees.

12 "(b) The operating expenses and staff salaries and
13 benefits for the offices of the public defender shall be
14 approved in advance by the director as part of an annual
15 budget for the subject public defender's office and, once the
16 budget is approved, shall be paid by the state from funds
17 appropriated annually from the Fair Trial Tax Fund or other
18 funds appropriated by the Legislature for this purpose. The
19 expenses shall include, but not be limited to, the salary,
20 benefits, and expenses of all eligible employees and
21 positions, training and education, travel, research,
22 equipment, and supplies.

23 "(c) Each public defender may employ assistant
24 public defenders, investigators, and other staff, full time or
25 part time, as authorized by the director. Assistants,
26 investigators, and other staff shall be appointed by the

1 public defender and serve at the pleasure of the public
2 defender.

3 "§15-12-46.

4 "Nothing in this article shall be construed to
5 exclude establishment of appointed counsel or contract counsel
6 systems parallel to a public defender system or to preclude
7 judges from appointing counsel for indigent defendants where
8 there is a conflict of interest involving the public defender
9 or if the public defender is unable to provide prompt and
10 adequate representation, and the indigent defense systems
11 chosen do not provide any other alternative."

12 Section 7. Persons holding the position of public
13 defender or appellate defender on the effective date of this
14 act shall be entitled to serve the remainder of his or her
15 term of office.

16 Section 8. All laws or parts of laws which conflict
17 with this act are repealed. Specifically, Sections 15-12-2,
18 15-12-3, 15-12-24, and 15-12-24.1, of the Code of Alabama
19 1975, are repealed.

20 Section 9. This act shall become effective following
21 its passage and approval by the Governor, or its otherwise
22 becoming law, but shall not affect the compensation
23 arrangement for any indigent defense representation ongoing or
24 unpaid as of that effective date.