

1 HB601
2 130577-2
3 By Representatives DeMarco, Beckman, England, Poole and
4 Johnson (W)
5 RFD: Judiciary
6 First Read: 03-MAY-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.

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

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

7 Existing law provides for \$40 per hour for
8 out-of-court time and \$60 per hour for in-court
9 time for appointed counsel representing an indigent
10 person at trial and postconviction proceedings and
11 provides for unlimited reimbursement of overhead
12 expenses. Existing law provides that the bill for
13 compensation of an appointed counsel representing
14 an indigent person at the trial court level be
15 approved by a circuit judge, submitted to the
16 Administrative Office of Courts, submitted to the
17 Comptroller for audit, and forwarded to the State
18 Treasurer for payment.

19 This bill would eliminate the provision for
20 overhead expenses and provide for \$75 per hour for
21 appointed counsel representing an indigent
22 defendant and compensation for any nonoverhead
23 expenses reasonably incurred in the representation
24 of his or her client in any trial court or
25 appellate proceeding, provided that any expense in
26 excess of \$300 be approved in advance by the trial
27 court, with the bill for compensation of an

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

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

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

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

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

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

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

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

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

1 Fund or other funds appropriated by the Legislature
2 for this purpose.

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

6
7 A BILL

8 TO BE ENTITLED

9 AN ACT

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

1 expenses of the public defender offices; and to repeal
2 Sections 15-12-2, 15-12-3, 15-12-24 and 15-12-24.1 of the Code
3 of Alabama 1975.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

21 (b) The office shall have a director, who shall be
22 chosen by the Director of Finance on the basis of training,
23 experience, and other qualifications. The term of office shall
24 be three years, subject to termination for cause. The person
25 selected as Director of the Office of Indigent Defense
26 Services, in addition to the above qualifications and
27 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, after considering any recommendation of the circuit 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. In determining the method for delivering indigent defense services, the Director shall select the most efficient and effective counsel system available.

(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

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 director shall
4 consult with the Alabama Supreme Court, the Court of Criminal
5 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 director shall annually approve and
12 recommend a budget for indigent defense systems to the
13 Director of Finance.

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

17 Section 4. (a) The Office of Indigent Defense
18 Services is established to carry out the administrative duties
19 relating to the provision of indigent defense services. The
20 director shall use existing employees of the Department of
21 Finance and its existing offices, as assigned by the Director
22 of Finance. The director's salary shall not exceed the state
23 salary paid to a district attorney and be paid at the same
24 time and in the same manner that salaries of other state
25 employees are paid. The Director of the Office of Indigent
26 Defense Services shall be entitled to annual and sick leave,
27 insurance, retirement, and other state employee benefits,

1 including cost-of-living raises authorized by the Legislature
2 for state employees.

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

7 (c) (1) The director shall be responsible for
8 implementing in each judicial circuit the system for providing
9 legal representation and related services for indigent
10 defendants. In determining the method for delivering indigent
11 defense services, the Director shall select the most efficient
12 and effective counsel system available.

13 (2) The director shall develop policies and
14 procedures for determining whether a person is an indigent
15 defendant, and those policies and procedures shall be applied
16 uniformly throughout the state. This act may not be construed
17 to prevent the office from establishing guidelines for
18 determining partial indigency and establishing policies and
19 procedures for providing indigent defense services to persons
20 determined to be partially indigent, including policies and
21 procedures governing recoupment of fees and expenses expended
22 in conjunction with the indigent defense services. In
23 accordance with the policies and procedures established by the
24 office, the court shall determine in each case whether a
25 person is an indigent defendant. If the court determines that
26 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

1 an annual report on the work of the office to the Chief
2 Justice and the Governor.

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

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

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

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

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

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

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

25 (10) Approve and administer the processing of all
26 claims from private counsel relative to appointments to
27 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 Association; and one member shall be appointed by the President of the District Judges Association. They shall serve staggered terms. The initial appointee by the President of the District Judges Association shall serve a one-year term and the initial appointee of the President of the Circuit Judges Association shall serve a two-year term. The appointees shall be members of the association for which the appointing authority serves as president. Any decision of the director relating to the delivery of indigent defense services may be appealed to the Indigent Defense Review Panel. The Indigent Defense Review Panel shall make a decision in a timely manner, which decision shall be deemed final.

Section 6. Sections 12-19-252, 15-12-1, 15-12-4,
15-12-5, 15-12-6, 15-12-20, 15-12-21, 15-12-22, 15-12-23,
15-12-26, 15-12-27, 15-12-29, 15-12-40, 15-12-41, 15-12-42,

1 15-12-43, 15-12-44, 15-12-45, and 15-12-46, Code of Alabama
2 1975, are amended to read as follows:

3 "§12-19-252.

4 "There is hereby appropriated from the Fair Trial
5 Tax Fund, annually, such amount as may be necessary to pay the
6 fees of counsel, court reporters, ~~clerks, registers~~ and such
7 other necessary expenses of indigent defense as are provided
8 by law.

9 "There is also hereby appropriated from the Fair
10 Trial Tax Fund, annually, such amount ~~not exceeding \$50,000.00~~
11 as may be necessary to pay ~~the quarterly withdrawals of the~~
12 ~~State Comptroller for the expenses of administering such~~
13 ~~indigent defense to the Office of Indigent Defense Services,~~
14 the salaries, benefits, and other necessary expenses involved
15 in administering the Office of Indigent Defense Services.

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

21 "If the county maintains a public defender, there
22 shall be paid a reasonable share of the cost of maintaining
23 such office, the amount appropriated for such purpose to be
24 prorated to the several counties maintaining public defender's
25 offices on the basis of the case load of the respective public
26 defender offices.

27 "§15-12-1.

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

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

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

"(3) DIRECTOR. The Director of the Office of
Indigent Defense Services.

"(1) INDIGENT DEFENDANT. Any person involved in a 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 DEFENDANT. For purposes of this act:

"a. A person with an income level at or below one hundred twenty-five percent of the United States poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, unless the court determines that the person is able to pay for the cost of an attorney to represent the person on the pending case.

"b. A person with an income level greater than one hundred twenty-five percent, but at or below two hundred percent, of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to indigent defense services, unless the court makes a written finding that not providing indigent defense services on the pending case would cause the person substantial hardship.

"c. A person with an income level greater than two hundred percent of the most recently revised poverty income guidelines published by the United States department of health and human services shall not be entitled to indigent defense services, unless the person is charged with a felony and the court makes a written finding that not providing indigent defense services would cause the person substantial hardship.

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

"(5) (6) 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.

"(7) 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 fees and expenses of all experts, investigators and others rendering indigent defense services to be used by counsel for an indigent defendant; 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.

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

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

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

"§15-12-4.

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

"(b) Composition; qualifications, appointment, term of office and removal of members; vacancies. - The indigent defense ~~commission~~ advisory board shall be composed of five

1 members who are residents of the judicial circuit in which
2 they are appointed, including the presiding circuit judge as
3 the chair, the president of the local circuit bar association
4 and three other attorneys all selected by the Bar Commissioner
5 or commissioners for that circuit. In a multi-county circuit,
6 the Bar Commissioner or commissioners shall select the
7 president of a county bar association existing within the
8 circuit to serve on the indigent defense advisory board. ~~There~~
9 ~~shall be two members who are attorneys licensed to practice~~
10 ~~law in Alabama, one member who is a member of a county~~
11 ~~commission within the circuit, one member who is the mayor or~~
12 ~~a member of the governing body of a municipality within the~~
13 ~~circuit, and one member who is a nonlawyer citizen.~~ Each
14 member shall serve for a term of ~~six years~~ one year from the
15 date of appointment, unless removed for cause by the presiding
16 circuit judge after notice and a hearing, and members may be
17 reappointed. Vacancies on the commission indigent defense
18 advisory board shall be filled by the presiding judge.

19 "(c) Compensation and expenses of members. - Members
20 of the indigent defense ~~commission~~ advisory board shall serve
21 without compensation; except, that necessary travel expenses
22 in connection with ~~commission~~ advisory board business shall be
23 paid by the ~~state office~~ in the same manner as for state
24 employees generally.

25 "(d) Meetings generally; quorum; chair. - The
26 indigent defense ~~commission~~ advisory board shall meet at least
27 once ~~annually~~ quarterly and shall meet whenever so requested

1 by the presiding circuit judge or by two members of the board.

2 Three members shall constitute a quorum for conducting
3 business. One member shall be designated a chair by majority
4 ~~vote of the members.~~

5 "(e) Powers and duties. - The indigent defense
6 ~~commission~~ advisory board shall perform the following duties
7 and have the following powers:

8 "(1) It shall advise the presiding circuit judge on
9 the indigent defense system to be utilized in each county of
10 the circuit.

11 "(2) It shall advise the presiding circuit judge on
12 the operation and administration of indigent defense systems
13 within the circuit.

14 "(3) It shall select the public defender by majority
15 vote, if a public defender system is established within the
16 circuit, determine the budget for the public defender and
17 supervise the operation of the public defender office. It may
18 remove the public defender for cause after notice and a
19 hearing.

20 "(4) It shall select, in accordance with procedures
21 promulgated by the Administrative Director of Courts, one or
22 more contract counsel by majority vote, if a contract counsel
23 system is established within the circuit; contract with such
24 entities, subject to the approval of the presiding circuit
25 judge; and determine the compensation to be paid to contract
26 counsel under each contract, subject to the review of the
27 Administrative Director of Courts and the approval of the

1 State Comptroller. Notwithstanding this section or any other
2 law to the contrary, no presiding judge or indigent defense
3 commission shall by rule, regulation, or otherwise prohibit a
4 circuit court judge or a district court judge from appointing
5 any attorney licensed in Alabama to represent an indigent
6 defendant.

7 "(1) Analyze, study, and recommend to the director
8 the method or indigent defense systems to be used in the
9 circuit.

10 "(2) Provide to the director any information
11 reasonably requested regarding the indigent defense systems
12 used or recommended for the circuit.

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

17 "(4) The right, in a timely manner, to appeal any
18 decision of the director regarding indigent defense services
19 for the circuit.

20 "§15-12-5.

21 "(a) Judicial role in determining indigency. - The
22 trial judge first having cognizance of a criminal or juvenile
23 proceeding in his court shall determine, if an accused person
24 or petitioner for postconviction relief in accordance with the
25 policies and procedures established by the Office of Indigent
26 Defense Services, if a person in his or her court is an
27 indigent defendant, any time the trial judge deems appropriate

1 or necessary. Upon appeal from ~~a~~ the trial court to the state
2 appellate ~~courts~~ court, the trial judge ~~or the presiding~~
3 ~~circuit judge who presided over the proceedings on appeal~~
4 shall determine if the appellant is an indigent defendant in
5 accordance with the policies and procedures established by the
6 Office of Indigent Defense Services. ~~In~~ If an indigency
7 determination is necessary in any proceeding initiated
8 originally in a state appellate court ~~or in any case appealed~~
9 ~~to a state appellate court without a determination of~~
10 ~~indigency~~, the presiding judge or chief justice of the
11 appellate court shall determine if the appellant or petitioner
12 is an indigent defendant.

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

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

1 affidavit of substantial hardship and the subsequent order of
2 the court either denying or granting ~~court appointed counsel~~
3 indigent defense services to the ~~accused~~ indigent defendant
4 shall become a part of the official court record in the case.

5 "(d) Provision of defense ~~counsel~~ services. - The
6 judge making a determination of indigency shall provide ~~legal~~
7 ~~representation~~ indigent defense services for the indigent
8 defendant through an indigent defense system provided for the
9 circuit; however, if no indigent defense system exists, then
10 the judge may provide indigent defense services otherwise in
11 accordance with the act adding this provision. To the extent
12 possible, judges shall provide continuity in legal
13 representation.

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 services shall be as provided by law or rule
19 as may be promulgated by the ~~Supreme Court~~ director.

20 "§15-12-20.

21 "In all criminal cases, including paternity cases,
22 and civil and criminal nonsupport cases which may result in
23 the jailing of the defendant, in any court of this state
24 created by authority of the Constitution of 1901, as amended,
25 when a defendant is entitled to counsel as provided by law,
26 the trial judge shall before arraignment ascertain from the
27 accused, or otherwise:

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

3 "(2) Whether or not the defendant desires the
4 assistance of counsel; and

5 "(3) Whether or not the defendant is able
6 financially or otherwise to obtain the assistance of counsel
7 in accordance with policies and procedures established by the
8 Office of Indigent Defense Services.

9 "§15-12-21.

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

21 "(b) If it appears to the trial court in a
22 delinquency case, need of supervision case, or other judicial
23 proceeding in which a juvenile is a party, that the juvenile
24 is entitled to counsel and that the juvenile is not able
25 financially or otherwise to obtain the assistance of counsel
26 or that appointed counsel is otherwise required by law, the
27 court shall appoint counsel to represent and assist the

1 juvenile or act in the capacity of guardian ad litem for the
2 juvenile. It shall be the duty of the appointed counsel, as an
3 officer of the court and as a member of the bar, to represent
4 and assist the juvenile to the best of his or her ability.

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

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

22 "(d) ~~Counsel appointed in cases described in~~
23 ~~subsections (a), (b), and (c), including cases tried de novo~~
24 ~~in circuit court on appeal from a juvenile proceeding, shall~~
25 ~~be entitled to receive for their services a fee to be approved~~
26 ~~by the trial court. The amount of the fee shall be based on~~
27 ~~the number of hours spent by the attorney in working on the~~

1 case and shall be computed at the rate of fifty dollars (\$50)
2 per hour for time expended in court and thirty dollars (\$30)
3 per hour for time reasonably expended out of court in the
4 preparation of the case. Effective October 1, 2000, the amount
5 of the fee shall be based on the number of hours spent by the
6 attorney in working on the case and shall be computed at the
7 rate of sixty dollars (\$60) per hour for time expended in
8 court and forty dollars (\$40) per hour for time reasonably
9 expended out of court in the preparation of the case. The
10 total fees paid to any one attorney in any one case, from the
11 time of appointment through the trial of the case, including
12 motions for new trial, shall not exceed the following:

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

16 "(2) Except for cases covered by subdivision (1), in
17 cases where the original charge is a Class A felony, the total
18 fee shall not exceed three thousand five hundred dollars
19 (\$3,500).

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

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

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

1 "(6) In all other cases, the total fee shall not
2 exceed one thousand dollars (\$1,000).
3

4 "Notwithstanding the above, the court for good cause
5 shown may approve an attorney's fee in excess of the maximum
6 amount allowed. Counsel shall also be entitled to be
7 reimbursed for any nonoverhead expenses reasonably incurred in
8 the defense representation of his or her client, with any
9 expense in excess of three hundred dollars (\$300) to be
10 approved in subject to advance approval by the trial court as
11 necessary for the indigent defense services and as a
12 reasonable cost or expense. Reimbursable expenses shall not
13 include overhead expenses. Preapproved expert fees Fees and
14 expenses of all experts, investigators, and others rendering
15 indigent defense services to be used by counsel for an
16 indigent defendant shall be billed at the time the court is
17 notified that all work by the expert has been completed, and
18 shall be paid forthwith approved in advance by the trial court
19 as necessary for the indigent defense services and as a
20 reasonable cost or expense. Once an expert has been paid for
21 services on a particular case, that expert shall not be
22 allowed to receive further payment on the case. Retrials of
23 any case shall be considered a new case for billing purposes.
24 Upon review, the director may authorize interim payment of the
25 attorney fees or expenses, or both.

26 "(e) Within a reasonable time after the conclusion
27 of the trial or ruling on a motion for a new trial or after an
acquittal or other judgment disposing of the case, not to

1 exceed 90 days, counsel shall submit to the trial court a bill
2 for services rendered, not to exceed the amount provided in
3 subsection (d) to the office. If The bill shall be accompanied
4 by a certification by the trial court that counsel has
5 submitted a bill in excess of the amount allowed in subsection
6 (d), a sworn affidavit shall be attached to the bill stating
7 the basis of the claim of the counsel for additional money,
8 and setting out the good cause required by subsection (d)
9 provided representation to the indigent defendant and that the
10 matter has been concluded. The trial court need not approve
11 the items included on the bill or the amount of the bill, but
12 may provide any information requested by the office or the
13 indigent defense advisory board relating to the
14 representation. The bill, after approval by the trial court,
15 for compensation of appointed counsel shall be submitted by
16 the clerk of the court to the state office. After review and
17 approval, the office shall recommend to the Comptroller for
18 audit and, if approved by the Comptroller, shall be forwarded
19 to the State Treasurer for payment that the bill be paid. The
20 office may forward the bill to the indigent defense advisory
21 board for review and comment prior to approval. The
22 Comptroller shall remit payment in a timely manner.

23 "§15-12-22.

24 "(a) In all criminal cases wherein a an indigent
25 defendant has been convicted of a serious offense in which an
26 appeal which lies directly to the Supreme Court or Court of
27 Criminal Appeals an appellate court and the indigent defendant

1 expresses his or her desire to appeal ~~the conviction, the~~
2 court shall cause to be entered upon its minutes a recital of
3 notice of appeal, ~~and the court shall then ascertain and make~~
4 ~~findings in reference to the appeal concerning those items~~
5 ~~listed in Section 15-12-20.~~

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

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

1 of the counsel, as an officer of the court and as a member of
2 the bar, to represent and assist the juvenile in the appeal.

3 ~~"(d) (c) Counsel appointed to defend any~~ If appointed
4 ~~counsel is the appropriate method selected for an~~ indigent
5 ~~defendant for the appeal from a decision in any~~ ~~criminal or~~
6 ~~juvenile trial court proceeding, excluding cases tried de novo~~
7 ~~in circuit court on appeal from a juvenile proceeding, he or~~
8 ~~she~~ shall be entitled to receive for ~~their~~ his or her services
9 a fee to be approved by the ~~appellate court~~ office.

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

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

22 "(3) (2) The total fees awarded to any one attorney
23 in any appeal and any subsequent petition for writ of
24 certiorari, shall not, however, exceed two thousand dollars
25 (\$2,000), and shall be in addition to any fees awarded on the
26 trial court level. In those cases where the state takes a
27 pretrial appeal, appointed counsel shall be entitled to bill

1 separately for services on the pretrial and post-trial
2 appeals, up to two thousand dollars (\$2,000) for each appeal.
3 In those cases where a petition for writ of certiorari is
4 filed in the Alabama Supreme Court, counsel shall be entitled
5 to bill separately for all services rendered after the Court
6 of Criminal Appeals or the Court of Civil Appeals overrules
7 the application for rehearing, or after the decision of the
8 Court of Criminal Appeals or the Court of Civil Appeals in the
9 case of a pretrial appeal, up to a separate limit of two
10 thousand dollars (\$2,000) over and above any funds received
11 for services rendered in the Court of Criminal Appeals. The
12 counsel Counsel shall also be entitled to be reimbursed for
13 any nonoverhead expenses reasonably incurred in preparing and
14 handling the appeal, to be approved in advance by the
15 appellate court the representation of his or her client, with
16 any expense in excess of three hundred dollars (\$300) subject
17 to advance approval by the appellant court as necessary for
18 the indigent defense services and as a reasonable cost or
19 expense and shall be paid directly by the office upon
20 submission from the attorney. Reimbursable expenses shall not
21 include overhead expenses. Fees and expenses of all experts,
22 investigators, and others rendering indigent defense services
23 to be used by counsel for an indigent defendant shall be
24 approved in advance by the appellant court as necessary for
25 the indigent defense services and as a reasonable cost or
26 expense. Upon review, the director may authorize interim
27 payment of the attorney fees or expenses, or both.

1 "(e) (3) Within a reasonable time after the
2 disposition of the appeal, not to exceed 90 days, counsel
3 shall submit ~~to the appellate court~~ a bill for services
4 rendered, ~~not to exceed the amount provided in subsection (d),~~
5 ~~and the bill, when approved by the presiding judge or chief~~
6 ~~justice of the appellate court, shall be submitted by the~~
7 ~~clerk of the appellate court to the state Comptroller for~~
8 ~~audit and, if approved by the Comptroller, forwarded to the~~
9 ~~State Treasurer for payment to the office for review and~~
10 ~~approval and, if approved, the office shall recommend the bill~~
11 ~~for payment by the Comptroller. The Comptroller shall remit~~
12 ~~payment in a timely manner.~~

13 "§15-12-23.

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

1 is necessary in the opinion of the judge to assert or protect
2 the right of the ~~person~~ indigent defendant.

3 "(b) In proceedings filed in the district or circuit
4 court involving the life and liberty of those persons charged
5 or adjudicated for juvenile offenses including proceedings for
6 habeas corpus or other post--conviction remedies, and in
7 post-trial motions or appeals in the proceedings, the trial or
8 presiding judge or chief justice of the court in which the
9 proceedings may be commenced or pending may appoint counsel
10 through the indigent defense system for such cases to
11 represent and assist those ~~juvenile~~ persons so charged or
12 ~~convicted~~ adjudicated if it appears to the court that the
13 ~~juvenile~~ person charged or ~~convicted~~ adjudicated is unable
14 financially or otherwise to obtain the assistance of counsel
15 and it further appears that counsel is necessary in the
16 opinion of the judge to assert or protect the rights of the
17 person, or court appointed counsel is otherwise required by
18 law or rule of court.

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

23 "(d) ~~The~~ Any appointed counsel ~~appointed in the~~
24 proceedings shall be entitled to receive for his or her
25 services a fee to be approved by the ~~judge appointing him or~~
26 ~~her~~ office. The amount of the fee shall be based on the number
27 of hours spent by counsel ~~in working on the proceedings and~~

1 shall be computed at the rate of ~~fifty dollars (\$50)~~
2 seventy-five dollars (\$75) per hour for time reasonably
3 ~~expended in court and thirty dollars (\$30)~~ per hour for time
4 ~~reasonably expended in preparation of the proceedings.~~

5 ~~Effective October 1, 2000, the fee shall be computed at the~~
6 ~~rate of sixty dollars (\$60) per hour for time expended in~~
7 ~~court and forty dollars (\$40) per hour for time reasonably~~
8 ~~expended in preparation of the proceedings. The total fees to~~
9 ~~counsel for the proceedings shall not exceed one thousand~~
10 ~~dollars (\$1,000) the matter. Counsel shall also be entitled to~~
11 ~~be reimbursed for any nonoverhead expenses reasonably incurred~~
12 ~~in the representation of his or her client, with any expense~~
13 ~~in excess of three hundred dollars (\$300) subject to advance~~
14 ~~approval by the court as necessary for the indigent defense~~
15 ~~services and as a reasonable cost or expense. Reimbursable~~
16 ~~expenses shall not include overhead expenses. Fees and~~
17 ~~expenses of all experts, investigators, and others rendering~~
18 ~~indigent defense services to be used by counsel for an~~
19 ~~indigent defendant shall be approved in advance by the court~~
20 ~~as necessary for the indigent defense services and as a~~
21 ~~reasonable cost or expense. Retrials of any case shall be~~
22 ~~considered a new case for billing purposes. Upon review, the~~
23 ~~director may authorize interim payment of the attorney fees or~~
24 ~~expenses, or both.~~

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

1 "§15-12-26.

2 "(a) ~~In any county or circuit where a contract~~
3 ~~counsel system is chosen as a method of providing indigent~~
4 ~~defense, the circuit indigent defense commission shall choose~~
5 ~~one or more contract counsel. The director may establish that~~
6 ~~a contract counsel system be used as the method to provide~~
7 ~~indigent defense services within a circuit or part thereof.~~
8 The indigent defense advisory board shall be consulted and
9 make recommendations on the selection and appointment of
10 contract counsel for the circuit.

11 "(b) If an indigent defense advisory board chooses
12 to explore a contract counsel system within a circuit or part
13 thereof, the indigent defense advisory board shall follow the
14 procedures of the director for requesting and accepting
15 applications or proposals for such contracts and shall make a
16 recommendation for contract counsel to the director. The
17 indigent defense advisory board shall also provide the
18 director with any other information reasonably requested by
19 the director regarding such contract counsel.

20 "(c) After considering the recommendations of the
21 indigent defense advisory board, the director shall award the
22 contracts to an attorney, firm, association, corporation, or
23 partnership of lawyers.

24 "(b) (d) Each contract counsel chosen by the director
25 shall be employed pursuant to a contract containing terms and
26 conditions as deemed necessary between the attorney, firm,
27 association, corporation, or partnership, as the case may be,

1 and the ~~circuit indigent defense commission office~~. The
2 contract shall be subject to the approval of the presiding
3 circuit judge. Unless the contract is disapproved by the
4 presiding circuit judge within 30 days of the execution of the
5 contract on behalf of the ~~circuit indigent defense commission~~,
6 the contract shall be deemed approved.

7 "§15-12-27.

8 "Any provision of this chapter to the contrary
9 notwithstanding, each ~~contract counsel shall receive~~
10 compensation as set by the ~~circuit indigent defense~~
11 commission, reviewed by the Administrative Director of Courts,
12 and approved by the State Comptroller, to be paid from the
13 Fair Trial Tax Fund or other funds as provided by law judicial
14 circuit desiring a contract counsel system shall be required
15 to follow those procedures established for the selection of
16 contract counsel established by the director.

17 "§15-12-29.

18 "Sections 15-12-26, 15-12-27, and 15-12-28 shall not
19 be construed to preclude judges from appointing counsel for
20 indigent defendants, or from assigning representation of an
21 indigent defendant to other contract counsel where there is a
22 conflict of interest involving the contract counsel, or if the
23 contract counsel is unable to provide prompt and adequate
24 representation, and the indigent defense systems chosen do not
25 provide any other alternative. Sections 15-12-26, 15-12-27,
26 and 15-12-28 shall not be construed to supersede any provision

1 of the Alabama Rules of Criminal Procedure or any other
2 provision of law relating to public defenders.

3 "§15-12-40.

4 ~~"In any county or circuit where a public defender~~
5 ~~system is chosen~~ The director may establish a public defender
6 office as a method ~~of to~~ providing provide indigent defense,
7 ~~the indigent defense commission shall choose a public defender~~
8 ~~services within a circuit or any part thereof.~~

9 "For each new term, and to fill any vacancy, the
10 director may select and appoint a public defender for a
11 circuit. The indigent defense advisory board shall be
12 consulted and have the right to recommend the selection and
13 appointment of a public defender for the circuit. Attorneys
14 appointed hereunder as public defenders shall be licensed to
15 practice law in Alabama at the time of the appointment or by
16 the time he or she assumes office.

17 "§15-12-41.

18 " (a) The public defender shall be appointed for a
19 fixed term not to exceed six years, subject to reappointment
20 by the director, upon the recommendation of the indigent
21 defense advisory board and may be removed from office for
22 cause by the ~~indigent defense commission~~ director.

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

25 "§15-12-42.

26 "The public defender shall have the following powers
27 and duties:

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

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

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

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

17 "§15-12-43.

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

23 "(b) All salary and expenses of a public defender
24 shall be paid by the state out of the fair trial tax fund or
25 other funds appropriated by the Legislature for such purposes;
26 except, that in counties authorized to impose a court cost for
27 defender services, the county shall fund defender services

1 from the revenues of said court cost, and the state shall pay
2 a reasonable share of the cost of maintaining such office,
3 such reasonable share to be determined by the ~~Administrative~~
4 ~~Director of Courts~~ director.

5 "§15-12-44.

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

12 "§15-12-45.

13 " (a) The indigent defense commission, subject to the
14 approval of the Administrative Director of Courts, director
15 may approve expenditures for attorneys, investigators, other
16 personnel and nonpersonnel expenses of the public defender.
17 Authorized employees of the public defender offices shall be
18 entitled to annual and sick leave, insurance, retirement, and
19 other state employee benefits, including cost-of-living
20 raises, authorized by the Legislature for state employees.

21 " (b) The operating expenses and staff salaries and
22 benefits for the offices of the public defender shall be
23 approved in advance by the director as part of an annual
24 budget for the subject public defender's office and, once the
25 budget is approved, shall be paid by the state from funds
26 appropriated annually from the Fair Trial Tax Fund or other
27 funds appropriated by the Legislature for this purpose. The

1 expenses shall include, but not be limited to, the salary,
2 benefits, and expenses of all eligible employees and
3 positions, training and education, travel, research,
4 equipment, and supplies.

5 "(c) Each public defender may employ assistant
6 public defenders, investigators, and other staff, full time or
7 part time, as authorized by the director. Assistants,
8 investigators, and other staff shall be appointed by the
9 public defender and serve at the pleasure of the public
10 defender.

11 "§15-12-46.

12 "Nothing in this article shall be construed to
13 exclude establishment of appointed counsel or contract counsel
14 systems parallel to a public defender system or to preclude
15 judges from appointing counsel for indigent defendants where
16 there is a conflict of interest involving the public defender
17 or if the public defender is unable to provide prompt and
18 adequate representation, and the indigent defense systems
19 chosen do not provide any other alternative."

20 Section 7. Persons holding the position of public
21 defender or appellate defender on the effective date of this
22 act shall be entitled to serve the remainder of his or her
23 term of office.

24 Section 8. All laws or parts of laws which conflict
25 with this act are repealed. Specifically, Sections 15-12-2,
26 15-12-3, 15-12-24, and 15-12-24.1, of the Code of Alabama
27 1975, are repealed.

Section 9. The Director shall promulgate rules pursuant to the Alabama Administrative Procedure Act necessary to implement this act.

Section 10. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 11. This act shall become effective following its passage and approval by the Governor, or its otherwise becoming law, but shall not affect the compensation arrangement for any indigent defense representation ongoing or unpaid as of that effective date.