

1 SB440
2 132211-2
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 26-APR-11

1 SB440

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4 ENGROSSED

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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, duties, and
19 responsibilities of the Office of Indigent Defense Services;
20 to provide for an indigent defense advisory board in each
21 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
3 Code 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 director
25 may not serve more than two consecutive terms. The person
26 selected as Director of the Office of Indigent Defense
27 Services, in addition to the above qualifications and

1 experience, shall be an attorney licensed to practice law in
2 the State of Alabama. The director shall be chosen from a list
3 of three qualified candidates nominated by the Alabama State
4 Bar Board of Bar Commissioners within 60 days of a vacancy
5 occurring. The Director of Finance shall serve as the Director
6 of Indigent Defense Services on an interim basis if a vacancy
7 exists. If the Alabama State Bar Board of Bar Commissioners
8 fails to provide a list as required, then the director shall
9 be chosen by the Director of Finance from a list of the three
10 qualified candidates provided by the Governor.

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

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

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

21 (3) Prescribing minimum experience, training, and
22 other qualifications for appointed counsel, contract counsel,
23 and public defenders, including additional qualifications for
24 counsel appointed in capital cases.

25 (4) Caseload management for appointed counsel,
26 contract counsel, and public defenders, including the number

1 of attorneys appointed in capital cases which, when
2 appropriate, may include two attorneys.

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

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

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

11 (8) Determining indigency and partial indigency.

12 (9) Establishing procedures for the recoupment of
13 fees and expenses.

14 (d) The director shall determine the methods for
15 delivering indigent defense services in the trial courts in
16 each county or circuit, or parts of the county or circuit,
17 after considering any recommendation of the circuit indigent
18 defense advisory board. The methods established for delivering
19 defense services may include, but are not limited to,
20 appointed counsel systems, contract counsel systems, and
21 part-time or full-time public defender systems. In determining
22 the method for delivering indigent defense services, the
23 director shall select the most efficient and effective counsel
24 system available.

25 (e) The director shall determine the methods of
26 providing indigent defense service in the appellate courts,
27 which may include state appellate defender offices for capital

1 and noncapital cases, and post-conviction representation in
2 capital and noncapital cases. If a method is selected by the
3 director whereby someone other than the trial counsel shall
4 serve as the appellate counsel for the appellant, the
5 director, to the extent possible, shall see that the system
6 provides for the continuous representation of the appellant
7 from the time the trial counsel is permitted to withdraw. In
8 determining the method by which indigent defense services
9 shall be provided in the appellate courts, the director shall
10 consult with the Alabama Supreme Court, the Court of Criminal
11 Appeals, and the Court of Civil Appeals.

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

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

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

23 Section 4. (a) The Office of Indigent Defense
24 Services is established to carry out the administrative duties
25 relating to the provision of indigent defense services. The
26 director shall initially use existing employees of the
27 Department of Finance and its existing offices, as assigned by

1 the Director of Finance. The director's salary shall not
2 exceed the state salary paid to a district attorney and be
3 paid at the same time and in the same manner that salaries of
4 other state employees are paid. The Director of the Office of
5 Indigent Defense Services shall be entitled to annual and sick
6 leave, insurance, retirement, and other state employee
7 benefits, including cost-of-living raises authorized by the
8 Legislature for state employees.

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

13 (c) (1) The director shall be responsible for
14 implementing in each judicial circuit the system for providing
15 legal representation and related services for indigent
16 defendants. In determining the method for delivering indigent
17 defense services, the director shall select the most efficient
18 and effective counsel system available.

19 (2) The director shall develop policies and
20 procedures for determining whether a person is an indigent
21 defendant, and those policies and procedures shall be applied
22 uniformly throughout the state. This act may not be construed
23 to prevent the office from establishing guidelines for
24 determining partial indigency and establishing policies and
25 procedures for providing indigent defense services to persons
26 determined to be partially indigent, including policies and
27 procedures governing recoupment of fees and expenses expended

1 in conjunction with the indigent defense services to include
2 filing of liens. In accordance with the policies and
3 procedures established by the office, the court shall
4 determine in each case whether a person is an indigent
5 defendant. If the court determines that a person is an
6 indigent defendant, indigent defense services shall be
7 provided as required by Section 15-12-5, Code of Alabama 1975.

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

15 (d) In addition to any other duties and
16 responsibilities of the director, the director shall have the
17 following duties and authority with respect to all indigent
18 defense services, subject to the approval of the Director of
19 Finance:

20 (1) Prepare and submit budget recommendations for
21 state appropriations necessary for the maintenance and
22 operation of the state indigent defense services, including
23 the operation of the office, local indigent defense systems,
24 appellate defender services, and, if established, an appellate
25 defender office, and request annually a sum certain necessary
26 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 by the Director of Finance 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 five members who each shall serve a three-year term. Two members 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, one member shall be appointed by the President of the District Judges Association, and one member who shall be the President of the Alabama Lawyers Association, or his or her designee. 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 system

of delivery of indigent defense services for the circuit 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. The membership of the Indigent Defense Review Panel shall be inclusive and reflect the racial and gender diversity of the state.

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

"§12-19-252.

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

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

"In addition thereto, ~~there is also appropriated the~~ Legislature may appropriate annually out of the General Fund in the State Treasury a sum equal to the amount by which the

1 cost of such necessary expenses of indigent defense, as
2 provided by law, exceeds the amount available for such purpose
3 in the Fair Trial Tax Fund.

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

10 "§15-12-1.

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

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

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

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

22 "(4) INDIGENT DEFENDANT. Any person involved in a
23 criminal or juvenile proceeding in the trial or appellate
24 courts of the state for which proceeding representation by
25 counsel is constitutionally required or is authorized or
26 required by statute or court rule, including parents of
27 children during the termination of parental rights hearings,

1 who under oath or affirmation states that he or she is unable
2 to pay for his or her ~~defense~~ representation, and who is found
3 by the court to be financially unable to pay for his or her
4 ~~defense~~. representation based on a written findings as further
5 provided below that the person is indigent based on one of the
6 following criteria:

7 ["a. A person that has an income level at or below](#)
8 125 percent of the United States poverty level as defined by
9 the most recently revised poverty income guidelines published
10 by the United States Department of Health and Human Services,
11 unless the court determines that the person is able to pay for
12 the cost of an attorney to represent the person on the pending
13 case.

14 ["b. A person that has an income level greater than](#)
15 125 percent, but at or below 200 percent, of the most recently
16 revised poverty income guidelines published by the United
17 States Department of Health and Human Services and the court
18 makes a written finding that not providing indigent defense
19 services on the pending case would cause the person
20 substantial hardship.

21 ["c. A person that has an income level greater than](#)
22 200 percent of the most recently revised poverty income
23 guidelines published by the United States Department of Health
24 and Human Services and the person is charged with a felony,
25 and the court makes a written finding that not providing
26 indigent defense services would cause the person substantial
27 hardship.

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

4 "(5)(6) INDIGENT DEFENSE SYSTEM. Any method or
5 mixture of methods for providing legal representation to an
6 indigent defendant, including use of appointed counsel, use of
7 contract counsel, or use of public defenders, ~~or any~~
8 ~~alternative method meeting constitutional requirements.~~

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

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

26 "(4)(9) PUBLIC DEFENDER. Any attorney licensed to
27 practice law in the State of Alabama, other than contract

1 counsel or appointed counsel, who receives a salary for
2 representing an indigent defendant.

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

6 "§15-12-4.

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

10 "(b) Composition; qualifications, appointment, term
11 of office, and removal of members; vacancies. - The voluntary
12 indigent defense commission advisory board shall be composed
13 of five members who are residents of the judicial circuit in
14 which they are appointed, including the presiding circuit
15 judge as the chair, the president of the local circuit bar
16 association and three other attorneys all selected by the bar
17 commissioner or commissioners for that circuit. The membership
18 of the voluntary indigent advisory board in each judicial
19 circuit shall be inclusive and reflect the racial, gender, and
20 economic diversity of the judicial circuit. In a multi-county
21 circuit, the bar commissioner or commissioners shall select
22 the president of a county bar association existing within the
23 circuit to serve on the indigent defense advisory board. There
24 shall be two members who are attorneys licensed to practice
25 law in Alabama, one member who is a member of a county
26 commission within the circuit, one member who is the mayor or
27 a member of the governing body of a municipality within the

~~circuit, and one member who is a nonlawyer citizen. Each member shall serve for a term of six years one year from the date of appointment, unless removed for cause by the presiding circuit judge after notice and a hearing and members may be reappointed. No appointed member may serve more than three consecutive terms. Vacancies on the commission indigent defense advisory board shall be filled by the presiding judge.~~

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

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

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

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

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

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

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

24 "(1) Analyze, study, and recommend to the director
25 the method or indigent defense systems to be used in the
26 circuit. If the recommendation is not adopted by the director,

1 the director shall resubmit the matter to the advisory board
2 for further review and recommendation.

3 "(2) Provide to the director any information
4 reasonably requested regarding the indigent defense systems
5 used or recommended for the circuit.

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

10 "(4) The right, in a timely manner, to appeal any
11 decision of the director regarding the type of indigent
12 defense system for the circuit.

13 "§15-12-5.

14 "(a) Judicial role in determining indigency. - The
15 trial judge first having cognizance of a criminal or juvenile
16 proceeding in his court shall determine, if an accused person
17 or petitioner for postconviction relief in accordance with the
18 policies and procedures established by the Office of Indigent
19 Defense Services, if a person in his or her court is an
20 indigent defendant, any time appropriate or necessary. Upon
21 appeal from a the trial court to the state appellate courts
22 court, the trial judge or the presiding circuit judge who
23 presided over the proceedings on appeal shall determine if the
24 appellant is an indigent defendant in accordance with the
25 policies and procedures established by the Office of Indigent
26 Defense Services. If an indigency determination is
27 necessary in any proceeding initiated originally in a state

1 appellate court ~~or in any case appealed to a state appellate~~
2 ~~court without a determination of indigency,~~ the presiding
3 judge or chief justice of the appellate court shall determine
4 if the appellant or petitioner is an indigent defendant.

5 "(b) Criteria for determining indigency. - In
6 determining indigency, the judge shall recognize ability to
7 pay as a variable depending on the nature, extent and
8 liquidity of assets, the disposable net income of the
9 defendant, the nature of the offense, the effort and skill
10 required to gather pertinent information and the length and
11 complexity of the proceedings. The director may by rules
12 provide for additional documentation of indigency, including,
13 but not limited to, tax returns, asset statements, or other
14 similar documentation as necessary.

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

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

10 "§15-12-6.

11 "Compensation of counsel appointed to represent
12 indigent defendants shall be paid by the state in such amounts
13 as otherwise provided by law. The procedure for approval and
14 payment for such services shall be as provided by law or rule
15 as may be promulgated by the ~~Supreme Court~~ director.

16 "§15-12-20.

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

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

26 "(2) Whether or not the defendant desires the
27 assistance of counsel; and

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

"§15-12-21.

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

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

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

11 "(d) ~~Counsel appointed in cases~~ If the appropriate
12 method for providing indigent defense services is by appointed
13 counsel in a case described in subsections (a), (b), and (c),
14 including cases tried de novo in circuit court on appeal from
15 a juvenile proceeding, appointed counsel shall be entitled to
16 receive for their services a fee to be approved by the trial
17 court. The amount of the fee shall be based on the number of
18 hours spent by the attorney in working on the case ~~and shall~~
19 ~~be computed at the rate of fifty dollars (\$50) per hour for~~
20 ~~time expended in court and thirty dollars (\$30) per hour for~~
21 ~~time reasonably expended out of court in the preparation of~~
22 ~~the case~~. Effective October 1, 2000 2011, the amount of the
23 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)~~ seventy dollars (\$70) per hour for
26 time ~~reasonably expended in court and forty dollars (\$40)~~ per
27 hour for time ~~reasonably expended out of court in the~~

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

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

8 "(2) Except for cases covered by subdivision (1), in
9 cases where the original charge is a Class A felony, the total
10 fee shall not exceed ~~three thousand five hundred dollars~~
11 ~~(\$3,500)~~ four thousand dollars (\$4,000).

12 "(3) In cases where the original charge is a Class B
13 felony, the total fee shall not exceed ~~two thousand five~~
14 ~~hundred dollars (\$2,500)~~ three thousand dollars (\$3,000).

15 "(4) In cases where the original charge is a Class C
16 felony, the total fee shall not exceed ~~one thousand five~~
17 ~~hundred dollars (\$1,500)~~ two thousand dollars (\$2,000).

18 "(5) In juvenile cases, the total fee shall not
19 exceed ~~two thousand dollars (\$2,000)~~ two thousand five hundred
20 dollars (\$2,500).

21 "(6) In all other cases, the total fee shall not
22 exceed ~~one thousand dollars (\$1,000)~~ one thousand five hundred
23 dollars (\$1,500).

24 "(7) Notwithstanding the provisions of subdivisions
25 (2) to (6), inclusive, the maximum amounts set forth in
26 subdivisions (2) to (6), inclusive, may be waived by the trial
27 court and the director for good cause shown.

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

"(e) Within a reasonable time after the conclusion 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 exceed 90 days, counsel shall submit ~~to the trial court~~ a bill for services rendered, ~~not to exceed the amount provided in~~

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

23 "§15-12-22.

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

1 and the indigent defendant expresses his or her desire to
2 appeal ~~the conviction~~, the court shall cause to be entered
3 upon its minutes a recital of notice of appeal, ~~and the court~~
4 ~~shall then ascertain and make findings in reference to the~~
5 ~~appeal concerning those items 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) per~~
13 ~~hour for time reasonably expended in the prosecution of the~~
14 ~~appeal, and any subsequent petition for writ of certiorari.~~

15 ~~"(2) (1) Effective October 1, 2000~~ 2011, the amount
16 of the fee shall be based on the number of hours spent by the
17 attorney in working on the prosecution of the appeal and shall
18 be computed at the rate of ~~sixty dollars (\$60)~~ seventy dollars
19 (\$70) per hour for time reasonably expended in the prosecution
20 of the appeal, and any subsequent petition for writ of
21 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)~~ two thousand five hundred dollars (\$2,500), and shall
26 be in addition to any fees awarded on the trial court level.
27 In those cases where the state takes a pretrial appeal,

1 appointed counsel shall be entitled to bill separately for
2 services on the pretrial and post-trial appeals, up to ~~two~~
3 ~~thousand dollars (\$2,000)~~ two thousand five hundred dollars
4 (\$2,500) for each appeal. In those cases where a petition for
5 writ of certiorari is filed in the Alabama Supreme Court,
6 counsel shall be entitled to bill separately for all services
7 rendered after the Court of Criminal Appeals or the Court of
8 Civil Appeals overrules the application for rehearing, or
9 after the decision of the Court of Criminal Appeals or the
10 Court of Civil Appeals in the case of a pretrial appeal, up to
11 a separate limit of ~~two thousand dollars (\$2,000)~~ two thousand
12 ~~five hundred dollars (\$2,500)~~ ~~over and above any funds~~
13 ~~received for services rendered in the Court of Criminal~~
14 ~~Appeals. The counsel Notwithstanding the foregoing provisions~~
15 ~~of this subdivision, the maximum amounts set forth above in~~
16 ~~this subdivision may be waived by the appropriate appellate~~
17 ~~court and the director for good cause shown. Counsel shall~~
18 also be entitled to be reimbursed for any nonoverhead expenses
19 reasonably incurred in preparing and handling the appeal, to
20 be approved in advance by the appellate court the
21 representation of his or her client, with any expense in
22 excess of three hundred dollars (\$300) subject to advance
23 approval by the appellate court as necessary for the indigent
24 defense services and as a reasonable cost or expense and shall
25 be paid directly by the office upon submission from the
26 attorney. Reimbursable expenses shall not include overhead
27 expenses. Fees and expenses of all experts, investigators, and

1 others rendering indigent defense services to be used by
2 counsel for an indigent defendant shall be approved in advance
3 by the appellate court as necessary for the indigent defense
4 services and as a reasonable cost or expense. Upon review, the
5 director may authorize interim payment of the attorney fees or
6 expenses, or both.

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

19 "§15-12-23.

20 "(a) In proceedings filed in the district or circuit
21 court involving the life and liberty of those charged with or
22 convicted of serious criminal offenses including proceedings
23 for habeas corpus or other post-conviction remedies, ~~and in~~
24 post-trial motions or appeals in the proceedings, the trial or
25 presiding judge or chief justice of the court in which the
26 proceedings may be commenced or pending may appoint counsel
27 through an indigent defense system approved by the office to

1 represent and assist ~~those persons charged or convicted~~
2 indigent defendants if it appears to the court that the ~~person~~
3 ~~charged or convicted~~ indigent defendant is unable financially
4 or otherwise to obtain the assistance of counsel and desires
5 the assistance of counsel and it further appears that counsel
6 is necessary in the opinion of the judge to assert or protect
7 the right of the ~~person~~ indigent defendant.

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

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

"(d) The Any appointed counsel appointed in the proceedings shall be entitled to receive for his or her services a fee to be approved by the ~~judge appointing him or her office~~. The amount of the fee shall be based on the number of hours spent by counsel in working on the proceedings. ~~and shall be computed at the rate of fifty dollars (\$50) per hour for time expended in court and thirty dollars (\$30) per hour for time reasonably expended in preparation of the proceedings.~~ Effective October 1, ~~2000~~ 2011, the fee shall be computed at the rate of ~~sixty dollars (\$60)~~ seventy dollars (\$70) per hour for time reasonably expended in court and forty dollars (\$40) per hour for time reasonably expended in preparation of ~~on~~ the proceedings. The total fees to counsel for the proceedings shall not exceed ~~one thousand dollars (\$1,000)~~ one thousand five hundred dollars (\$1,500). Notwithstanding the foregoing, the maximum amount may be waived by the director for good cause shown. Counsel shall also be entitled to be reimbursed for any nonoverhead expenses reasonably incurred in the representation of his or her client, with any expense in excess of three hundred dollars (\$300) subject to advance approval by the court as necessary for the indigent defense services and as a reasonable cost or expense. Reimbursable expenses shall not include overhead expenses. Fees and expenses of all experts, investigators, and others rendering indigent defense services to be used by counsel for an indigent defendant shall be approved in advance by the court as necessary for the indigent defense services.

1 and as a reasonable cost or expense. Retrials of any case
2 shall be considered a new case for billing purposes. Upon
3 review, the director may authorize interim payment of the
4 attorney fees or expenses, or both.

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

8 "§15-12-26.

9 "(a) ~~In any county or circuit where a contract~~
10 ~~counsel system is chosen as a method of providing indigent~~
11 ~~defense, the circuit indigent defense commission shall choose~~
12 ~~one or more contract counsel. The director may establish that~~
13 ~~a contract counsel system be used as the method to provide~~
14 ~~indigent defense services within a circuit or part thereof.~~
15 ~~The indigent defense advisory board shall be consulted and~~
16 ~~make recommendations on the selection and appointment of~~
17 ~~contract counsel for the circuit.~~

18 "(b) If an indigent defense advisory board chooses
19 to explore a contract counsel system within a circuit or part
20 thereof, the indigent defense advisory board shall follow the
21 procedures of the director for requesting and accepting
22 applications or proposals for such contracts and shall make a
23 recommendation for contract counsel to the director. The
24 indigent defense advisory board shall also provide the
25 director with any other information reasonably requested by
26 the director regarding such contract counsel.

1 "(c) After considering the recommendations of the
2 indigent defense advisory board, the director shall award the
3 contracts to an attorney, firm, association, corporation, or
4 partnership of lawyers.

5 "(b) (d) Each contract counsel chosen by the director
6 shall be employed pursuant to a contract containing terms and
7 conditions as deemed necessary between the attorney, firm,
8 association, corporation, or partnership, as the case may be,
9 and the circuit indigent defense commission office. The
10 contract shall be subject to the approval of the presiding
11 circuit judge. Unless the contract is disapproved by the
12 presiding circuit judge within 30 days of the execution of the
13 contract on behalf of the circuit indigent defense commission,
14 the contract shall be deemed approved.

15 "§15-12-27.

16 "Any provision of this chapter to the contrary
17 notwithstanding, each contract counsel shall receive
18 compensation as set by the circuit indigent defense
19 commission, reviewed by the Administrative Director of Courts,
20 and approved by the State Comptroller, to be paid from the
21 Fair Trial Tax Fund or other funds as provided by law judicial
22 circuit desiring a contract counsel system shall be required
23 to follow those procedures established for the selection of
24 contract counsel established by the director.

25 "§15-12-29.

26 "Sections 15-12-26, 15-12-27, and 15-12-28 shall not
27 be construed to preclude judges from appointing counsel for

1 indigent defendants, or from assigning representation of an
2 indigent defendant to other contract counsel where there is a
3 conflict of interest involving the contract counsel, or if the
4 contract counsel is unable to provide prompt and adequate
5 representation, and the indigent defense systems chosen do not
6 provide any other alternative. Sections 15-12-26, 15-12-27,
7 and 15-12-28 shall not be construed to supersede any provision
8 of the Alabama Rules of Criminal Procedure or any other
9 provision of law relating to public defenders.

10 "§15-12-40.

11 ~~"In any county or circuit where a public defender~~
12 ~~system is chosen The director may establish a public defender~~
13 ~~office as a method of providing to provide~~ indigent defense,
14 ~~the indigent defense commission shall choose a public defender~~
15 ~~services within a circuit or any part thereof.~~

16 "For each new term, and to fill any vacancy, the
17 director may select and appoint a public defender for a
18 circuit. The indigent defense advisory board shall be
19 consulted and have the right to recommend the selection and
20 appointment of a public defender for the circuit. Attorneys
21 appointed hereunder as public defenders shall be licensed to
22 practice law in Alabama at the time of the appointment or by
23 the time he or she assumes office.

24 "§15-12-41.

25 " (a) The public defender shall be appointed after
26 the date of this amendatory act for a fixed term not to exceed
27 six three years, subject to reappointment by the director,

1 upon the recommendation of the indigent defense advisory board
2 and may be removed from office for cause by the ~~indigent~~
3 ~~defense commission director~~.

4 "(b) The ~~indigent defense commission director~~ may
5 require that the public defender serve full time or part time.
6 "§15-12-42.

7 "The public defender shall have the following powers
8 and duties:

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

13 "(2) The public defender ~~shall~~, at the request and
14 with the consent of a municipal governing body and the
15 ~~indigent defense commission office, shall~~ represent indigent
16 defendants in a municipal court within his or her geographic
17 jurisdiction. The municipality shall reimburse the office of
18 the public defender for the costs associated with the services
19 rendered.

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

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

27 "§15-12-43.

1 "(a) The public defender shall receive a salary set
2 by the ~~indigent defense commission and approved by the~~
3 ~~Administrative Director of Courts~~ director. The salary shall
4 not exceed the state salary paid to a district attorney and
5 shall be paid in the same manner as employees of the state.

6 "(b) All salary and expenses of a public defender
7 shall be paid by the state out of the ~~fair trial tax fund~~ Fair
8 Trial Tax Fund or other funds appropriated by the Legislature
9 for such purposes; except, that in counties authorized to
10 impose a court cost for defender services, the county shall
11 fund defender services from the revenues ~~of said~~ from the
12 court cost, and the state shall pay a reasonable share of the
13 cost of maintaining such office, such reasonable share to be
14 determined by the ~~Administrative Director of Courts~~ director.

15 "§15-12-44.

16 "The public defender shall keep such records and
17 make such reports on matters related to the operation of the
18 office of the public defender as are required by the ~~indigent~~
19 ~~defense commission~~ director; except, that The attorney-client
20 communications involving the defender or attorneys employed by
21 him or her shall remain confidential.

22 "§15-12-45.

23 "(a) The ~~indigent defense commission, subject to the~~
24 ~~approval of the Administrative Director of Courts,~~ director
25 may approve expenditures for attorneys, investigators, other
26 personnel and nonpersonnel expenses of the public defender.
27 Authorized employees of the public defender offices shall be

1 entitled to annual and sick leave, insurance, retirement, and
2 other state employee benefits, including cost-of-living
3 raises, authorized by the Legislature for state employees.

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

15 "(c) Each public defender may employ assistant
16 public defenders, investigators, and other staff, full time or
17 part time, as authorized by the director. Assistants,
18 investigators, and other staff shall be appointed by the
19 public defender and serve at the pleasure of the public
20 defender.

21 "§15-12-46.

22 "Nothing in this article shall be construed to
23 exclude establishment of appointed counsel or contract counsel
24 systems parallel to a public defender system or to preclude
25 judges from appointing counsel for indigent defendants where
26 there is a conflict of interest involving the public defender
27 or if the public defender is unable to provide prompt and

1 adequate representation, and the indigent defense systems
2 chosen do not provide any other alternative."

3 Section 7. Persons holding the position of public
4 defender or appellate defender on the effective date of this
5 act shall be entitled to serve the remainder of his or her
6 term of office.

7 Section 8. The provisions of this act shall expire
8 three years from the effective date of this act unless
9 approved for continuance by affirmative vote by Senate Joint
10 Resolution or House Joint Resolution of the Legislature of
11 Alabama, both houses thereof concurring.

12 Section 9. Any contract counsel or other recipient
13 of funds provided by the indigent defense system in excess of
14 fifty thousand dollars (\$50,000) in any calendar year shall be
15 required to comply with the filing requirements of the Alabama
16 State Ethics Commission in the same manner as any public
17 official or employee receiving state funds.

18 Section 10. All laws or parts of laws which conflict
19 with this act are repealed. Specifically, Sections 15-12-2,
20 15-12-3, 15-12-24, and 15-12-24.1, of the Code of Alabama
21 1975, are repealed.

22 Section 11. The director shall promulgate rules
23 pursuant to the Alabama Administrative Procedure Act necessary
24 to implement this act.

25 Section 12. The provisions of this act are
26 severable. If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 13. This act shall become effective
4 following its passage and approval by the Governor, or its
5 otherwise becoming law, but shall not affect the compensation
6 arrangement for any indigent defense representation ongoing or
7 unpaid as of that effective date.

1

2

3 Senate

4 Read for the first time and referred to the Senate
5 committee on Judiciary.....

26-APR-11

6

7 Read for the second time and placed on the calen-
8 dar with 1 substitute and.....

05-MAY-11

9

10 Read for the third time and passed as amended 25-MAY-11

11 Yeas 25
12 Nays 3

13

14

15 Patrick Harris
16 Secretary
17