

SB83 INTRODUCED



1 SB83
2 5IEW366-1
3 By Senators Smitherman, Albritton, Singleton, Stewart
4 RFD: Finance and Taxation General Fund
5 First Read: 08-Feb-24



4 SYNOPSIS:

5 Under existing law, a voluntary indigent defense
6 advisory board consists of the presiding circuit judge,
7 the president of the local circuit bar association, and
8 three other attorneys selected by the circuit bar
9 commissioner or commissioners.

10 This bill would require that two of the board
11 members selected by the bar commissioner or
12 commissioners are attorneys who regularly practice in
13 the criminal courts of the circuit.

14 Under existing law, the presiding circuit judge
15 is a member of the voluntary indigent defense advisory
16 board.

17 This bill would provide that if the presiding
18 judge has a conflict of interest that would preclude
19 him or her from serving on the voluntary indigent
20 defense advisory board, the presiding judge shall
21 designate another member of the judiciary of the
22 circuit to serve on the board.

23 Under existing law, the Director of the Office
24 of Indigent Defense Services may request that the
25 voluntary indigent defense advisory board review and
26 provide comment on any statements or bills submitted
27 for indigent defense services in the circuit.

28 This bill would further provide for the review



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29 process.

30 This bill would require the voluntary indigent
31 defense advisory board to convene a meeting with all
32 indigent defense attorneys in the circuit to review
33 billing issues.

34 This bill would provide voluntary indigent
35 defense advisory board members with statutory immunity.

36 Under existing law, an indigent defense attorney
37 is compensated \$70 per hour.

38 This bill would provide that indigent defense
39 attorneys are compensated based on the level of the
40 original criminal charge.

41 Under existing law, the total compensation of an
42 indigent defense attorney is capped based on the level
43 of the original criminal charge.

44 This bill would revise the total compensation
45 caps for indigent defense attorneys.

46 This bill would require an indigent defense
47 attorney to provide an explanation for any billing over
48 2,000 hours in a single fiscal year and would authorize
49 a voluntary indigent defense advisory board to
50 recommend remedial action for any attorney who submits
51 over 2,000 hours in a single fiscal year.

52 Under existing law, an indigent defense attorney
53 is compensated \$70 per hour when working on an appeal.

54 This bill would provide that an indigent defense
55 attorney is compensated \$85 per hour when working on an
56 appeal.



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57 Under existing law, an indigent defense attorney
58 may not receive more than \$2,500 in total compensation
59 for any single appeal and subsequent petition for writ
60 of certiorari.

61 This bill would provide that an indigent defense
62 attorney may not receive more than \$5,000 in total
63 compensation for any single appeal and subsequent
64 petition for writ of certiorari.

65 Under existing law, an indigent defense attorney
66 may not receive more than \$2,500 in total additional
67 compensation for a case where a petition for writ of
68 certiorari is filed in the Alabama Supreme Court.

69 This bill would provide that an indigent defense
70 attorney may not receive more than \$5,000 in total
71 additional compensation for a case where a petition for
72 writ of certiorari is filed in the Alabama Supreme
73 Court.

74 Under existing law, the State Comptroller shall
75 remit payment to an indigent defense attorney in a
76 timely manner after the disposition of an appeal.

77 This bill would provide that if the State
78 Comptroller does not remit payment to an indigent
79 defense attorney within 90 days after court
80 certification of the disposition of an appeal, the
81 attorney shall be entitled to receive six percent
82 interest on the payment until the payment is remitted.

83 This bill would also make nonsubstantive,
84 technical revisions to update the existing code



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language to current style.

A BILL

TO BE ENTITLED

AN ACT

Relating to indigent defense; to amend Sections 15-12-4, 15-12-21, and 15-12-22, Code of Alabama 1975; to further provide for the membership of voluntary indigent defense advisory boards; to further provide for a voluntary indigent defense advisory board's review process; to further provide for the compensation of attorneys appointed to defend indigent individuals; to further provide for the remittance of payments to attorneys appointed to defend indigent individuals; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 15-12-4, 15-12-21, and 15-12-22, Code of Alabama 1975, are amended to read as follows:

"§15-12-4

(a) ~~Creation.~~ In each judicial circuit, a voluntary indigent defense advisory board shall be established.

(b) (1) ~~Composition; qualifications, appointment, term of office, and removal of members; vacancies. - The voluntary indigent defense advisory~~ Each board shall be composed of five members who are residents of the judicial circuit in which they are appointed, including the presiding circuit judge as



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the chair, the president of the local circuit bar association, two attorneys who regularly practice in the criminal or juvenile courts of the judicial circuit, and ~~three~~one other ~~attorneys~~attorney, all selected by the bar commissioner or commissioners for that circuit.

(2) In the event the presiding judge has a conflict of interest that prevents his or her service on the board, the presiding judge shall designate another member of the judiciary from within the circuit to serve on the board.

(3) The membership of the voluntary indigent defense advisory board in each judicial circuit shall be inclusive and reflect the racial, gender, urban, rural, and economic diversity of the judicial circuit.

(4) In a multi-county circuit, the bar commissioner or commissioners shall select the president of a county bar association existing within the circuit to serve on the indigent defense advisory board.

(5) Each member shall serve for a term of one year from the date of appointment and members may be reappointed.

(6) Vacancies on the indigent defense advisory board shall be filled by the presiding judge.

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

(d) ~~Meetings generally; quorum; chair. The voluntary~~



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~~indigent defense advisory~~ The board shall meet at least once 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.

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

(1) Analyze, study, and determine the method of indigent defense systems to be used in the circuit. The director may appeal the determination of the ~~indigent defense advisory~~ board 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.

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

(3) a. At the request of the director, review and provide ~~comment~~ written recommendations on any statements, fee declarations, cumulative timesheets, or bills rendered or submitted for the provision of indigent defense services in the circuit.

b. In reviewing any fee declarations or cumulative timesheets, the board shall consider all of the following:

1. Billing standards and practices established by the director and contained in Chapter 335-9-1 of the Alabama Administrative Code.

2. The prior billing history of the attorney, which shall be provided by the Office of Indigent Defense Services



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along with the fee declaration.

3. Any prior fee vouchers adjustment which resulted in a reduction of requested fees or other recommended remedial action and the nature of the remedial action as determined by the director.

c. Following the review of a fee declaration, but prior to the issuance of any written recommendation to the director, the board shall provide the attorney with an opportunity to provide evidence and argument in support of the fee voucher.

d. The board shall submit a written report containing recommendations based on its review of the fee voucher and its communications with the attorney of record.

(4) Convene a meeting of all attorneys handling court appointed representation of indigent defendants to review billing standards and practices adopted by the Office of Indigent Services.

(f) Members of the board shall have the same immunity afforded to state agents as provided in Section 36-1-12."

"§15-12-21

(a) If it appears to the trial court that 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



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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.

(c) If it appears to the trial court that the ~~parents~~parent, guardian, or custodian of a juvenile who is a party in a judicial proceeding, ~~are~~ is entitled to counsel and the ~~parties are~~ party is unable to afford counsel, upon request, the court shall appoint counsel to represent and assist the ~~parents~~parent, guardian, or custodian. 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 ~~parties~~ party to the best of his or her ability.

(d) If the appropriate method for providing indigent defense services is by appointed counsel in a case described in subsections (a), (b), ~~and~~ or (c), including cases tried de novo in circuit court on appeal from a juvenile proceeding, appointed counsel shall be entitled to receive for their services a fee to be approved by the trial court. The amount of the fee shall be based on the number of hours spent by the



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attorney in working on the case and shall be computed ~~at the~~
~~rate of seventy dollars (\$70) per hour~~ for time reasonably
expended on the case. ~~The total fees paid to any one attorney~~
~~in any one case, from the time of appointment through the~~
~~trial of the case, including motions for new trial, shall not~~
~~exceed the following and capped as follows:~~

(1) In cases where the original charge is a capital
offense or a charge which carries a possible sentence of life
without parole, the rate shall be one hundred twenty dollars
(\$120) per hour and there shall be no limit on the total fee.

(2) Except for cases covered by subdivision (1), in
cases where the original charge is a Class A felony, the rate
shall be one hundred ten dollars (\$110) per hour and the total
fee shall not exceed ~~four thousand dollars (\$4,000)~~ seven
thousand five hundred dollars (\$7,500).

(3) In cases where the original charge is a Class B
felony, the rate shall be ninety dollars (\$90) per hour and
the total fee shall not exceed ~~three thousand dollars~~
~~(\$3,000)~~ six thousand dollars (\$6,000).

(4) In cases where the original charge is a Class C or
Class D felony, the rate shall be seventy dollars (\$70) per
hour and the total fee shall not exceed ~~two thousand dollars~~
~~(\$2,000)~~ four thousand five hundred dollars (\$4,500).

(5)a. In juvenile cases, the rate shall be eighty
dollars (\$80) per hour and the total fee shall not exceed ~~two~~
~~thousand five hundred dollars (\$2,500)~~ four thousand five
hundred dollars (\$4,500), except as provided in paragraph b.

b. In juvenile dependency cases, the total fee for



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guardians ad litem shall not exceed five thousand dollars (\$5,000), provided that a guardian ad litem shall receive no more than two thousand five hundred dollars (\$2,500) during the first 18 months after his or her appointment to a case, and no more than one thousand dollars (\$1,000) during each 12 months thereafter. If a guardian ad litem does not receive the full fee during the initial 18-month or subsequent 12-month period, any remaining fees may be carried over until the final disposition, his or her appointment as guardian ad litem ends, or his or her total fee for the case reaches five thousand dollars (\$5,000), whichever occurs first.

(6) In all traffic cases, the rate shall be fifty-five dollars (\$55) per hour and the total fee shall not exceed one thousand five hundred dollars (\$1,500).

~~+(6)~~ (7) In all other cases, the rate shall be seventy dollars (\$70) per hour and the total fee shall not exceed ~~one thousand five hundred dollars (\$1,500)~~ two thousand five hundred dollars (\$2,500).

(e) (1) 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 trial court as necessary for the indigent defense services and as a reasonable cost or expense.

(2) Reimbursable expenses shall not include overhead expenses.

(3) Fees and expenses of all experts, investigators, and others rendering indigent defense services to be used by



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counsel for an indigent defendant shall be approved in advance by the trial court as necessary for the indigent defense services and as a reasonable cost or expense.

(4) Retrials of any case shall be considered a new case for billing purposes.

(5) Upon review, the director may authorize interim payment of the attorney fees or expenses, or both.

(f) (1) Within a reasonable time after the conclusion of the trial, ruling on a motion for a new trial, or after an acquittal or other judgment disposing of the case, not to exceed ~~90~~-120 days, counsel shall submit a bill for services rendered to the office.

(2) The bill shall be accompanied by a certification by the trial court that counsel provided representation to the indigent defendant, that the matter has been concluded, and that to the best of his or her knowledge the bill is reasonable based on the defense provided.

(3) The trial court need not approve the items included on the bill or the amount of the bill, but may provide any information requested by the office or the indigent defense advisory board relating to the representation.

(4) The bill for compensation of appointed counsel shall be submitted to the office.

(5) After review and approval, the office shall recommend to the State Comptroller that the bill be paid.

(6) The office may forward ~~the~~ any individual bill or cumulative billing data to the indigent defense advisory board for review and comment prior to approval.



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(7)a. The indigent defense advisory board shall require any attorney who submits billing totaling more than 2,000 work hours in a fiscal year to provide an explanation establishing good cause grounds for the excess hours.

b. The board shall have the authority to recommend remedial action for excess work, including, but not limited to, suspension of appointment, reimbursement of funds, or referral to the Alabama State Bar or the Office of the Attorney General.

(8) The State Comptroller shall remit payment in a timely manner not to exceed 90 days from ~~submission~~court certification.

(9) In the event that payment is not made within 90 days of ~~submission~~court certification, counsel shall be entitled to receive interest at a rate of six percent until the payment is issued."

"§15-12-22

(a) In all criminal cases ~~wherein~~ where an indigent defendant has an appeal ~~which lies~~ directly to an appellate court and the indigent defendant expresses his or her desire to appeal, the court shall ~~cause to be entered upon its minutes~~ enter a recital of notice of appeal in its minutes.

(b) If it appears that the indigent defendant desires to appeal ~~and~~ , is unable financially or otherwise to obtain the assistance of counsel on appeal , and ~~the indigent defendant~~ expresses the desire for assistance of counsel, the trial court shall appoint counsel to represent and assist the indigent defendant on appeal ~~,~~ through the indigent defense



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system for such cases. ~~The~~ If the trial court fails to appoint and it becomes necessary to further provide for counsel, the presiding judge of the court to which the appeal is taken shall have authority to appoint counsel through the indigent defense system ~~for such cases in the event the trial court fails to appoint and in the event it becomes necessary to further provide for counsel~~. It shall be the duty of the counsel, as an officer of the court and as a member of the bar, to represent and assist the indigent defendant in the appeal.

(c) (1) If appointed counsel is the appropriate method selected for an indigent defendant for the appeal from a decision in any trial court proceeding, he or she shall be entitled to receive for his or her services a fee to be approved by the office.

~~The amount of the fee shall be based on the number of hours spent by the counsel in working on the appeal.~~

~~(1)~~ (2) a. The amount of the fee shall be based on the number of hours spent by the attorney in working on the prosecution of the appeal and shall be computed at the rate of ~~seventy dollars (\$70)~~ eighty-five dollars (\$85) per hour for time reasonably expended in the prosecution of the appeal, and any subsequent petition for writ of certiorari.

~~(2)~~ b. ~~The~~ Notwithstanding paragraph a., the total fees awarded to any one attorney in any appeal and any subsequent petition for writ of certiorari, shall not, ~~however,~~ exceed ~~two thousand five hundred dollars (\$2,500)~~ five thousand dollars (\$5,000), and shall be in addition to any fees awarded



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on the trial court level.

c. In those cases where the state takes a pretrial appeal, appointed counsel shall be entitled to bill separately for services on the pretrial and post-trial appeals, up to two thousand five hundred dollars (\$2,500) for each appeal.

d. In those cases where a petition for writ of certiorari is filed in the Alabama Supreme Court, counsel shall be entitled to bill separately for all services rendered after the Court of Criminal Appeals or the Court of Civil Appeals overrules the application for rehearing, or after the decision of the Court of Criminal Appeals or the Court of Civil Appeals in the case of a pretrial appeal, up to a separate limit of ~~two thousand five hundred dollars (\$2,500)~~ five thousand dollars (\$5,000).

(3) Notwithstanding ~~the foregoing provisions of this~~ subdivision (2), the maximum amounts set forth ~~above in this~~ subdivision (2) may be waived by the appropriate appellate court and the director for good cause shown.

(4) 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 appellate court as necessary for the indigent defense services and as a reasonable cost or expense and shall be paid directly by the office upon submission from the attorney.

(5) Reimbursable expenses shall not include overhead expenses.



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(6) 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 appellate court as necessary for the indigent defense services and as a reasonable cost or expense.

(7) Upon review, the director may authorize interim payment of the attorney fees or expenses, or both.

~~(3)~~ (8) a. Within a reasonable time after the disposition of the appeal, not to exceed ~~90~~ 120 days, counsel shall submit a bill for services rendered to the office for review and approval and, if approved, the office shall recommend the bill for payment by the State Comptroller.

b. The State Comptroller shall remit payment in a timely manner not to exceed 90 days from court certification.

c. In the event that payment is not made within 90 days of certification, counsel shall be entitled to receive interest at a rate of six percent until such payment is remitted."

Section 2. This act shall become effective on October 1, 2024.