

HB275 INTRODUCED



1 HB275
2 4W6P3R3-1
3 By Representative Almond
4 RFD: Ways and Means General Fund
5 First Read: 29-Feb-24



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SYNOPSIS:

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

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

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

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

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

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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85 language to current style.

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88 A BILL

89 TO BE ENTITLED

90 AN ACT

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92 Relating to indigent defense; to amend Section 15-12-4,
93 Section 15-12-21, as last amended by Act 2023-368, 2023
94 Regular Session, and Section 15-12-22, Code of Alabama 1975;
95 to further provide for the membership of voluntary indigent
96 defense advisory boards; to further provide for a voluntary
97 indigent defense advisory board's review process; to further
98 provide for the compensation of attorneys appointed to defend
99 indigent individuals; to further provide for the remittance of
100 payments to attorneys appointed to defend indigent
101 individuals; and to make nonsubstantive, technical revisions
102 to update the existing code language to current style.

103 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

104 Section 1. Section 15-12-4, Section 15-12-21, as last
105 amended by Act 2023-368, 2023 Regular Session, and Section
106 15-12-22, Code of Alabama 1975, are amended to read as
107 follows:

108 "§15-12-4

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

111 (b) (1) ~~Composition; qualifications, appointment, term~~
112 ~~of office, and removal of members; vacancies. - The voluntary~~



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113 ~~indigent defense advisory~~ Each board shall be composed of five
114 members who are residents of the judicial circuit in which
115 they are appointed, including the presiding circuit judge as
116 the chair, the president of the local circuit bar association,
117 two attorneys who regularly practice in the criminal or
118 juvenile courts of the judicial circuit, and ~~three~~ one other
119 ~~attorneys~~ attorney, all selected by the bar commissioner or
120 commissioners for that circuit.

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

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

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

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

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

137 (c) ~~Compensation and expenses of members.~~ Members of
138 the ~~voluntary indigent defense advisory~~ board shall serve
139 without compensation; except, that necessary travel expenses
140 in connection with ~~advisory~~ board business shall be paid by



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141 the office in the same manner as for state employees
142 generally.

143 (d) ~~Meetings generally; quorum; chair. The voluntary~~
144 ~~indigent defense advisory~~ The board shall meet at least once
145 quarterly and shall meet whenever so requested by the
146 presiding circuit judge or by two members of the board. Three
147 members shall constitute a quorum for conducting business.

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

151 (1) Analyze, study, and determine the method of
152 indigent defense systems to be used in the circuit. The
153 director may appeal the determination of the ~~indigent defense~~
154 ~~advisory~~ board to the Indigent Defense Review Panel. The
155 Indigent Defense Review Panel shall make a decision in a
156 timely manner, which decision shall be deemed final.

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

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

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

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



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169 Administrative Code.

170 2. The prior billing history of the attorney, which
171 shall be provided by the Office of Indigent Defense Services
172 along with the fee declaration.

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

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

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

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

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

190 "§15-12-21

191 (a) If it appears to the trial court that an indigent
192 defendant is entitled to counsel, that the indigent defendant
193 does not expressly waive the right to assistance of counsel,
194 and that the indigent defendant is not able financially or
195 otherwise to obtain the assistance of counsel through another
196 indigent defense system for the circuit, the court shall



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197 appoint counsel to represent and assist the defendant. It
198 shall be the duty of the appointed counsel, as an officer of
199 the court and as a member of the bar, to represent and assist
200 the indigent defendant to the best of his or her ability.

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

212 (c) If it appears to the trial court that the
213 ~~parents~~parent, guardian, or custodian of a juvenile who is a
214 party in a judicial proceeding, ~~are~~ is entitled to counsel and
215 the ~~parties are~~ party is unable to afford counsel, upon
216 request, the court shall appoint counsel to represent and
217 assist the ~~parents~~parent, guardian, or custodian. It shall be
218 the duty of the appointed counsel, as an officer of the court
219 and as a member of the bar, to represent and assist the
220 ~~parties~~ party to the best of his or her ability.

221 (d) If the appropriate method for providing indigent
222 defense services is by appointed counsel in a case described
223 in subsections (a), (b), ~~and~~ or (c), including cases tried de
224 novo in circuit court on appeal from a juvenile proceeding,



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225 appointed counsel shall be entitled to receive for their
226 services a fee to be approved by the trial court. The amount
227 of the fee shall be based on the number of hours spent by the
228 attorney in working on the case and shall be computed ~~at the~~
229 ~~rate of seventy dollars (\$70) per hour~~ for time reasonably
230 expended on the case. ~~The total fees paid to any one attorney~~
231 ~~in any one case, from the time of appointment through the~~
232 ~~trial of the case, including motions for new trial, shall not~~
233 ~~exceed the following~~ and capped as follows:

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

238 (2) Except for cases covered by subdivision (1), in
239 cases where the original charge is a Class A felony, the rate
240 shall be one hundred dollars (\$100) per hour and the total fee
241 shall not exceed ~~four thousand dollars (\$4,000)~~ six thousand
242 dollars (\$6,000).

243 (3) In cases where the original charge is a Class B
244 felony, the rate shall be eighty dollars (\$80) per hour and
245 the total fee shall not exceed ~~three thousand dollars~~
246 ~~(\$3,000)~~ four thousand dollars (\$4,000).

247 (4) In cases where the original charge is a Class C or
248 Class D felony, the rate shall be eighty dollars (\$80) per
249 hour and the total fee shall not exceed ~~two thousand dollars~~
250 ~~(\$2,000)~~ three thousand five hundred dollars (\$3,500).

251 (5)a. In juvenile cases, the rate shall be seventy
252 dollars (\$70) per hour and the total fee shall not exceed ~~two~~



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253 ~~thousand five hundred dollars (\$2,500)~~ four thousand five
254 hundred dollars (\$4,500), except as provided in paragraph b.

255 b. In juvenile dependency cases, the total fee for
256 guardians ad litem shall not exceed five thousand dollars
257 (\$5,000), provided that a guardian ad litem shall receive no
258 more than two thousand five hundred dollars (\$2,500) during
259 the first 18 months after his or her appointment to a case,
260 and no more than one thousand dollars (\$1,000) during each 12
261 months thereafter. If a guardian ad litem does not receive the
262 full fee during the initial 18-month or subsequent 12-month
263 period, any remaining fees may be carried over until the final
264 disposition, his or her appointment as guardian ad litem ends,
265 or his or her total fee for the case reaches five thousand
266 dollars (\$5,000), whichever occurs first.

267 (6) In all other cases, the rate shall be fifty-five
268 dollars (\$55) per hour and the total fee shall not exceed ~~one~~
269 ~~thousand five hundred dollars (\$1,500)~~ two thousand dollars
270 (\$2,000).

271 (e) (1) Counsel shall also be entitled to be reimbursed
272 for any nonoverhead expenses reasonably incurred in the
273 representation of his or her client, with any expense in
274 excess of three hundred dollars (\$300) subject to advance
275 approval by the trial court as necessary for the indigent
276 defense services and as a reasonable cost or expense.

277 (2) Reimbursable expenses shall not include overhead
278 expenses.

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



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

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

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

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

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

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

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

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

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



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

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

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

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

325 "§15-12-22

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

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



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

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

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

354 ~~(1)~~ (2) a. The amount of the fee shall be based on the
355 number of hours spent by the attorney in working on the
356 prosecution of the appeal and shall be computed at the rate of
357 ~~seventy dollars (\$70)~~ eighty-five dollars (\$85) per hour for
358 time reasonably expended in the prosecution of the appeal, and
359 any subsequent petition for writ of certiorari.

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



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365 on the trial court level.

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

370 d. In those cases where a petition for writ of
371 certiorari is filed in the Alabama Supreme Court, counsel
372 shall be entitled to bill separately for all services rendered
373 after the Court of Criminal Appeals or the Court of Civil
374 Appeals overrules the application for rehearing, or after the
375 decision of the Court of Criminal Appeals or the Court of
376 Civil Appeals in the case of a pretrial appeal, up to a
377 separate limit of ~~two thousand five hundred dollars~~
378 ~~(\$2,500)~~ five thousand dollars (\$5,000).

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

383 (4) Counsel shall also be entitled to be reimbursed for
384 any nonoverhead expenses reasonably incurred in the
385 representation of his or her client, with any expense in
386 excess of three hundred dollars (\$300) subject to advance
387 approval by the appellate court as necessary for the indigent
388 defense services and as a reasonable cost or expense and shall
389 be paid directly by the office upon submission from the
390 attorney.

391 (5) Reimbursable expenses shall not include overhead
392 expenses.



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393 (6) Fees and expenses of all experts, investigators,
394 and others rendering indigent defense services to be used by
395 counsel for an indigent defendant shall be approved in advance
396 by the appellate court as necessary for the indigent defense
397 services and as a reasonable cost or expense.

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

400 ~~(3)~~ (8) a. Within a reasonable time after the disposition
401 of the appeal, not to exceed ~~90~~ 120 days, counsel shall submit
402 a bill for services rendered to the office for review and
403 approval and, if approved, the office shall recommend the bill
404 for payment by the state Comptroller.

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

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

411 Section 2. This act shall become effective on October
412 1, 2024.