

SB83 ENGROSSED



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



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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; to require the state to provide reimbursement for indigent health care services; 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



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29 members who are residents of the judicial circuit in which
30 they are appointed, including the presiding circuit judge as
31 the chair, the president of the local circuit bar association,
32 two attorneys who regularly practice in the criminal or
33 juvenile courts of the judicial circuit, and ~~three~~one other
34 ~~attorneys~~attorney, all selected by the bar commissioner or
35 commissioners for that circuit.

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

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

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

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

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

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

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57 generally.

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

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

66 (1) Analyze, study, and determine the method of
67 indigent defense systems to be used in the circuit. The
68 director may appeal the determination of the ~~indigent defense~~
69 ~~advisory~~ board to the Indigent Defense Review Panel. The
70 Indigent Defense Review Panel shall make a decision in a
71 timely manner, which decision shall be deemed final.

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

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

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

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

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85 2. The prior billing history of the attorney, which
86 shall be provided by the Office of Indigent Defense Services
87 along with the fee declaration.

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

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

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

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

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

105 "§15-12-21

106 (a) If it appears to the trial court that an indigent
107 defendant is entitled to counsel, that the indigent defendant
108 does not expressly waive the right to assistance of counsel,
109 and that the indigent defendant is not able financially or
110 otherwise to obtain the assistance of counsel through another
111 indigent defense system for the circuit, the court shall
112 appoint counsel to represent and assist the defendant. It



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113 shall be the duty of the appointed counsel, as an officer of
114 the court and as a member of the bar, to represent and assist
115 the indigent defendant to the best of his or her ability.

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

127 (c) If it appears to the trial court that the
128 ~~parents~~parent, guardian, or custodian of a juvenile who is a
129 party in a judicial proceeding, ~~are~~ is entitled to counsel and
130 the ~~parties are~~ party is unable to afford counsel, upon
131 request, the court shall appoint counsel to represent and
132 assist the ~~parents~~parent, guardian, or custodian. It shall be
133 the duty of the appointed counsel, as an officer of the court
134 and as a member of the bar, to represent and assist the
135 ~~parties~~ party to the best of his or her ability.

136 (d) If the appropriate method for providing indigent
137 defense services is by appointed counsel in a case described
138 in subsections (a), (b), ~~and or~~ (c), including cases tried de
139 novo in circuit court on appeal from a juvenile proceeding,
140 appointed counsel shall be entitled to receive for their



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141 services a fee to be approved by the trial court. The amount
142 of the fee shall be based on the number of hours spent by the
143 attorney in working on the case and shall be computed ~~at the~~
144 ~~rate of seventy dollars (\$70) per hour~~ for time reasonably
145 expended on the case. ~~The total fees paid to any one attorney~~
146 ~~in any one case, from the time of appointment through the~~
147 ~~trial of the case, including motions for new trial, shall not~~
148 ~~exceed the following~~ and capped as follows:

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

153 (2) Except for cases covered by subdivision (1), in
154 cases where the original charge is a Class A felony, the rate
155 shall be one hundred ten dollars (\$110) per hour and the total
156 fee shall not exceed ~~four thousand dollars (\$4,000)~~ six
157 thousand five hundred dollars (\$6,500).

158 (3) In cases where the original charge is a Class B
159 felony, the rate shall be ninety dollars (\$90) per hour and
160 the total fee shall not exceed ~~three thousand dollars~~
161 ~~(\$3,000)~~ six thousand dollars (\$6,000).

162 (4) In cases where the original charge is a Class C or
163 Class D felony, the rate shall be seventy dollars (\$70) per
164 hour and the total fee shall not exceed ~~two thousand dollars~~
165 ~~(\$2,000)~~ four thousand five hundred dollars (\$4,500).

166 (5)a. In juvenile cases, the rate shall be eighty
167 dollars (\$80) per hour and the total fee shall not exceed ~~two~~
168 ~~thousand five hundred dollars (\$2,500)~~ four thousand five



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169 hundred dollars (\$4,500), except as provided in paragraph b.

170 b. In juvenile dependency cases, the total fee for
171 guardians ad litem shall not exceed five thousand dollars
172 (\$5,000), provided that a guardian ad litem shall receive no
173 more than two thousand five hundred dollars (\$2,500) during
174 the first 18 months after his or her appointment to a case,
175 and no more than one thousand dollars (\$1,000) during each 12
176 months thereafter. If a guardian ad litem does not receive the
177 full fee during the initial 18-month or subsequent 12-month
178 period, any remaining fees may be carried over until the final
179 disposition, his or her appointment as guardian ad litem ends,
180 or his or her total fee for the case reaches five thousand
181 dollars (\$5,000), whichever occurs first.

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

185 ~~(6)~~ (7) In all other cases, the rate shall be seventy
186 dollars (\$70) per hour and the total fee shall not exceed ~~one~~
187 ~~thousand five hundred dollars (\$1,500)~~ two thousand five
188 hundred dollars (\$2,500).

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

195 (2) Reimbursable expenses shall not include overhead
196 expenses.



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197 (3) Fees and expenses of all experts, investigators,
198 and others rendering indigent defense services to be used by
199 counsel for an indigent defendant shall be approved in advance
200 by the trial court as necessary for the indigent defense
201 services and as a reasonable cost or expense.

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

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

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

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

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

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

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

224 (6) The office may forward ~~the~~ any individual bill or



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225 cumulative billing data to the indigent defense advisory board
226 for review and comment prior to approval.

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

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

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

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

243 "§15-12-22

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

249 (b) If it appears that the indigent defendant desires
250 to appeal~~and~~, is unable financially or otherwise to obtain
251 the assistance of counsel on appeal~~,~~ and the indigent
252 ~~defendant~~ expresses the desire for assistance of counsel, the



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253 trial court shall appoint counsel to represent and assist the
254 indigent defendant on appeal, through the indigent defense
255 system for such cases. ~~The~~ If the trial court fails to appoint
256 and it becomes necessary to further provide for counsel, the
257 presiding judge of the court to which the appeal is taken
258 shall have authority to appoint counsel through the indigent
259 defense system ~~for such cases in the event the trial court~~
260 ~~fails to appoint and in the event it becomes necessary to~~
261 ~~further provide for counsel~~. It shall be the duty of the
262 counsel, as an officer of the court and as a member of the
263 bar, to represent and assist the indigent defendant in the
264 appeal.

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

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

272 ~~(1)~~ (2) a. The amount of the fee shall be based on the
273 number of hours spent by the attorney in working on the
274 prosecution of the appeal and shall be computed at the rate of
275 ~~seventy dollars (\$70)~~ eighty-five dollars (\$85) per hour for
276 time reasonably expended in the prosecution of the appeal, and
277 any subsequent petition for writ of certiorari.

278 ~~(2)~~ b. ~~The~~ Notwithstanding paragraph a., the total fees
279 awarded to any one attorney in any appeal and any subsequent
280 petition for writ of certiorari, shall not, ~~however,~~ exceed



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281 ~~two thousand five hundred dollars (\$2,500)~~ five thousand
282 dollars (\$5,000), and shall be in addition to any fees awarded
283 on the trial court level.

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

288 d. In those cases where a petition for writ of
289 certiorari is filed in the Alabama Supreme Court, counsel
290 shall be entitled to bill separately for all services rendered
291 after the Court of Criminal Appeals or the Court of Civil
292 Appeals overrules the application for rehearing, or after the
293 decision of the Court of Criminal Appeals or the Court of
294 Civil Appeals in the case of a pretrial appeal, up to a
295 separate limit of ~~two thousand five hundred dollars~~
296 ~~(\$2,500)~~ five thousand dollars (\$5,000).

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

301 (4) Counsel shall also be entitled to be reimbursed for
302 any nonoverhead expenses reasonably incurred in the
303 representation of his or her client, with any expense in
304 excess of three hundred dollars (\$300) subject to advance
305 approval by the appellate court as necessary for the indigent
306 defense services and as a reasonable cost or expense and shall
307 be paid directly by the office upon submission from the
308 attorney.



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309 (5) Reimbursable expenses shall not include overhead
310 expenses.

311 (6) Fees and expenses of all experts, investigators,
312 and others rendering indigent defense services to be used by
313 counsel for an indigent defendant shall be approved in advance
314 by the appellate court as necessary for the indigent defense
315 services and as a reasonable cost or expense.

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

318 ~~(3)~~ (8) a. Within a reasonable time after the disposition
319 of the appeal, not to exceed ~~90~~ 120 days, counsel shall submit
320 a bill for services rendered to the office for review and
321 approval and, if approved, the office shall recommend the bill
322 for payment by the State Comptroller.

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

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

329 Section 2. Notwithstanding any law to the contrary, the
330 state shall provide reimbursement as necessary to cover the
331 costs of indigent health care services provided in the state.
332 The rate of reimbursement shall be commensurate with the
333 Medicare reimbursement rate established for the specific
334 health care service provided.

335 Section 3. This act shall become effective on October
336 1, 2024.



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337
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339 Senate

340 Read for the first time and referred08-Feb-24
341 to the Senate committee on Finance
342 and Taxation General Fund
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344 Read for the second time and placed14-Feb-24
345 on the calendar:
346 0 amendments
347
348 Read for the third time and passed15-Feb-24
349 as amended
350 Yeas 32
351 Nays 0
352 Abstains 0
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354

Patrick Harris,
Secretary.

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