

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



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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 Sections
93 15-12-4, 15-12-21, and 15-12-22, Code of Alabama 1975; to
94 further provide for the membership of voluntary indigent
95 defense advisory boards; to further provide for a voluntary
96 indigent defense advisory board's review process; to further
97 provide for the compensation of attorneys appointed to defend
98 indigent individuals; to further provide for the remittance of
99 payments to attorneys appointed to defend indigent
100 individuals; and to make nonsubstantive, technical revisions
101 to update the existing code language to current style.

102 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

105 "§15-12-4

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

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



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

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

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

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

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

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

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

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



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141 ~~indigent defense advisory~~ The board shall meet at least once
142 quarterly and shall meet whenever so requested by the
143 presiding circuit judge or by two members of the board. Three
144 members shall constitute a quorum for conducting business.

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

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

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

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

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

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

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



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169 along with the fee declaration.

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

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

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

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

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

187 "§15-12-21

188 (a) If it appears to the trial court that an indigent
189 defendant is entitled to counsel, that the indigent defendant
190 does not expressly waive the right to assistance of counsel,
191 and that the indigent defendant is not able financially or
192 otherwise to obtain the assistance of counsel through another
193 indigent defense system for the circuit, the court shall
194 appoint counsel to represent and assist the defendant. It
195 shall be the duty of the appointed counsel, as an officer of
196 the court and as a member of the bar, to represent and assist



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197 the indigent defendant to the best of his or her ability.

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

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

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



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

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

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

240 (3) In cases where the original charge is a Class B
241 felony, the rate shall be ninety dollars (\$90) per hour and
242 the total fee shall not exceed ~~three thousand dollars~~
243 ~~(\$3,000)~~ six thousand dollars (\$6,000).

244 (4) In cases where the original charge is a Class C or
245 Class D felony, the rate shall be seventy dollars (\$70) per
246 hour and the total fee shall not exceed ~~two thousand dollars~~
247 ~~(\$2,000)~~ four thousand five hundred dollars (\$4,500).

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

252 b. In juvenile dependency cases, the total fee for



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253 guardians ad litem shall not exceed five thousand dollars
254 (\$5,000), provided that a guardian ad litem shall receive no
255 more than two thousand five hundred dollars (\$2,500) during
256 the first 18 months after his or her appointment to a case,
257 and no more than one thousand dollars (\$1,000) during each 12
258 months thereafter. If a guardian ad litem does not receive the
259 full fee during the initial 18-month or subsequent 12-month
260 period, any remaining fees may be carried over until the final
261 disposition, his or her appointment as guardian ad litem ends,
262 or his or her total fee for the case reaches five thousand
263 dollars (\$5,000), whichever occurs first.

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

267 ~~(6)~~ (7) In all other cases, the rate shall be seventy
268 dollars (\$70) per hour and the total fee shall not exceed ~~one~~
269 ~~thousand five hundred dollars (\$1,500)~~ two thousand five
270 hundred dollars (\$2,500).

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.