

HB275 ENGROSSED



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



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A BILL
TO BE ENTITLED
AN ACT

Relating to indigent defense; to amend Section 15-12-4, Section 15-12-21, as last amended by Act 2023-368, 2023 Regular Session, and Section 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. Section 15-12-4, Section 15-12-21, as last amended by Act 2023-368, 2023 Regular Session, and Section 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~~



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29 ~~of office, and removal of members; vacancies. - The voluntary~~
30 ~~indigent defense advisory~~ Each board shall be composed of five
31 members who are residents of the judicial circuit in which
32 they are appointed, including the presiding circuit judge as
33 the chair, the president of the local circuit bar association,
34 two attorneys who regularly practice in the criminal or
35 juvenile courts of the judicial circuit, and ~~three~~ one other
36 ~~attorneys~~ attorney, all selected by the bar commissioner or
37 commissioners for that circuit.

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

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

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

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

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

54 (c) ~~Compensation and expenses of members.~~ Members of
55 the ~~voluntary indigent defense advisory~~ board shall serve
56 without compensation; except, that necessary travel expenses



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57 in connection with ~~advisory~~ board business shall be paid by
58 the office in the same manner as for state employees
59 generally.

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

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

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

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

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

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

84 1. Billing standards and practices established by the



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85 director and contained in Chapter 335-9-1 of the Alabama
86 Administrative Code.

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

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

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

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

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

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

107 "§15-12-21

108 (a) If it appears to the trial court that an indigent
109 defendant is entitled to counsel, that the indigent defendant
110 does not expressly waive the right to assistance of counsel,
111 and that the indigent defendant is not able financially or
112 otherwise to obtain the assistance of counsel through another



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113 indigent defense system for the circuit, the court shall
114 appoint counsel to represent and assist the defendant. It
115 shall be the duty of the appointed counsel, as an officer of
116 the court and as a member of the bar, to represent and assist
117 the indigent defendant to the best of his or her ability.

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

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

138 (d) If the appropriate method for providing indigent
139 defense services is by appointed counsel in a case described
140 in subsections (a), (b), ~~and or~~ (c), including cases tried de



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

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

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

160 (3) In cases where the original charge is a Class B
161 felony, the rate shall be eighty dollars (\$80) per hour and
162 the total fee shall not exceed ~~three thousand dollars~~
163 ~~(\$3,000)~~ four thousand dollars (\$4,000).

164 (4) In cases where the original charge is a Class C or
165 Class D felony, the rate shall be eighty dollars (\$80) per
166 hour and the total fee shall not exceed ~~two thousand dollars~~
167 ~~(\$2,000)~~ three thousand five hundred dollars (\$3,500).

168 (5)a. In juvenile cases, the rate shall be seventy



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169 dollars (\$70) per hour and the total fee shall not exceed ~~two~~
170 ~~thousand five hundred dollars (\$2,500)~~four thousand five
171 hundred dollars (\$4,500), except as provided in paragraph b.

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

184 (6) In all other cases, the rate shall be fifty-five
185 dollars (\$55) per hour and the total fee shall not exceed ~~one~~
186 ~~thousand five hundred dollars (\$1,500)~~two thousand dollars
187 (\$2,000).

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

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

196 (3) Fees and expenses of all experts, investigators,



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197 and others rendering indigent defense services to be used by
198 counsel for an indigent defendant shall be approved in advance
199 by the trial court as necessary for the indigent defense
200 services and as a reasonable cost or expense.

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

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

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

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

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

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

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

223 (6) The office may forward ~~the~~ any individual bill or
224 cumulative billing data to the indigent defense advisory board



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225 for review and comment prior to approval.

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

230 b. The board shall have the authority to recommend
231 remedial action for excess work, including, but not limited
232 to, suspension of appointment, reimbursement of funds, or
233 referral to the Alabama State Bar or the Office of the
234 Attorney General. ~~The state Comptroller shall remit payment in~~
235 ~~a timely manner not to exceed 90 days from submission~~
236 ~~certification. In the event that payment is not made within 90~~
237 ~~days of submission~~
238 ~~certification, counsel shall be~~
239 ~~entitled to receive interest at a rate of six percent until~~
240 ~~the payment is issued."~~

240 "§15-12-22

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

246 (b) If it appears that the indigent defendant desires
247 to appeal ~~and~~, is unable financially or otherwise to obtain
248 the assistance of counsel on appeal, ~~and the indigent~~
249 ~~defendant~~ expresses the desire for assistance of counsel, the
250 trial court shall appoint counsel to represent and assist the
251 indigent defendant on appeal, ~~through the indigent defense~~
252 system for such cases. ~~The~~ If the trial court fails to appoint



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

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

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

269 ~~(1)~~ (2) a. The amount of the fee shall be based on the
270 number of hours spent by the attorney in working on the
271 prosecution of the appeal and shall be computed at the rate of
272 ~~seventy dollars (\$70)~~ eighty-five dollars (\$85) per hour for
273 time reasonably expended in the prosecution of the appeal, and
274 any subsequent petition for writ of certiorari.

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



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

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

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

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

306 (5) Reimbursable expenses shall not include overhead
307 expenses.

308 (6) Fees and expenses of all experts, investigators,



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309 and others rendering indigent defense services to be used by
310 counsel for an indigent defendant shall be approved in advance
311 by the appellate court as necessary for the indigent defense
312 services and as a reasonable cost or expense.

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

315 ~~(3)~~ (8) Within a reasonable time after the disposition
316 of the appeal, not to exceed ~~90~~ 120 days, counsel shall submit
317 a bill for services rendered to the office for review and
318 approval and, if approved, the office shall recommend the bill
319 for payment by the state Comptroller. ~~The Comptroller shall~~
320 ~~remit payment in a timely manner."~~

321 Section 2. This act shall become effective on October
322 1, 2024.



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House of Representatives

Read for the first time and referred29-Feb-24
to the House of Representatives
committee on Ways and Means General
Fund
Read for the second time and placed06-Mar-24
on the calendar:
1 amendment
Read for the third time and passed19-Mar-24
as amended
Yeas 97
Nays 1
Abstains 4

John Treadwell
Clerk