

HB275 ENROLLED



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



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1 Enrolled, An Act,

2

3 Relating to indigent defense; to amend Section 15-12-4,
4 Section 15-12-21, as last amended by Act 2023-368, 2023
5 Regular Session, and Section 15-12-22, Code of Alabama 1975;
6 to further provide for the membership of voluntary indigent
7 defense advisory boards; to further provide for a voluntary
8 indigent defense advisory board's review process; to further
9 provide for the compensation of attorneys appointed to defend
10 indigent individuals; to further provide for the remittance of
11 payments to attorneys appointed to defend indigent
12 individuals; and to make nonsubstantive, technical revisions
13 to update the existing code language to current style.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Section 15-12-4, Section 15-12-21, as last
16 amended by Act 2023-368, 2023 Regular Session, and Section
17 15-12-22, Code of Alabama 1975, are amended to read as
18 follows:

19 "§15-12-4

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

22 (b) ~~(1) Composition; qualifications, appointment, term~~
23 ~~of office, and removal of members; vacancies. - The voluntary~~
24 ~~indigent defense advisory~~ Each board shall be composed of five
25 members who are residents of the judicial circuit in which
26 they are appointed, including the presiding circuit judge as
27 the chair, the president of the local circuit bar association,
28 two attorneys who regularly practice in the criminal or



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29 juvenile courts of the judicial circuit, and ~~three~~one other
30 ~~attorneys~~attorney, all selected by the bar commissioner or
31 commissioners for that circuit.

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

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

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

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

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

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

54 (d) ~~Meetings generally; quorum; chair. The voluntary~~
55 ~~indigent defense advisory~~ The board shall meet at least once
56 quarterly and shall meet whenever so requested by the



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57 presiding circuit judge or by two members of the board. Three
58 members shall constitute a quorum for conducting business.

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

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

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

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

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

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

81 2. The prior billing history of the attorney, which
82 shall be provided by the Office of Indigent Defense Services
83 along with the fee declaration.

84 3. Any prior fee voucher adjustment which resulted in a



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85 reduction of requested fees or other recommended remedial
86 action and the nature of the remedial action as determined by
87 the director.

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

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

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

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

101 "§15-12-21

102 (a) If it appears to the trial court that an indigent
103 defendant is entitled to counsel, that the indigent defendant
104 does not expressly waive the right to assistance of counsel,
105 and that the indigent defendant is not able financially or
106 otherwise to obtain the assistance of counsel through another
107 indigent defense system for the circuit, the court shall
108 appoint counsel to represent and assist the defendant. It
109 shall be the duty of the appointed counsel, as an officer of
110 the court and as a member of the bar, to represent and assist
111 the indigent defendant to the best of his or her ability.

112 (b) If it appears to the trial court in a delinquency



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

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

132 (d) If the appropriate method for providing indigent
133 defense services is by appointed counsel in a case described
134 in subsections (a), (b), ~~and~~or (c), including cases tried de
135 novo in circuit court on appeal from a juvenile proceeding,
136 appointed counsel shall be entitled to receive for their
137 services a fee to be approved by the trial court. The amount
138 of the fee shall be based on the number of hours spent by the
139 attorney in working on the case and shall be computed ~~at the~~
140 ~~rate of seventy dollars (\$70) per hour~~ for time reasonably



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141 expended on the case. ~~The total fees paid to any one attorney~~
142 ~~in any one case, from the time of appointment through the~~
143 ~~trial of the case, including motions for new trial, shall not~~
144 ~~exceed the following~~ and capped as follows:

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

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

154 (3) In cases where the original charge is a Class B
155 felony, the rate shall be eighty dollars (\$80) per hour and
156 the total fee shall not exceed ~~three thousand dollars~~
157 ~~(\$3,000)~~ four thousand dollars (\$4,000).

158 (4) In cases where the original charge is a Class C or
159 Class D felony, the rate shall be eighty dollars (\$80) per
160 hour and the total fee shall not exceed ~~two thousand dollars~~
161 ~~(\$2,000)~~ three thousand five hundred dollars (\$3,500).

162 (5)a. In juvenile cases, the rate shall be seventy
163 dollars (\$70) per hour and the total fee shall not exceed ~~two~~
164 ~~thousand five hundred dollars (\$2,500)~~ four thousand five
165 hundred dollars (\$4,500), except as provided in paragraph b.

166 b. In juvenile dependency cases, the total fee for
167 guardians ad litem shall not exceed five thousand dollars
168 (\$5,000), provided that a guardian ad litem shall receive no



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

178 (6) In all other cases, the rate shall be fifty-five
179 dollars (\$55) per hour and the total fee shall not exceed ~~one~~
180 ~~thousand five hundred dollars (\$1,500)~~ two thousand dollars
181 (\$2,000).

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

188 (2) Reimbursable expenses shall not include overhead
189 expenses.

190 (3) Fees and expenses of all experts, investigators,
191 and others rendering indigent defense services to be used by
192 counsel for an indigent defendant shall be approved in advance
193 by the trial court as necessary for the indigent defense
194 services and as a reasonable cost or expense.

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



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

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

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

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

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

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

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

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

224 b. The board shall have the authority to recommend



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

234 "§15-12-22

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

240 (b) If it appears that the indigent defendant desires
241 to appeal ~~and,~~ is unable financially or otherwise to obtain
242 the assistance of counsel on appeal, and ~~the indigent~~
243 ~~defendant~~ expresses the desire for assistance of counsel, the
244 trial court shall appoint counsel to represent and assist the
245 indigent defendant on appeal, ~~through the indigent defense~~
246 ~~system for such cases.~~ The If the trial court fails to appoint
247 and it becomes necessary to further provide for counsel, the
248 presiding judge of the court to which the appeal is taken
249 shall have authority to appoint counsel through the indigent
250 defense system ~~for such cases in the event the trial court~~
251 ~~fails to appoint and in the event it becomes necessary to~~
252 ~~further provide for counsel.~~ It shall be the duty of the



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253 counsel, as an officer of the court and as a member of the
254 bar, to represent and assist the indigent defendant in the
255 appeal.

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

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

263 ~~(1)~~ (2) a. The amount of the fee shall be based on the
264 number of hours spent by the attorney in working on the
265 prosecution of the appeal and shall be computed at the rate of
266 ~~seventy dollars (\$70)~~ eighty-five dollars (\$85) per hour for
267 time reasonably expended in the prosecution of the appeal, and
268 any subsequent petition for writ of certiorari.

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

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

279 d. In those cases where a petition for writ of
280 certiorari is filed in the Alabama Supreme Court, counsel



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281 shall be entitled to bill separately for all services rendered
282 after the Court of Criminal Appeals or the Court of Civil
283 Appeals overrules the application for rehearing, or after the
284 decision of the Court of Criminal Appeals or the Court of
285 Civil Appeals in the case of a pretrial appeal, up to a
286 separate limit of ~~two thousand five hundred dollars~~
287 ~~(\$2,500)~~ five thousand dollars (\$5,000).

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

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

300 (5) Reimbursable expenses shall not include overhead
301 expenses.

302 (6) Fees and expenses of all experts, investigators,
303 and others rendering indigent defense services to be used by
304 counsel for an indigent defendant shall be approved in advance
305 by the appellate court as necessary for the indigent defense
306 services and as a reasonable cost or expense.

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



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309 ~~(3)~~ (8) Within a reasonable time after the disposition
310 of the appeal, not to exceed ~~90~~ 120 days, counsel shall submit
311 a bill for services rendered to the office for review and
312 approval and, if approved, the office shall recommend the bill
313 for payment by the state Comptroller. ~~The Comptroller shall~~
314 ~~remit payment in a timely manner."~~

315 Section 2. This act shall become effective on October
316 1, 2024.



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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 19-Mar-24, as amended.

John Treadwell
Clerk

Senate

09-Apr-24

Passed