

1 HB379
2 188089-4
3 By Representatives England and Jones
4 RFD: Judiciary
5 First Read: 06-FEB-18

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8 SYNOPSIS: Under existing law, the court may not waive
9 the maximum fee that counsel may collect when
10 appointed to represent an indigent client charged
11 with a felony for any reason.

12 Also under existing law, there is a cap on
13 the amount of fees that counsel may be awarded for
14 services rendered for the appeal of a capital
15 murder conviction.

16 Also under existing law, the court may not
17 appoint counsel to file a petition for the
18 commitment of an incapacitated person.

19 This bill would authorize the court to waive
20 the maximum fee limit for appointed attorneys under
21 certain circumstances and remove the cap for
22 appeals of capital murder convictions. This bill
23 would also allow the court to appoint an attorney
24 to file a petition for the commitment of an
25 incapacitated person should the need exist.

26
27 A BILL

1 TO BE ENTITLED

2 AN ACT

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4 To amend Section 15-12-21, 15-12-22, and 22-52-14 of
5 the Code of Alabama 1975, relating to the payment of court
6 appointed attorneys; to authorize the court to waive the
7 maximum fee limit in certain cases; to remove the cap for
8 appeals of capital murder convictions; and authorize the court
9 to appoint an attorney to represent an incapacitated person
10 prior to the filing of a petition.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 15-12-21 of the Code of Alabama
13 1975, is amended to read as follows:

14 "§15-12-21.

15 "(a) If it appears to the trial court that an
16 indigent defendant is entitled to counsel, that the indigent
17 defendant does not expressly waive the right to assistance of
18 counsel, and that the indigent defendant is not able
19 financially or otherwise to obtain the assistance of counsel
20 through another indigent defense system for the circuit, the
21 court shall appoint counsel to represent and assist the
22 defendant. It shall be the duty of the appointed counsel, as
23 an officer of the court and as a member of the bar, to
24 represent and assist the indigent defendant to the best of his
25 or her ability.

26 "(b) If it appears to the trial court in a
27 delinquency case, need of supervision case, or other judicial

1 proceeding in which a juvenile is a party, that the juvenile
2 is entitled to counsel and that the juvenile is not able
3 financially or otherwise to obtain the assistance of counsel
4 or that appointed counsel is otherwise required by law, the
5 court shall appoint counsel to represent and assist the
6 juvenile or act in the capacity of guardian ad litem for the
7 juvenile. It shall be the duty of the appointed counsel, as an
8 officer of the court and as a member of the bar, to represent
9 and assist the juvenile to the best of his or her ability.

10 "(c) If it appears to the trial court that the
11 parents, guardian, or custodian of a juvenile who is a party
12 in a judicial proceeding, are entitled to counsel and the
13 parties are unable to afford counsel, upon request, the court
14 shall appoint counsel to represent and assist the parents,
15 guardian, or custodian. It shall be the duty of the appointed
16 counsel, as an officer of the court and as a member of the
17 bar, to represent and assist the parties to the best of his or
18 her ability.

19 "(d) If the appropriate method for providing
20 indigent defense services is by appointed counsel in a case
21 described in subsections (a), (b), and (c), including cases
22 tried de novo in circuit court on appeal from a juvenile
23 proceeding, appointed counsel shall be entitled to receive for
24 their services a fee to be approved by the trial court. The
25 amount of the fee shall be based on the number of hours spent
26 by the attorney in working on the case. The amount of the fee
27 shall be based on the number of hours spent by the attorney in

1 working on the case and shall be computed at the rate of
2 seventy dollars (\$70) per hour for time reasonably expended on
3 the case. The total fees paid to any one attorney in any one
4 case, from the time of appointment through the trial of the
5 case, including motions for new trial, shall not exceed the
6 following:

7 "(1) In cases where the original charge is a capital
8 offense or a charge which carries a possible sentence of life
9 without parole, there shall be no limit on the total fee.

10 "(2) Except for cases covered by subdivision (1), in
11 cases where the original charge is a Class A felony, the total
12 fee shall not exceed four thousand dollars (\$4,000).

13 "(3) In cases where the original charge is a Class B
14 felony, the total fee shall not exceed three thousand dollars
15 (\$3,000).

16 "(4) In cases where the original charge is a Class C
17 or Class D felony, the total fee shall not exceed two thousand
18 dollars (\$2,000).

19 "(5) In juvenile cases, the total fee shall not
20 exceed two thousand five hundred dollars (\$2,500).

21 Notwithstanding the foregoing provisions of this subdivision,
22 the maximum amount set forth above may be waived by the
23 presiding judge or the director for good cause shown in
24 juvenile dependency cases for guardians ad litem representing
25 children. In the event the maximum fee is waived by the court,
26 the judge shall enter a written order setting forth the
27 factors he or she considered in making his or her

1 determination that such a waiver was appropriate. In the event
2 the maximum amount is waived by the director, the director
3 shall forward to the Director of the Department of Finance a
4 written memorandum setting forth the factors considered by the
5 director in making his or her determination that such a waiver
6 was appropriate.

7 "(6) In all other cases, the total fee shall not
8 exceed one thousand five hundred dollars (\$1,500).

9 "(7) Notwithstanding the foregoing provisions, the
10 maximum amount set forth above in subdivisions (2) and (3) may
11 be waived by the trial court or the director for good cause
12 shown when the case was adjudicated within five days of the
13 date the case was scheduled to be tried before a jury. In the
14 event the maximum amount is waived by the court, the court
15 shall enter a written order setting forth the factors it
16 considered in making its determination that such a waiver was
17 appropriate. In the event the maximum amount is waived by the
18 director, the director shall forward to the Director of the
19 Department of Finance a written memorandum setting forth the
20 factors considered by the director in making his or her
21 determination that such a waiver was appropriate.

22 "Counsel shall also be entitled to be reimbursed for
23 any nonoverhead expenses reasonably incurred in the
24 representation of his or her client, with any expense in
25 excess of three hundred dollars (\$300) subject to advance
26 approval by the trial court as necessary for the indigent
27 defense services and as a reasonable cost or expense.

1 Reimbursable expenses shall not include overhead expenses.
2 Fees and expenses of all experts, investigators, and others
3 rendering indigent defense services to be used by counsel for
4 an indigent defendant shall be approved in advance by the
5 trial court as necessary for the indigent defense services and
6 as a reasonable cost or expense. Retrials of any case shall be
7 considered a new case for billing purposes. Upon review, the
8 director may authorize interim payment of the attorney fees or
9 expenses, or both.

10 "(e) Within a reasonable time after the conclusion
11 of the trial or ruling on a motion for a new trial or after an
12 acquittal or other judgment disposing of the case, not to
13 exceed 90 days, counsel shall submit a bill for services
14 rendered to the office. The bill shall be accompanied by a
15 certification by the trial court that counsel provided
16 representation to the indigent defendant, that the matter has
17 been concluded, and that to the best of his or her knowledge
18 the bill is reasonable based on the defense provided. The
19 trial court need not approve the items included on the bill or
20 the amount of the bill, but may provide any information
21 requested by the office or the indigent defense advisory board
22 relating to the representation. The bill for compensation of
23 appointed counsel shall be submitted to the office. After
24 review and approval, the office shall recommend to the
25 Comptroller that the bill be paid. The office may forward the
26 bill to the indigent defense advisory board for review and
27 comment prior to approval. The Comptroller shall remit payment

1 in a timely manner not to exceed 90 days from submission. In
2 the event that payment is not made within 90 days of
3 submission, counsel shall be entitled to receive interest at a
4 rate of six percent until such payment is issued."

5 Section 2. Section 15-12-22 of the Code of Alabama
6 1975, is amended to read as follows:

7 "§15-12-22.

8 "(a) In all criminal cases wherein an indigent
9 defendant has an appeal which lies directly to an appellate
10 court and the indigent defendant expresses his or her desire
11 to appeal, the court shall cause to be entered upon its
12 minutes a recital of notice of appeal.

13 "(b) If it appears that the indigent defendant
14 desires to appeal and is unable financially or otherwise to
15 obtain the assistance of counsel on appeal and the indigent
16 defendant expresses the desire for assistance of counsel, the
17 trial court shall appoint counsel to represent and assist the
18 indigent defendant on appeal, through the indigent defense
19 system for such cases. The presiding judge of the court to
20 which the appeal is taken shall have authority to appoint
21 counsel through the indigent defense system for such cases in
22 the event the trial court fails to appoint and in the event it
23 becomes necessary to further provide for counsel. It shall be
24 the duty of the counsel, as an officer of the court and as a
25 member of the bar, to represent and assist the indigent
26 defendant in the appeal.

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

6 "The amount of the fee shall be based on the number
7 of hours spent by the counsel in working on the appeal.

8 "(1) The amount of the fee shall be based on the
9 number of hours spent by the attorney in working on the
10 prosecution of the appeal and shall be computed at the rate of
11 seventy dollars (\$70) per hour for time reasonably expended in
12 the prosecution of the appeal, and any subsequent petition for
13 writ of certiorari.

14 "(2) The total fees awarded to any one attorney in
15 any appeal and any subsequent petition for writ of certiorari,
16 shall not, however, exceed two thousand five hundred dollars
17 (\$2,500), and shall be in addition to any fees awarded on the
18 trial court level. In those cases where the state takes a
19 pretrial appeal, appointed counsel shall be entitled to bill
20 separately for services on the pretrial and post-trial
21 appeals, up to two thousand five hundred dollars (\$2,500) for
22 each appeal. In those cases where a petition for writ of
23 certiorari is filed in the Alabama Supreme Court, counsel
24 shall be entitled to bill separately for all services rendered
25 after the Court of Criminal Appeals or the Court of Civil
26 Appeals overrules the application for rehearing, or after the
27 decision of the Court of Criminal Appeals or the Court of

1 Civil Appeals in the case of a pretrial appeal, up to a
2 separate limit of two thousand five hundred dollars (\$2,500).
3 Notwithstanding the foregoing provisions of this subdivision,
4 the maximum amounts set forth above in this subdivision may be
5 waived by the appropriate appellate court and the director for
6 good cause shown. Counsel shall also be entitled to be
7 reimbursed for any nonoverhead expenses reasonably incurred in
8 the representation of his or her client, with any expense in
9 excess of three hundred dollars (\$300) subject to advance
10 approval by the appellate court as necessary for the indigent
11 defense services and as a reasonable cost or expense and shall
12 be paid directly by the office upon submission from the
13 attorney. Reimbursable expenses shall not include overhead
14 expenses. Fees and expenses of all experts, investigators, and
15 others rendering indigent defense services to be used by
16 counsel for an indigent defendant shall be approved in advance
17 by the appellate court as necessary for the indigent defense
18 services and as a reasonable cost or expense. Upon review, the
19 director may authorize interim payment of the attorney fees or
20 expenses, or both.

21 "(3) Notwithstanding anything in this section to the
22 contrary, there shall be no maximum amount of fees for
23 services billed by an appointed attorney for the appeal of a
24 capital murder conviction.

25 "(3)(4) Within a reasonable time after the
26 disposition of the appeal, not to exceed 90 days, counsel
27 shall submit a bill for services rendered to the office for

1 review and approval and, if approved, the office shall
2 recommend the bill for payment by the Comptroller. The
3 Comptroller shall remit payment in a timely manner."

4 Section 3. Section 22-52-14 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§22-52-14.

7 "In any commitment proceeding, the fees of any
8 attorney appointed by the probate judge to act as advocate for
9 the petition, including any fees incurred for the preparation
10 and filing of the petition, and any attorney or guardian ad
11 litem appointed by the probate judge for the person sought to
12 be committed shall be set at the rates established by Section
13 15-12-21; and any expert employed to offer expert testimony,
14 in such amounts as found to be reasonable by the probate
15 judge; and all other costs allowable by law shall be paid by
16 the state general fund upon order of the probate judge;
17 except, that if the petition is denied and the petitioner is
18 not indigent and is not a law enforcement officer or other
19 public official acting within the line and scope of his
20 duties, all costs may be taxed against the petitioner, or if
21 the petition is granted and the person sought to be committed
22 is not indigent, the probate judge may order all costs paid
23 from the estate of the person committed."

24 Section 4. This act shall become effective on
25 October 1, 2018 following its passage and approval by the
26 Governor, or its otherwise becoming law.