

1 SB318  
2 184110-1  
3 By Senator Whatley  
4 RFD: Finance and Taxation General Fund  
5 First Read: 15-MAR-17

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8 SYNOPSIS: Under existing law, appointed indigent  
9 defense counsel representing an indigent in a trial  
10 court or during an appeal is paid a fee based on  
11 the number of hours reasonably spent working on the  
12 case, computed at the rate of \$70 per hour.

13 This bill would increase the rate of the fee  
14 paid to appointed indigent counsel for  
15 representation of an indigent in a trial court or  
16 during an appeal to a rate of not lower than \$125  
17 per hour.

18 This bill would also increase the caps on  
19 total fees indigent counsel can charge the state  
20 for representing an indigent to a level  
21 commensurate with the increase in the rate of fee  
22 paid for indigent representation in a trial or  
23 appeals court.

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25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

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Relating to indigents; to amend Sections 15-12-21 and 15-12-22, Code of Alabama 1975, to increase the rate of the fee paid to appointed indigent counsel for the representation of an indigent in a trial court or during an appeal to a rate of not lower than \$125 per hour; to increase the caps on total fees indigent counsel may charge for representing an indigent to a level commensurate with the increase in the rate of fee paid for indigent representation during trial or appeal.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§15-12-21.

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

"(b) If it appears to the trial court in a 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~~ a rate of  
2 ~~seventy dollars (\$70)~~ not lower than one hundred and twenty  
3 five dollars (\$125) per hour for time reasonably expended on  
4 the case. The total fees paid to any one attorney in any one  
5 case, from the time of appointment through the trial of the  
6 case, including motions for new trial, shall not exceed the  
7 following:

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

11 "(2) Except for cases covered by subdivision (1), in  
12 cases where the original charge is a Class A felony, the total  
13 fee shall not exceed ~~four thousand dollars (\$4,000)~~ seven  
14 thousand dollars (\$7,000).

15 "(3) In cases where the original charge is a Class B  
16 felony, the total fee shall not exceed ~~three thousand dollars~~  
17 ~~(\$3,000)~~ five thousand five hundred dollars (\$5,500).

18 "(4) In cases where the original charge is a Class C  
19 or Class D felony, the total fee shall not exceed ~~two thousand~~  
20 ~~dollars (\$2,000)~~ three thousand five hundred dollars (\$3,500).

21 "(5) In juvenile cases, the total fee shall not  
22 exceed ~~two thousand five hundred dollars (\$2,500)~~ four  
23 thousand five hundred dollars (\$4,500).

24 "(6) In all other cases, the total fee shall not  
25 exceed ~~one thousand five hundred dollars (\$1,500)~~ two thousand  
26 five hundred (\$2,500).

1           "Counsel shall also be entitled to be reimbursed for  
2 any nonoverhead expenses reasonably incurred in the  
3 representation of his or her client, with any expense in  
4 excess of three hundred dollars (\$300) subject to advance  
5 approval by the trial court as necessary for the indigent  
6 defense services and as a reasonable cost or expense.  
7 Reimbursable expenses shall not include overhead expenses.  
8 Fees and expenses of all experts, investigators, and others  
9 rendering indigent defense services to be used by counsel for  
10 an indigent defendant shall be approved in advance by the  
11 trial court as necessary for the indigent defense services and  
12 as a reasonable cost or expense. Retrials of any case shall be  
13 considered a new case for billing purposes. Upon review, the  
14 director may authorize interim payment of the attorney fees or  
15 expenses, or both.

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

1 relating to the representation. The bill for compensation of  
2 appointed counsel shall be submitted to the office. After  
3 review and approval, the office shall recommend to the  
4 Comptroller that the bill be paid. The office may forward the  
5 bill to the indigent defense advisory board for review and  
6 comment prior to approval. The Comptroller shall remit payment  
7 in a timely manner not to exceed 90 days from submission. In  
8 the event that payment is not made within 90 days of  
9 submission, counsel shall be entitled to receive interest at a  
10 rate of six percent until such payment is issued.

11 "§15-12-22.

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

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

1 the duty of the counsel, as an officer of the court and as a  
2 member of the bar, to represent and assist the indigent  
3 defendant in the appeal.

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

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

11 "(1) The amount of the fee shall be based on the  
12 number of hours reasonably spent by the attorney in working on  
13 the ~~prosecution of the~~ appeal and shall be computed at ~~the a~~  
14 ~~rate of seventy dollars (\$70)~~ not lower than one hundred and  
15 twenty five dollars (\$125) per hour for time reasonably  
16 expended ~~in the prosecution of~~ representing the indigent  
17 during the appeal, and any subsequent petition for writ of  
18 certiorari.

19 "(2) The total fees awarded to any one attorney in  
20 any appeal and any subsequent petition for writ of certiorari,  
21 shall not, however, exceed ~~two thousand five hundred dollars~~  
22 ~~(\$2,500)~~ three thousand five hundred dollars (\$3,500), and  
23 shall be in addition to any fees awarded on the trial court  
24 level. In those cases where the state takes a pretrial appeal,  
25 appointed counsel shall be entitled to bill separately for  
26 services on the pretrial and post-trial appeals, up to ~~two~~  
27 ~~thousand five hundred dollars (\$2,500)~~ three thousand five



1 hundred dollars (\$3,500) for each appeal. In those cases where  
2 a petition for writ of certiorari is filed in the Alabama  
3 Supreme Court, counsel shall be entitled to bill separately  
4 for all services rendered after the Court of Criminal Appeals  
5 or the Court of Civil Appeals overrules the application for  
6 rehearing, or after the decision of the Court of Criminal  
7 Appeals or the Court of Civil Appeals in the case of a  
8 pretrial appeal, up to a separate limit of ~~two thousand five~~  
9 ~~hundred dollars (\$2,500)~~ three thousand five hundred dollars  
10 (\$3,500). Notwithstanding the foregoing provisions of this  
11 subdivision, the maximum amounts set forth above in this  
12 subdivision may be waived by the appropriate appellate court  
13 and the director for good cause shown. Counsel shall also be  
14 entitled to be reimbursed for any nonoverhead expenses  
15 reasonably incurred in the representation of his or her  
16 client, with any expense in excess of three hundred dollars  
17 (\$300) subject to advance approval by the appellate court as  
18 necessary for the indigent defense services and as a  
19 reasonable cost or expense and shall be paid directly by the  
20 office upon submission from the attorney. Reimbursable  
21 expenses shall not include overhead expenses. Fees and  
22 expenses of all experts, investigators, and others rendering  
23 indigent defense services to be used by counsel for an  
24 indigent defendant shall be approved in advance by the  
25 appellate court as necessary for the indigent defense services  
26 and as a reasonable cost or expense. Upon review, the director

1 may authorize interim payment of the attorney fees or  
2 expenses, or both.

3 "(3) Within a reasonable time after the disposition  
4 of the appeal, not to exceed 90 days, counsel shall submit a  
5 bill for services rendered to the office for review and  
6 approval and, if approved, the office shall recommend the bill  
7 for payment by the Comptroller. The Comptroller shall remit  
8 payment in a timely manner."

9 Section 2. This act shall become effective on the  
10 first day of the third month following its passage and  
11 approval by the Governor, or its otherwise becoming law.