

1 SB328
2 174367-1
3 By Senator Whatley
4 RFD: Judiciary
5 First Read: 08-MAR-16

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8 SYNOPSIS: Under existing law, the maximum fee that
9 counsel appointed to represent an indigent
10 defendant may collect is based on the degree of
11 severity of the original charge or the type of case
12 to which the counsel is appointed. Under existing
13 law, where the original charge is a Class A felony,
14 appointed counsel may collect a maximum of \$4,000
15 for legal services.

16 This bill would authorize the court or the
17 Director of Indigent Defense Services to waive the
18 \$4,000 maximum in certain cases where the original
19 charge was a Class A felony. This bill would
20 require a court waiving the limit to enter an order
21 specifying the reasons for the waiver. This bill
22 would also require the director to submit a memo to
23 the state Finance Director explaining the reasons
24 for any waiver granted by the director.

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26 A BILL
27 TO BE ENTITLED

1 AN ACT

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3 To amend Section 15-12-21 of the Code of Alabama
4 1975, as amended by Act 2015-185 of the 2015 Regular Session,
5 relating to indigent defense services; to authorize the court
6 or the Director of Indigent Defense Services to waive the
7 maximum fee of four thousand dollars (\$4,000) in certain cases
8 where the original charge is a Class A felony; and to specify
9 the procedure for documenting the waiver.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Section 15-12-21 of the Code of Alabama
12 1975, as amended by Act 2015-185 of the 2015 Regular Session,
13 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 Notwithstanding the foregoing, the maximum amount may be
14 waived by the trial court or by the director for good cause
15 shown. In the event the maximum amount is waived by the court,
16 the court shall enter a written order setting forth the
17 factors it considered in making its determination that such a
18 waiver was appropriate. In the event the maximum amount is
19 waived by the director, the director shall forward to the
20 state Finance Director a written memo setting forth the
21 factors considered by the director in making his or her
22 determination that such a waiver was appropriate. In no event
23 shall the total fee exceed eight thousand dollars (\$8,000).

24 "(3) In cases where the original charge is a Class B
25 felony, the total fee shall not exceed three thousand dollars
26 (\$3,000).

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

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

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

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

14 Reimbursable expenses shall not include overhead expenses.
15 Fees and expenses of all experts, investigators, and others
16 rendering indigent defense services to be used by counsel for
17 an indigent defendant shall be approved in advance by the
18 trial court as necessary for the indigent defense services and
19 as a reasonable cost or expense. Retrials of any case shall be
20 considered a new case for billing purposes. Upon review, the
21 director may authorize interim payment of the attorney fees or
22 expenses, or both.

23 "(e) Within a reasonable time after the conclusion
24 of the trial or ruling on a motion for a new trial or after an
25 acquittal or other judgment disposing of the case, not to
26 exceed 90 days, counsel shall submit a bill for services
27 rendered to the office. The bill shall be accompanied by a

1 certification by the trial court that counsel provided
2 representation to the indigent defendant, that the matter has
3 been concluded, and that to the best of his or her knowledge
4 the bill is reasonable based on the defense provided. The
5 trial court need not approve the items included on the bill or
6 the amount of the bill, but may provide any information
7 requested by the office or the indigent defense advisory board
8 relating to the representation. The bill for compensation of
9 appointed counsel shall be submitted to the office. After
10 review and approval, the office shall recommend to the
11 Comptroller that the bill be paid. The office may forward the
12 bill to the indigent defense advisory board for review and
13 comment prior to approval. The Comptroller shall remit payment
14 in a timely manner not to exceed 90 days from submission. In
15 the event that payment is not made within 90 days of
16 submission, counsel shall be entitled to receive interest at a
17 rate of six percent until such payment is issued."

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