

OFFICE OF THE
ATTORNEY GENERAL
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STATE OF ALABAMA

APR 26 1990

90-00244

BEFORE RELYING ON THIS
OPINION, SEE ACT 2011-678,
WHICH RELATES TO DEFENSE
OF INDIGENTS

Honorable John B. Bush, Circuit Judge
Nineteenth Judicial Circuit
Autauga, Chilton & Elmore Counties
Post Office Box 185
Wetumpka, Alabama 36092

Capital Punishment -- Indigent
Defense Fund -- Attorney Fees
Under §15-12-21(d)

Attorney representing indigent
capital defendant entitled to
maximum of \$1,000.00 for
out-of-court work for sentence
stage in addition to \$1,000.00
maximum for out-of-court work
for guilt stage.

Dear Judge Bush:

Your recent letter to the Attorney General requests an
advisory opinion on the following question:

QUESTION

15-12-21(d), Code of Alabama 1975,
provides that an attorney representing an
indigent defendant in a capital case may be
paid no more than \$1,000.00 for his
out-of-court work plus payment for all
in-court work. Does the \$1,000.00 limit
for out of court time apply to out-of-court
time spent in connection with preparation
on the guilt phase of the case as well as
out-of-court time spent on the sentencing
phase of the case, or is a separate
\$1,000.00 limit applicable to both the
guilt phase and the sentencing phase?

FACTS AND ANALYSIS

It is the opinion of this office that the \$1,000.00 maximum for out-of-court work applies separately to the guilt and sentencing stages. As a result, an attorney who represents a capital defendant is entitled to a maximum of \$1,000.00 for out-of-court time in connection with the guilt stage trial, and in addition thereto he is entitled to a maximum of \$1,000.00 for separate and additional out-of-court time he spent in connection with the sentence stage trial.

Like every other court that has addressed the matter, the Alabama Supreme Court has held that capital cases are different from all other cases, Ex parte Monk, No. 88-1445 (Ala. Nov. 17, 1989), WL No. 161158, and one of the major differences is the nature of the sentence stage in a capital case, id., at 6-8. Unlike non-capital sentencing, capital sentencing is treated like a separate trial for several purposes, including constitutional double jeopardy purposes. See, e.g., Sullington v. Missouri, 451 U.S. 430 (1981). In capital cases, guilt is often so apparent and the evidence of it so overwhelming that the only real issue is the sentence.

Also, unlike the sentence proceedings in most non-capital cases, which last an hour or less, capital sentencing hearings can last for days. For example, the 1987 capital resentencing proceeding in the Thomas Warren Whisenant case lasted for eight court days (during a period of nine calendar days). The amount of time an attorney must spend out of court to prepare for a capital sentence proceeding is sometimes substantial, both because of the nature of the proceeding and because of the importance of it.

In summary, capital sentence trials or hearings are different from and vastly more important than non-capital sentence proceedings, and they require more work by the defense attorney, out-of-court work as well as in-court work. These considerations, as well as constitutional values which underlie the area, lead to the conclusion that the provision of Code of Alabama 1975, §15-12-21(d) that authorizes a maximum of \$1,000.00 for an appointed attorney's out-of-court work should be construed to authorize that sum for the out-of-court work done in preparation for the guilt stage, and to authorize an additional sum in that amount for out-of-court work done in preparation for the sentence stage trial. In other words, the total maximum for out-of-court work is \$2,000.00; if the attorney reaches the maximum for both the guilt stage trial and the sentence stage trial. Of course, the same hour of work could not be billed twice.

Honorable John B. Bush
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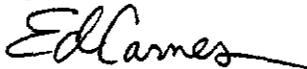
This opinion is generally consistent with the reasoning of a July 23, 1982, opinion of this office to Rex Rainer, as Finance Director. However, that opinion, which was issued prior to the latest amendment to §15-12-21(d), concluded that the entitlement of an indigent capital defendant's attorney to additional compensation for the sentence stage trial was to be paid as if the sentence stage were a post-conviction proceeding. Because a capital sentence trial more closely resembles a trial than a post-conviction proceeding, it makes more sense to treat it like a trial for indigent representation purposes. Therefore, this office's July 23, 1982, opinion to Finance Director Rex Rainer is amended to the extent of its conflict with this opinion.

CONCLUSION

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:



ED CARNES
Assistant Attorney General

DS/EC/sf

1795t

1 SB440
2 132990-5
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 26-APR-11



1 SB440

2
3
4 ENROLLED, An Act,

5 To amend Sections 12-19-252, 15-12-1, 15-12-4,
6 15-12-5, 15-12-6, 15-12-20, 15-12-21, 15-12-22, 15-12-23,
7 15-12-26, 15-12-27, 15-12-29, 15-12-40, 15-12-41, 15-12-42,
8 15-12-43, 15-12-44, 15-12-45, and 15-12-46, Code of Alabama
9 1975, relating to the defense of indigents; to create the
10 Office of Indigent Defense Services to operate as a division
11 of the Department of Finance and at the direction of the
12 Director of Finance; to provide for the director, duties, and
13 responsibilities of the Office of Indigent Defense Services;
14 to provide for an indigent defense advisory board in each
15 judicial circuit; to provide further for compensation of
16 appointed counsel; to provide further for contract counsel; to
17 provide for the employment contract, compensation, and
18 attorney-client communications of public defenders to
19 supersede part of the Alabama Rules of Criminal Procedure; to
20 provide further for a public defender system; to provide
21 further for the expenditures, employees, and operating
22 expenses of the public defender offices; and to repeal
23 Sections 15-12-2, 15-12-3, 15-12-24, and 15-12-24.1 of the
24 Code of Alabama 1975.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. The Legislature finds and declares the
2 following:

3 The purpose of this act is to provide for the
4 defense of those indigent defendants who have been found by a
5 court to be unable to pay for their defense or representation
6 in a trial or appellate court proceeding. When a court
7 determines that a person is unable to pay for his or her
8 defense, it shall be the responsibility of the court, subject
9 to the establishment of the Office of Indigent Defense
10 Services as set forth in this act, to provide that person with
11 counsel and other necessary expenses of representation.

12 Section 2. There is created within the Department of
13 Finance, the Office of Indigent Defense Services, which is
14 subject to the control of the Director of Finance.

15 Section 3. (a) The office shall develop and improve
16 programs to provide legal representation to indigents.

17 (b) The office shall have a director, who shall be
18 chosen by the Director of Finance on the basis of training,
19 experience, and other qualifications. The term of office shall
20 be three years, subject to termination for cause. The person
21 selected as Director of the Office of Indigent Defense
22 Services, in addition to the above qualifications and
23 experience, shall be an attorney licensed to practice law in
24 the State of Alabama. The director shall be chosen from a list
25 of three qualified candidates nominated by the Alabama State

1 Bar Board of Bar Commissioners within 60 days of a vacancy
2 occurring. The Director of Finance shall serve as the Director
3 of Indigent Defense Services on an interim basis if a vacancy
4 exists. If the Alabama State Bar Board of Bar Commissioners
5 fails to provide a list as required, then the director shall
6 be chosen by the Director of Finance from a list of the three
7 qualified candidates provided by the Governor.

8 (c) The director shall develop standards governing
9 the provision of defense services under this act. The
10 standards shall include, but not be limited to, the following:

11 (1) Providing fiscal responsibility and
12 accountability in indigent defense preparation.

13 (2) Maintaining and operating indigent defense
14 systems, whether appointed counsel, contract counsel, public
15 defender, or appellate defender offices, some combination of
16 the above, or any other method which meets the goals set forth
17 in this act.

18 (3) Prescribing minimum experience, training, and
19 other qualifications for appointed counsel, contract counsel,
20 and public defenders, including additional qualifications for
21 counsel appointed in capital cases.

22 (4) Caseload management for appointed counsel,
23 contract counsel, and public defenders, including the number
24 of attorneys appointed in capital cases which, when
25 appropriate, may include two attorneys.

1 (5) Performance for appointed counsel, contract
2 counsel, and public defenders.

3 (6) Criteria for independent, competent, and
4 efficient representation of clients whose cases present
5 conflicts of interest.

6 (7) Providing and compensating experts who provide
7 services related to legal representation of indigents.

8 (8) Determining indigency and partial indigency.

9 (9) Establishing procedures for the recoupment of
10 fees, expenses, and salaries.

11 (d) The local indigent defense advisory board shall
12 determine the methods for delivering indigent defense services
13 in the trial courts in each county or circuit, or parts of the
14 county or circuit. The director may appeal the determination
15 of the indigent defense advisory board to the Indigent Defense
16 Review Panel. The indigent defense advisory board shall
17 certify its system to the Indigent Defense Review Panel and to
18 the director on or before October 1 of each year. Should the
19 indigent defense advisory board fail to make certification to
20 the Indigent Defense Review Panel and to the director as
21 herein prescribed, the Indigent Defense Review Panel, in
22 consultation with the director, shall determine the system for
23 delivery of indigent defense services in that circuit. The
24 methods established for delivering indigent defense services
25 may include, but are not limited to, appointed counsel

1 systems, contract counsel systems, and part-time or full-time
2 public defender systems. In determining the method for
3 delivering indigent defense services, the indigent defense
4 advisory board shall select the most efficient and effective
5 counsel system available in each county or circuit, or parts
6 of the county or circuit.

7 (e) The director shall determine the methods of
8 providing indigent defense service in the appellate courts. If
9 a method is selected by the director whereby someone other
10 than the trial counsel shall serve as the appellate counsel
11 for the appellant, the director, to the extent possible, shall
12 see that the system provides for the representation of the
13 appellant from the time the trial counsel is permitted to
14 withdraw. In determining the method by which indigent defense
15 services shall be provided in the appellate courts, the
16 director shall consult with the Alabama Supreme Court, the
17 Court of Criminal Appeals, and the Court of Civil Appeals.

18 (f) This act does not govern the provision of
19 indigent defense services to municipal courts, and this act
20 does not prohibit any of the systems or methods by which legal
21 services are now or are in the future provided to indigent
22 defendants in the municipal courts of this state.

23 (g) The director shall annually approve and
24 recommend a budget for indigent defense systems to the
25 Director of Finance.

1 (h) The director shall adopt other rules and
2 procedures he or she deems necessary for the conduct of
3 business by the Office of Indigent Defense Services.

4 Section 4. (a) The Office of Indigent Defense
5 Services is established to carry out the administrative duties
6 relating to the provision of indigent defense services. The
7 director shall use existing employees of the Department of
8 Finance and its existing offices, as assigned by the Director
9 of Finance. The director's salary shall not exceed the state
10 salary paid to a district attorney and be paid at the same
11 time and in the same manner that salaries of other state
12 employees are paid. The Director of the Office of Indigent
13 Defense Services shall be entitled to annual and sick leave,
14 insurance, retirement, and other state employee benefits,
15 including cost-of-living raises authorized by the Legislature
16 for state employees.

17 (b) The director may enter into contracts, and
18 accept funds, grants, and charitable donations from any public
19 or private source to pay expenses incident to implementing the
20 purposes of the Office of Indigent Defense Services.

21 (c) (1) The director shall be responsible for
22 implementing in each judicial circuit the system for providing
23 legal representation and related services for indigent
24 defendants after the indigent defense advisory board selects
25 the method to be used in the circuit. In determining the

1 method for delivering indigent defense services, the indigent
2 defense advisory board shall select the most efficient and
3 effective counsel system available in each county or circuit,
4 or parts of the county or circuit.

5 (2) The director shall develop policies and
6 procedures for determining whether a person is an indigent
7 defendant, and those policies and procedures shall be applied
8 uniformly throughout the state. This act may not be construed
9 to prevent the office from establishing guidelines for
10 determining partial indigency and establishing policies and
11 procedures for providing indigent defense services to persons
12 determined to be partially indigent, including policies and
13 procedures governing recoupment of fees and expenses expended
14 in conjunction with the indigent defense services to include
15 filing of liens. In accordance with the policies and
16 procedures established by the office, the court shall
17 determine in each case whether a person is an indigent
18 defendant. If the court determines that a person is an
19 indigent defendant, indigent defense services shall be
20 provided as required by Section 15-12-5, Code of Alabama 1975.

21 (3) The director shall allocate and disburse funds
22 appropriated for legal representation and related services in
23 the cases subject to this act pursuant to rules and procedures
24 established and in accordance with the Budget Management Act.
25 The director shall also have the authority to approve monetary

1 allocations requested by and for appointed counsel, contract
2 counsel, and public defender offices.

3 (4) If the director for any reason determines that a
4 bill submitted for indigent defense services does not comply
5 with this act, the director may request the Department of
6 Examiners of Public Accounts to audit the bill.

7 (d) In addition to any other duties and
8 responsibilities of the director, the director shall have the
9 following duties and authority with respect to all indigent
10 defense services, subject to the approval of the Director of
11 Finance:

12 (1) Prepare and submit budget recommendations for
13 state appropriations necessary for the maintenance and
14 operation of the state indigent defense services, including
15 the operation of the office, local indigent defense systems,
16 appellate defender services, and, if established, an appellate
17 defender office, and request annually a sum certain necessary
18 to be appropriated from the State General Fund and the Fair
19 Trial Tax Fund pursuant to Section 12-19-252, Code of Alabama
20 1975, and in accordance with this act.

21 (2) Prepare reports and collect and compile
22 statistical data and all other information on the operations,
23 costs, and needs of the office, and any other information
24 which may be required. The director shall prepare and submit

1 an annual report on the work of the office to the Chief
2 Justice, the Governor, and the Legislature.

3 (3) Develop rules and standards for the delivery of
4 services under this act.

5 (4) Administer and coordinate the operations of the
6 office and supervise compliance with standards adopted by the
7 office.

8 (5) Recommend to the Director of Finance the hiring
9 of professional, technical, and support personnel by the
10 Director of Finance as deemed necessary for the efficient
11 operation of the Office of Indigent Defense Services.

12 (6) Keep and maintain proper financial records of
13 the office and of the indigent defense services provided.

14 (7) Apply for and accept on behalf of the office any
15 funds that may become available from government grants, gifts,
16 donations, bequests, or otherwise from any source.

17 (8) Coordinate the services of the office with any
18 and all federal, county, or private programs established to
19 provide assistance to indigent defendants, and consult with
20 professional bodies concerning the improvement of the
21 administration of indigent defense services.

22 (9) Offer or approve training programs for attorneys
23 and others involved in the legal representation of persons
24 subject to this act.

1 (10) Approve and administer the processing of all
2 claims from private counsel relative to appointments to
3 indigent defense cases.

4 (11) Administer the processing of all contracts for
5 contract counsel relating to handling indigent criminal cases.

6 (12) Administer the processing of all monetary
7 allocations requested by and for a public defender's office
8 relating to the annual operation of the requesting public
9 defender's office.

10 Section 5. There is created the Indigent Defense
11 Review Panel which shall consist of five members who each
12 shall serve a three-year term. Two members shall be appointed
13 by the President of the Alabama State Bar, one member shall be
14 appointed by the President of the Alabama Circuit Judges
15 Association, one member shall be appointed by the President of
16 the District Judges Association, and one member who shall be
17 the President of the Alabama Lawyers Association, or his or
18 her designee. They shall serve staggered terms. The initial
19 appointee by the President of the District Judges Association
20 shall serve a one-year term and the initial appointee of the
21 President of the Circuit Judges Association shall serve a
22 two-year term. The appointees shall be members of the
23 association for which the appointing authority serves as
24 president. Any decision of the director relating to delivery
25 of indigent defense services may be appealed to the Indigent

1 Defense Review Panel. The Indigent Defense Review Panel shall
2 make a decision in a timely manner, which decision shall be
3 deemed final. The membership of the Indigent Defense Review
4 Panel shall be inclusive and reflect the racial and gender
5 diversity of the state.

6 Section 6. Sections 12-19-252, 15-12-1, 15-12-4,
7 15-12-5, 15-12-6, 15-12-20, 15-12-21, 15-12-22, 15-12-23,
8 15-12-26, 15-12-27, 15-12-29, 15-12-40, 15-12-41, 15-12-42,
9 15-12-43, 15-12-44, 15-12-45, and 15-12-46, Code of Alabama
10 1975, are amended to read as follows:

11 "§12-19-252.

12 "There is hereby appropriated from the Fair Trial
13 Tax Fund, annually, such amount as may be necessary to pay the
14 fees of counsel, court reporters, and such other necessary
15 expenses of indigent defense as are provided by law.

16 "There is also hereby appropriated from the Fair
17 Trial Tax Fund, annually, such amount as may be necessary to
18 pay to the Office of Indigent Defense Services, the salaries,
19 benefits, and other necessary expenses involved in
20 administering the Office of Indigent Defense Services.

21 "In addition thereto, the Legislature shall
22 appropriate annually out of the General Fund in the State
23 Treasury a sum equal to the amount by which the cost of such
24 necessary expenses of indigent defense, as provided by law,

1 exceeds the amount available for such purpose in the Fair
2 Trial Tax Fund.

3 "If the county maintains a public defender, there
4 shall be paid a reasonable share of the cost of maintaining
5 such office, the amount appropriated for such purpose to be
6 prorated to the several counties maintaining public defender's
7 offices on the basis of the case load of the respective public
8 defender offices.

9 "§15-12-1.

10 "When used in this chapter, the following terms
11 shall have the following meanings:

12 "(1) APPOINTED COUNSEL. Any attorney licensed to
13 practice law in the State of Alabama who is appointed by the
14 court to represent an indigent defendant.

15 "(2) CONTRACT COUNSEL. Any attorney licensed to
16 practice law in the State of Alabama, or a firm, association,
17 corporation, or partnership of lawyers so licensed, executing
18 a contract for the provision of indigent defense services.

19 "(3) DIRECTOR. The Director of the Office of
20 Indigent Defense Services.

21 "(4) INDIGENT DEFENDANT. Any person involved in a
22 criminal or juvenile proceeding in the trial or appellate
23 courts of the state for which proceeding representation by
24 counsel is constitutionally required or is authorized or
25 required by statute or court rule, including parents of

1 children during the termination of parental rights hearings,
2 who under oath or affirmation states that he or she is unable
3 to pay for his or her representation, and who is found by the
4 court to be financially unable to pay for his or her
5 representation based on a written findings as further provided
6 below that the person is indigent based on one of the
7 following criteria:

8 "a. A person that has an income level at or below
9 125 percent of the United States poverty level as defined by
10 the most recently revised poverty income guidelines published
11 by the United States Department of Health and Human Services,
12 unless the court determines that the person is able to pay for
13 the cost of an attorney to represent the person on the pending
14 case.

15 "b. A person that has an income level greater than
16 125 percent, but at or below 200 percent, of the most recently
17 revised poverty income guidelines published by the United
18 States Department of Health and Human Services and the court
19 makes a written finding that not providing indigent defense
20 services on the pending case would cause the person
21 substantial hardship.

22 "c. A person that has an income level greater than
23 200 percent of the most recently revised poverty income
24 guidelines published by the United States Department of Health
25 and Human Services and the person is charged with a felony,

1 and the court makes a written finding that not providing
2 indigent defense services would cause the person substantial
3 hardship.

4 "(5) INDIGENT DEFENSE SERVICES. Those legal services
5 that are necessary for representation of an indigent
6 defendant.

7 "(6) INDIGENT DEFENSE SYSTEM. Any method or mixture
8 of methods for providing legal representation to an indigent
9 defendant, including use of appointed counsel, use of contract
10 counsel, or use of public defenders.

11 "(7) NONOVERHEAD EXPENSES. The reasonable expenses
12 incurred during and directly related to an appointed counsel's
13 legal representation of an indigent defendant including, but
14 not limited to, mileage, postage, and reasonable costs of
15 photocopying. Nonoverhead expenses do not include fees and
16 expenses of all experts, investigators, and others rendering
17 indigent defense services to be used by counsel for an
18 indigent defendant; office overhead expenses, such as
19 professional license fees; malpractice, casualty, health,
20 general disability, and workers' compensation insurance;
21 office salaries; ad valorem taxes; office supplies; office
22 rent; depreciation of office equipment and furniture;
23 continuing legal education expenses, including travel and
24 lodging; utilities; bank fees and interest on loans;
25 professional fees; and other overhead expenses or costs.

1 "(8) OFFICE. The Office of Indigent Defense
2 Services.

3 "(9) PUBLIC DEFENDER. Any attorney licensed to
4 practice law in the State of Alabama, other than contract
5 counsel or appointed counsel, who receives a salary for
6 representing an indigent defendant.

7 "(10) TRIAL COURT. Any juvenile, district, or
8 circuit court of the State of Alabama, not including municipal
9 or probate courts of the State of Alabama.

10 "§15-12-4.

11 "(a) Creation. - In each judicial circuit, a
12 voluntary indigent defense advisory board shall be
13 established.

14 "(b) Composition; qualifications, appointment, term
15 of office, and removal of members; vacancies. - The voluntary
16 indigent defense advisory board shall be composed of five
17 members who are residents of the judicial circuit in which
18 they are appointed, including the presiding circuit judge as
19 the chair, the president of the local circuit bar association
20 and three other attorneys all selected by the bar commissioner
21 or commissioners for that circuit. The membership of the
22 voluntary indigent defense advisory board in each judicial
23 circuit shall be inclusive and reflect the racial, gender, and
24 economic diversity of the judicial circuit. In a multi-county
25 circuit, the bar commissioner or commissioners shall select

1 the president of a county bar association existing within the
2 circuit to serve on the indigent defense advisory board. Each
3 member shall serve for a term of one year from the date of
4 appointment and members may be reappointed. Vacancies on the
5 indigent defense advisory board shall be filled by the
6 presiding judge.

7 "(c) Compensation and expenses of members. - Members
8 of the voluntary indigent defense advisory board shall serve
9 without compensation; except, that necessary travel expenses
10 in connection with advisory board business shall be paid by
11 the office in the same manner as for state employees
12 generally.

13 "(d) Meetings generally; quorum; chair. - The
14 voluntary indigent defense advisory board shall meet at least
15 once quarterly and shall meet whenever so requested by the
16 presiding circuit judge or by two members of the board. Three
17 members shall constitute a quorum for conducting business.

18 "(e) Powers and duties. - The voluntary indigent
19 defense advisory board shall perform the following duties and
20 have the following powers:

21 "(1) Analyze, study, and determine the method of
22 indigent defense systems to be used in the circuit. The
23 director may appeal the determination of the indigent defense
24 advisory board to the Indigent Defense Review Panel. The

1 Indigent Defense Review Panel shall make a decision in a
2 timely manner, which decision shall be deemed final.

3 "(2) Provide to the director any information
4 reasonably requested regarding the indigent defense systems
5 used or recommended for the circuit.

6 "(3) At the request of the director, review and
7 provide comment on any statements or bills rendered or
8 submitted for the provision of indigent defense services in
9 the circuit.

10 "\$15-12-5.

11 "(a) Judicial role in determining indigency. - The
12 trial judge shall determine, in accordance with the policies
13 and procedures established by the Office of Indigent Defense
14 Services, if a person in his or her court is an indigent
15 defendant, any time appropriate or necessary. Upon appeal from
16 the trial court to the state appellate court, the trial judge
17 who presided over the proceedings on appeal shall determine if
18 the appellant is an indigent defendant in accordance with the
19 policies and procedures established by the Office of Indigent
20 Defense Services. If an indigency determination is necessary
21 in any proceeding initiated originally in a state appellate
22 court, the presiding judge or chief justice of the appellate
23 court shall determine if the appellant or petitioner is an
24 indigent defendant.

1 "(b) Criteria for determining indigency. - In
2 determining indigency, the judge shall recognize ability to
3 pay as a variable depending on the nature, extent and
4 liquidity of assets, the disposable net income of the
5 defendant, the nature of the offense, the effort and skill
6 required to gather pertinent information and the length and
7 complexity of the proceedings. The director may by rules
8 provide for additional documentation of indigency, including,
9 but not limited to, tax returns, asset statements, or other
10 similar documentation as necessary.

11 "(c) Investigation of indigency. - In determining
12 the fact of indigency a judge may require an investigation and
13 report by a district attorney, public defender, sheriff,
14 probation officer, or other officer of the court. Provided,
15 further, that the trial judge shall, in all cases requiring a
16 determination of indigency, require the accused to execute an
17 affidavit of substantial hardship on a form approved by the
18 director. The completed affidavit of substantial hardship and
19 the subsequent order of the court either denying or granting
20 indigent defense services to the indigent defendant shall
21 become a part of the official court record in the case.

22 "(d) Provision of defense services. - The judge
23 making a determination of indigency shall provide indigent
24 defense services for the indigent defendant through an
25 indigent defense system provided for the circuit; however, if

1 no indigent defense system exists, then the judge may provide
2 indigent defense services otherwise in accordance with the act
3 adding this provision. To the extent possible, judges shall
4 provide continuity in legal representation.

5 "§15-12-6.

6 "Compensation of counsel appointed to represent
7 indigent defendants shall be paid by the state in such amounts
8 as otherwise provided by law. The procedure for approval and
9 payment for such services shall be as provided by law or rule
10 as may be promulgated by the director.

11 "§15-12-20.

12 "In all criminal cases, including paternity cases,
13 and civil and criminal nonsupport cases which may result in
14 the jailing of the defendant, in any court of this state
15 created by authority of the Constitution of Alabama of 1901,
16 as amended, when a defendant is entitled to counsel as
17 provided by law, the trial judge shall before arraignment
18 ascertain from the accused, or otherwise:

19 "(1) Whether or not the defendant has arranged to be
20 represented by counsel;

21 "(2) Whether or not the defendant desires the
22 assistance of counsel; and

23 "(3) Whether or not the defendant is able
24 financially or otherwise to obtain the assistance of counsel

1 in accordance with policies and procedures established by the
2 Office of Indigent Defense Services.

3 "§15-12-21.

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

15 "(b) If it appears to the trial court in a
16 delinquency case, need of supervision case, or other judicial
17 proceeding in which a juvenile is a party, that the juvenile
18 is entitled to counsel and that the juvenile is not able
19 financially or otherwise to obtain the assistance of counsel
20 or that appointed counsel is otherwise required by law, the
21 court shall appoint counsel to represent and assist the
22 juvenile or act in the capacity of guardian ad litem for the
23 juvenile. It shall be the duty of the appointed counsel, as an
24 officer of the court and as a member of the bar, to represent
25 and assist the juvenile to the best of his or her ability.

1 "(c) If it appears to the trial court that the
2 parents, guardian, or custodian of a juvenile who is a party
3 in a judicial proceeding, are entitled to counsel and the
4 parties are unable to afford counsel, upon request, the court
5 shall appoint counsel to represent and assist the parents,
6 guardian, or custodian. It shall be the duty of the appointed
7 counsel, as an officer of the court and as a member of the
8 bar, to represent and assist the parties to the best of his or
9 her ability.

10 "(d) If the appropriate method for providing
11 indigent defense services is by appointed counsel in a case
12 described in subsections (a), (b), and (c), including cases
13 tried de novo in circuit court on appeal from a juvenile
14 proceeding, appointed counsel shall be entitled to receive for
15 their services a fee to be approved by the trial court. The
16 amount of the fee shall be based on the number of hours spent
17 by the attorney in working on the case. The amount of the fee
18 shall be based on the number of hours spent by the attorney in
19 working on the case and shall be computed at the rate of
20 seventy dollars (\$70) per hour for time reasonably expended on
21 the case. The total fees paid to any one attorney in any one
22 case, from the time of appointment through the trial of the
23 case, including motions for new trial, shall not exceed the
24 following:

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

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

7 "(3) In cases where the original charge is a Class B
8 felony, the total fee shall not exceed three thousand dollars
9 (\$3,000).

10 "(4) In cases where the original charge is a Class C
11 felony, the total fee shall not exceed two thousand dollars
12 (\$2,000).

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

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

17 " Counsel shall also be entitled to be reimbursed
18 for any nonoverhead expenses reasonably incurred in the
19 representation of his or her client, with any expense in
20 excess of three hundred dollars (\$300) subject to advance
21 approval by the trial court as necessary for the indigent
22 defense services and as a reasonable cost or expense.
23 Reimbursable expenses shall not include overhead expenses.
24 Fees and expenses of all experts, investigators, and others
25 rendering indigent defense services to be used by counsel for

1 an indigent defendant shall be approved in advance by the
2 trial court as necessary for the indigent defense services and
3 as a reasonable cost or expense. Retrials of any case shall be
4 considered a new case for billing purposes. Upon review, the
5 director may authorize interim payment of the attorney fees or
6 expenses, or both.

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

1 "§15-12-22.

2 "(a) In all criminal cases wherein an indigent
3 defendant has an appeal which lies directly to an appellate
4 court and the indigent defendant expresses his or her desire
5 to appeal, the court shall cause to be entered upon its
6 minutes a recital of notice of appeal.

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

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

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

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

9 "(2) The total fees awarded to any one attorney in
10 any appeal and any subsequent petition for writ of certiorari,
11 shall not, however, exceed two thousand five hundred dollars
12 (\$2,500), and shall be in addition to any fees awarded on the
13 trial court level. In those cases where the state takes a
14 pretrial appeal, appointed counsel shall be entitled to bill
15 separately for services on the pretrial and post-trial
16 appeals, up to two thousand five hundred dollars (\$2,500) for
17 each appeal. In those cases where a petition for writ of
18 certiorari is filed in the Alabama Supreme Court, counsel
19 shall be entitled to bill separately for all services rendered
20 after the Court of Criminal Appeals or the Court of Civil
21 Appeals overrules the application for rehearing, or after the
22 decision of the Court of Criminal Appeals or the Court of
23 Civil Appeals in the case of a pretrial appeal, up to a
24 separate limit of two thousand five hundred dollars (\$2,500) .
25 Notwithstanding the foregoing provisions of this subdivision,

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

18 "(3) Within a reasonable time after the disposition
19 of the appeal, not to exceed 90 days, counsel shall submit a
20 bill for services rendered to the office for review and
21 approval and, if approved, the office shall recommend the bill
22 for payment by the Comptroller. The Comptroller shall remit
23 payment in a timely manner.

24 "\$15-12-23.

1 "(a) In proceedings filed in the district or circuit
2 court involving the life and liberty of those charged with or
3 convicted of serious criminal offenses including proceedings
4 for habeas corpus or other post-conviction remedies, the trial
5 or presiding judge or chief justice of the court in which the
6 proceedings may be commenced or pending may appoint counsel
7 through an indigent defense system approved by the office to
8 represent and assist indigent defendants if it appears to the
9 court that the indigent defendant is unable financially or
10 otherwise to obtain the assistance of counsel and desires the
11 assistance of counsel and it further appears that counsel is
12 necessary in the opinion of the judge to assert or protect the
13 right of the indigent defendant.

14 "(b) In proceedings filed in the district or circuit
15 court involving the life and liberty of those persons charged
16 or adjudicated for juvenile offenses including proceedings for
17 habeas corpus or other post-conviction remedies, and in
18 post-trial motions or appeals in the proceedings, the trial or
19 presiding judge or chief justice of the court in which the
20 proceedings may be commenced or pending may appoint counsel
21 through the indigent defense system for such cases to
22 represent and assist those persons so charged or adjudicated
23 if it appears to the court that the person charged or
24 adjudicated is unable financially or otherwise to obtain the
25 assistance of counsel and it further appears that counsel is

1 necessary in the opinion of the judge to assert or protect the
2 rights of the person, or court appointed counsel is otherwise
3 required by law or rule of court.

4 "(c) It shall be the duty of the counsel as provided
5 in subsections (a) and (b) as an officer of the court and a
6 member of the bar to represent and assist the indigent
7 defendant in the proceedings.

8 "(d) Any appointed counsel shall be entitled to
9 receive for his or her services a fee to be approved by the
10 office. The amount of the fee shall be based on the number of
11 hours spent by counsel in working on the proceedings. The fee
12 shall be computed at the rate of seventy dollars (\$70) per
13 hour for time reasonably expended on the proceedings. The
14 total fees to counsel for the proceedings shall not exceed one
15 thousand five hundred dollars (\$1,500). Notwithstanding the
16 foregoing, the maximum amount may be waived by the director
17 for good cause shown. Counsel shall also be entitled to be
18 reimbursed for any nonoverhead expenses reasonably incurred in
19 the representation of his or her client, with any expense in
20 excess of three hundred dollars (\$300) subject to advance
21 approval by the court as necessary for the indigent defense
22 services and as a reasonable cost or expense. Reimbursable
23 expenses shall not include overhead expenses. Fees and
24 expenses of all experts, investigators, and others rendering
25 indigent defense services to be used by counsel for an

1 indigent defendant shall be approved in advance by the court
2 as necessary for the indigent defense services and as a
3 reasonable cost or expense. Retrials of any case shall be
4 considered a new case for billing purposes. Upon review, the
5 director may authorize interim payment of the attorney fees or
6 expenses, or both.

7 "(e) Claim for the fee shall be submitted, approved,
8 and paid in the same manner as provided in subdivision (3) of
9 Section 15-12-22.

10 "\$15-12-26.

11 "(a) The director may recommend that a contract
12 counsel system be used as the method to provide indigent
13 defense services within a circuit or part thereof. The
14 indigent defense advisory board shall be consulted and make a
15 determination on the selection and appointment of contract
16 counsel for the circuit. The director may appeal the
17 determination of the indigent defense advisory board to the
18 Indigent Defense Review Panel. The Indigent Defense Review
19 Panel shall make a decision in a timely manner, which decision
20 shall be deemed final.

21 "(b) If an indigent defense advisory board chooses
22 to explore a contract counsel system within a circuit or part
23 thereof, the indigent defense advisory board shall follow the
24 procedures of the director for requesting and accepting
25 applications or proposals for such contracts and shall make a

1 recommendation for contract counsel to the director. The
2 indigent defense advisory board shall also provide the
3 director with any other information reasonably requested by
4 the director regarding such contract counsel.

5 "(c) After a determination by the indigent defense
6 advisory board, the director shall award the contracts to an
7 attorney, firm, association, corporation, or partnership of
8 lawyers.

9 "(d) Each contract counsel chosen by the director
10 shall be employed pursuant to a contract containing terms and
11 conditions as deemed necessary between the attorney, firm,
12 association, corporation, or partnership, as the case may be,
13 and the office.

14 "§15-12-27.

15 "Any provision of this chapter to the contrary
16 notwithstanding, each judicial circuit desiring a contract
17 counsel system shall be required to follow those procedures
18 established for the selection of contract counsel established
19 by the director.

20 "§15-12-29.

21 "Sections 15-12-26, 15-12-27, and 15-12-28 shall not
22 be construed to preclude judges from appointing counsel for
23 indigent defendants, or from assigning representation of an
24 indigent defendant to other contract counsel where there is a
25 conflict of interest involving the contract counsel, or if the

1 contract counsel is unable to provide prompt and adequate
2 representation, and the indigent defense systems chosen do not
3 provide any other alternative. Sections 15-12-26, 15-12-27,
4 and 15-12-28 shall not be construed to supersede any provision
5 of the Alabama Rules of Criminal Procedure or any other
6 provision of law relating to public defenders.

7 "§15-12-40.

8 "The indigent defense advisory board may establish a
9 public defender office as a method to provide indigent defense
10 services within a circuit or any part thereof.

11 "For each new term, and to fill any vacancy, the
12 director may select and appoint a public defender for a
13 circuit. The indigent defense advisory board shall be
14 consulted and have the right to recommend the selection and
15 appointment of a public defender for the circuit. Attorneys
16 appointed hereunder as public defenders shall be licensed to
17 practice law in Alabama at the time of the appointment or by
18 the time he or she assumes office.

19 "§15-12-41.

20 "(a) The public defender shall be appointed after
21 the date of this amendatory act for a fixed term not to exceed
22 three years, subject to reappointment by the indigent defense
23 advisory board, and may be removed from office for cause by
24 the director.

1 "(b) The director may require that the public
2 defender serve full time or part time.

3 "§15-12-42.

4 "The public defender shall have the following powers
5 and duties:

6 "(1) Within his or her geographic jurisdiction, the
7 public defender shall provide indigent defense services as
8 defined in Section 15-12-1 to indigent defendants .

9 "(2) The public defender, at the request and with
10 the consent of a municipal governing body and the office,
11 shall represent indigent defendants in a municipal court
12 within his or her geographic jurisdiction. The municipality
13 shall reimburse the office of the public defender for the
14 costs associated with the services rendered.

15 "(3) The public defender, with consent of the
16 director, may represent an indigent defendant in a state
17 appellate court.

18 "§15-12-43.

19 "(a) The public defender shall receive a salary set
20 by the director. The salary shall not exceed the state salary
21 paid to a district attorney and shall be paid in the same
22 manner as employees of the state.

23 "(b) All salary and expenses of a public defender
24 shall be paid by the state out of the Fair Trial Tax Fund or
25 other funds appropriated by the Legislature for such purposes;

1 except, that in counties authorized to impose a court cost for
2 defender services, the county shall fund defender services
3 from the revenues from the court cost, and the state shall pay
4 a reasonable share of the cost of maintaining such office,
5 such reasonable share to be determined by the director.

6 "\$15-12-44.

7 "The public defender shall keep such records and
8 make such reports on matters related to the operation of the
9 office of the public defender as are required by the director.
10 The attorney-client communications involving the defender or
11 attorneys employed by him or her shall remain confidential.

12 "\$15-12-45.

13 "(a) The director may approve expenditures for
14 attorneys, investigators, other personnel and nonpersonnel
15 expenses of the public defender. Authorized employees of the
16 public defender offices shall be entitled to annual and sick
17 leave, insurance, retirement, and other state employee
18 benefits, including cost-of-living raises, authorized by the
19 Legislature for state employees.

20 "(b) The operating expenses and staff salaries and
21 benefits for the offices of the public defender shall be
22 approved in advance by the director as part of an annual
23 budget for the subject public defender's office and, once the
24 budget is approved, shall be paid by the state from funds
25 appropriated annually from the Fair Trial Tax Fund or other

1 funds appropriated by the Legislature for this purpose. The
2 expenses shall include, but not be limited to, the salary,
3 benefits, and expenses of all eligible employees and
4 positions, training and education, travel, research,
5 equipment, and supplies.

6 "(c) Each public defender may employ assistant
7 public defenders, investigators, and other staff, full time or
8 part time, as authorized by the director. Assistants,
9 investigators, and other staff shall be appointed by the
10 public defender and serve at the pleasure of the public
11 defender.

12 "\$15-12-46.

13 "Nothing in this article shall be construed to
14 exclude establishment of appointed counsel or contract counsel
15 systems parallel to a public defender system or to preclude
16 judges from appointing counsel for indigent defendants where
17 there is a conflict of interest involving the public defender
18 or if the public defender is unable to provide prompt and
19 adequate representation, and the indigent defense systems
20 chosen do not provide any other alternative."

21 Section 7. Any person holding the position of public
22 defender or appellate defender on the effective date of this
23 act shall be entitled to serve the remainder of his or her
24 term of office.

1 Section 8. Any state or public employee who provides
2 indigent defense services pursuant to this act shall be
3 required to comply with the reporting requirements of the
4 Alabama State Ethics Commission.

5 Section 9. All laws or parts of laws which conflict
6 with this act are repealed. Specifically, Sections 15-12-2,
7 15-12-3, 15-12-24, and 15-12-24.1, of the Code of Alabama
8 1975, are repealed.

9 Section 10. The director shall promulgate rules
10 pursuant to the Alabama Administrative Procedure Act necessary
11 to implement this act.

12 Section 11. The provisions of this act are
13 severable. If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 which remains.

16 Section 12. This act shall become effective
17 following its passage and approval by the Governor, or its
18 otherwise becoming law, but shall not affect the compensation
19 arrangement for any indigent defense representation ongoing or
20 unpaid as of that effective date.

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Kay Ivey

President and Presiding Officer of the Senate

~~_____~~

Speaker of the House of Representatives

SB440

Senate 25-MAY-11

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 09-JUN-11

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

Patrick Harris
Secretary

House of Representatives
Passed: 01-JUN-11, as amended

House of Representatives
Passed: 09-JUN-2011, as amended by Conference Committee Report.

By: Senator Ward

APPROVED June 14, 2011
TIME 4:00 P.M.
Robert Bentley
GOVERNOR

Alabama Secretary Of State

Act Num....: 2011-678
Bill Num....: S-440

Recv'd 06/15/11 02:30pm JJB