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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB116  
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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. This bill would  
19 require a court waiving the limit to enter an order  
20 specifying the reasons for the waiver. This bill  
21 would also require the director to submit a memo to  
22 the state Finance Director explaining the reasons  
23 for any waiver granted by the director.  
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25 A BILL  
26 TO BE ENTITLED  
27 AN ACT

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To amend Section 15-12-21 of the Code of Alabama 1975, relating to indigent defense services; to authorize the court or the Director of Indigent Defense Services to waive the maximum fee in certain cases; and to specify the procedure for documenting the waiver.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 15-12-21 of the Code of Alabama 1975, is amended to read 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 proceeding in which a juvenile is a party, that the juvenile is entitled to counsel and that the juvenile is not able financially or otherwise to obtain the assistance of counsel or that appointed counsel is otherwise required by law, the

1 court shall appoint counsel to represent and assist the  
2 juvenile or act in the capacity of guardian ad litem for the  
3 juvenile. It shall be the duty of the appointed counsel, as an  
4 officer of the court and as a member of the bar, to represent  
5 and assist the juvenile to the best of his or her ability.

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

15 "(d) If the appropriate method for providing  
16 indigent defense services is by appointed counsel in a case  
17 described in subsections (a), (b), and (c), including cases  
18 tried de novo in circuit court on appeal from a juvenile  
19 proceeding, appointed counsel shall be entitled to receive for  
20 their services a fee to be approved by the trial court. The  
21 amount of the fee shall be based on the number of hours spent  
22 by the attorney in working on the case. The amount of the fee  
23 shall be based on the number of hours spent by the attorney in  
24 working on the case and shall be computed at the rate of  
25 seventy dollars (\$70) per hour for time reasonably expended on  
26 the case. The total fees paid to any one attorney in any one  
27 case, from the time of appointment through the trial of the

1 case, including motions for new trial, shall not exceed the  
2 following:

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

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

9 "(3) In cases where the original charge is a Class B  
10 felony, the total fee shall not exceed three thousand dollars  
11 (\$3,000).

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

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

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

19 "(7) Notwithstanding the foregoing, the maximum  
20 amount of the total fees set forth above in subdivisions (2),  
21 (3), and (4) may be waived by the trial court or by the  
22 director for good cause shown when the case was tried to a  
23 verdict before a jury. In the event the maximum amount is  
24 waived by the court, the court shall enter a written order  
25 setting forth the factors it considered in making its  
26 determination that such a waiver was appropriate. In the event  
27 the maximum amount is waived by the director, the director

1 shall forward to the Director of the Department of Finance a  
2 written memo setting forth the factors considered by the  
3 director in making his or her determination that such a waiver  
4 was appropriate. In no event shall the total fee exceed twice  
5 the allowable fee for the original charge.

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

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

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

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

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