

1 SB486  
2 97104-1  
3 By Senator Bedford  
4 RFD: Finance and Taxation General Fund  
5 First Read: 25-MAR-08

SYNOPSIS: Existing law provides for indigent defense systems used in circuit, district, and municipal courts with the presiding circuit judge administering the systems within the circuits pursuant to rule of the Supreme Court.

This bill would create the Alabama Indigent Defense Commission to provide for the defense of indigent persons in criminal and juvenile proceedings and to further provide for legal representation and related services in all other cases subject to this act pursuant to rules and procedures established by the commission and in accordance with the budget management act.

This bill would provide for members, terms of office, duties, and responsibilities of the commission.

This bill would establish the Office of Indigent Defense Services.

1           This bill would provide for a director,  
2           staff, duties, and responsibilities of the Office  
3           of Indigent Defense Services.

4           This bill would provide for an indigent  
5           defense advisory board in each judicial circuit and  
6           would provide for the composition, meetings,  
7           compensation, powers, and duties of the board.  
8           Existing law provides for a determination of  
9           indigency and provides for defense counsel.

10          This bill would provide for the Office of  
11          Indigent Defense Services to assign counsel in  
12          capital cases subject to the approval of the Office  
13          of Indigent Defense Services.

14          Existing law provides for compensation of  
15          appointed counsel as provided by law or rule  
16          promulgated by the Alabama Supreme Court.

17          This bill would provide for compensation as  
18          provided by law or rule or regulation adopted by  
19          the Alabama Indigent Defense Commission.

20          Existing law provides that the bill for  
21          compensation of an appointed counsel representing  
22          an indigent person at trial level to be approved by  
23          a circuit judge and then submitted by the clerk of  
24          the court to the Alabama Administrative Office of  
25          Courts and then to the State Comptroller for audit,  
26          and forwarded to the State Treasurer for payment.

1                   This bill would require the bill for  
2                   compensation of appointed counsel to be submitted  
3                   by the clerk of the court to the Office of Indigent  
4                   Defense Services for audit and approval, and  
5                   forwarded to the State Comptroller for payment.

6                   Existing law provides \$50 per hour for  
7                   appointed counsel representing an indigent person  
8                   on appeal and effective October 1, 2000, based on  
9                   the number of hours spent by the attorney, \$60 per  
10                  hour in the prosecution of the appeal and  
11                  subsequent petition for writ of certiorari with the  
12                  bill for compensation of appointed counsel to be  
13                  submitted by the clerk of the appellate court to  
14                  the State Comptroller for audit and, if approved,  
15                  forwarded to the State Treasurer for payment.

16                  This bill would provide for the  
17                  determination of fees to be paid to attorneys  
18                  representing indigent defendants on appeal and  
19                  post-conviction proceedings to be made by the  
20                  Indigent Defense Commission with the bill for  
21                  compensation of appointed counsel to be submitted  
22                  by the clerk of the appellate court to the Office  
23                  of Indigent Defense Services for audit and approval  
24                  and forwarded to the State Comptroller for payment.

25                  Existing law, in post conviction  
26                  proceedings, appointed counsel receives \$50 per  
27                  hour for time expended in court and \$30 per hour

1           expended in preparation, with a maximum amount of  
2           \$1,000. This bill would repeal this provision.  
3           Existing law provides for a circuit indigent  
4           defense commission in any county or circuit, with  
5           the approval of the presiding circuit judge, to  
6           select a contract counsel as a method of providing  
7           indigent defense and provide for each contract  
8           counsel to receive compensation as set by the  
9           commission.

10                   This bill would allow the Alabama Indigent  
11           Defense Commission to establish a contract counsel  
12           program for all or part of the subject circuit,  
13           after consultation with the circuit indigent  
14           defense advisory board and if no advisory board,  
15           the affected circuit's bar association and the  
16           presiding circuit court judge, and may provide for  
17           the contract counsel to be employed under terms,  
18           conditions, and compensation set by the Office of  
19           Indigent Defense Services.

20                   Under existing law, the employment contract,  
21           compensation, and attorney-client communications of  
22           the contract counsel are not to be construed to  
23           supersede the provisions of the Alabama Rules of  
24           Criminal Procedure.

25                   This bill would repeal this provision. Also,  
26           under existing law, the indigent defense commission  
27           in a judicial circuit with the approval of the

1           presiding circuit judge, may select a public  
2           defender system with salary set by the commission  
3           and approved by the Director of the Administrative  
4           Office of Courts.

5                       This bill would provide that the Alabama  
6           Indigent Defense Commission may establish a public  
7           defender office for all or part of the subject  
8           circuit, after consultation with the circuit  
9           indigent defense advisory board and if no advisory  
10          board, the affected circuit's bar association and  
11          the presiding circuit court judge, and may provide  
12          for compensation. The commission may appoint a  
13          public defender approved by the commission for a  
14          term of six years.

15                      This bill would provide for the commission  
16          to approve for the public defender to represent an  
17          indigent defendant in a state appellate court. This  
18          bill would provide for the keeping of reports on  
19          matters related to the operation of the office of  
20          the public defender.

21                      Existing law provides that the indigent  
22          defense commission subject to approval by the  
23          Administrative Director of Courts may approve  
24          expenditures.

25                      This bill would provides for approval of  
26          expenditures for attorneys by the Director of the

1 Office of Indigent Defense Services in compliance  
2 with procedures adopted by the commission.

3 This bill would provide for the employees of  
4 public defender offices to receive the same  
5 benefits as state employees.

6 This bill would provide for the operating  
7 expenses of public defender offices to be paid by  
8 the state from funds appropriated annually from the  
9 Fair Trial Tax Fund and the General Fund.

10 This bill would repeal the determination as  
11 to indigent defense systems to be used in circuit  
12 and district courts, the presiding circuit judges  
13 to administer the circuit indigent defense system,  
14 withdrawals from the Fair Trial Tax Fund to pay  
15 expenses of the State Comptroller for administering  
16 the defense of indigents, and withdrawals from the  
17 State General Fund for any amount above that  
18 appropriated by the Legislature for the operation  
19 of the Indigent Defense Commission.

20  
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24  
25 To create the Alabama Indigent Defense Commission as  
26 an independent agency of the judicial branch of state  
27 government; to provide the duties and powers of the

1 commission; to provide for the appointment and terms of its  
2 members; to provide for the creation of an Office of Indigent  
3 Defense Services to operate at the direction of the Alabama  
4 Indigent Defense Commission; to amend Sections 12-19-252,  
5 15-12-1, 15-12-4, 15-12-5, 15-12-6, 15-12-21, 15-12-22,  
6 15-12-23, 15-12-26, 15-12-27, 15-12-29, 15-12-40, 15-12-41,  
7 15-12-42, 15-12-43, 15-12-44, 15-12-45, and 15-12-46 of the  
8 Code of Alabama 1975; relating to the defense of indigents; to  
9 provide for the Office of Indigent Defense Services, the  
10 director, staff, duties and responsibilities; to provide for  
11 an Indigent Defense Advisory Board in each judicial circuit;  
12 to provide for the assignment of counsel in capital cases; to  
13 provide further for compensation of appointed counsels; to  
14 provide further for contract counsel; to provide for the  
15 employment contract, compensation, and attorney-client  
16 communications of the contract to supersede the Alabama Rules  
17 of Criminal Procedure; to provide further for a public  
18 defender system; to provide further for expenditures,  
19 employees, and operating expenses of the public defender  
20 offices; to make an appropriation; and to repeal Sections  
21 15-12-2, 15-12-3, and 15-12-24.1 of the Code of Alabama 1975.  
22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The Legislature finds and declares the  
24 following:

25 (1) The purpose of this act is to provide for the  
26 defense of those persons who have been found by a court to be  
27 unable to pay for their defense in a criminal or juvenile



1 proceeding. Whenever a court determines that a person is  
2 unable to pay for his or her defense, it shall be the  
3 responsibility of the court, subject to the establishment of  
4 the Indigent Defense Commission as set forth in this act, to  
5 provide that person with counsel and the other necessary  
6 expenses of representation.

7 (2) Additionally, the further purposes of this act  
8 are as follows:

9 a. Establish financial accountability for the  
10 Indigent Defense System.

11 b. Improve the quality of representation and ensure  
12 the independence of counsel.

13 c. Deliver indigent defense services in the most  
14 efficient and cost-effective manner without sacrificing  
15 quality representation.

16 d. Establish uniform policies and procedures for the  
17 delivery of indigent defense services, and enhance oversight  
18 of the determination of indigency, the oversight of the  
19 indigent defense systems in the judicial circuits, and the  
20 delivery of counsel and related services.

21 e. Enhance the integrity and efficiency of the  
22 judicial process related to indigent criminal cases.

23 f. Generate reliable statistical information in  
24 order to evaluate the services provided and funds expended  
25 hereunder.

26 Section 2. There is created as an independent state  
27 agency, the Alabama Indigent Defense Commission.

1           Section 3. (a) The commission shall consist of the  
2 following members:

3           (1) Two members to be appointed by the Chief Justice  
4 of the Alabama Supreme Court who shall be members of the  
5 judiciary.

6           (2) Two members to be appointed by the Governor.

7           (3) One member to be appointed by the Lieutenant  
8 Governor.

9           (4) One member to be appointed by the Speaker of the  
10 House of Representatives.

11           (5) One member to be appointed by the President Pro  
12 Tempore of the Senate.

13           (6) Two members who shall be attorneys to be  
14 appointed by the Alabama State Bar Association, one with  
15 significant experience in criminal defense and one with  
16 significant experience in juvenile justice.

17           (7) One member shall be an attorney with significant  
18 experience in criminal defense to be appointed by the Alabama  
19 Criminal Defense Lawyers Association.

20           (8) One member who shall be an attorney with  
21 significant experience in criminal defense to be appointed by  
22 the President of the Alabama Lawyers Association.

23           (9) Two members shall be appointed by the  
24 commission, one of whom shall not be an attorney and one of  
25 whom shall have a significant financial background.

26           (b) The terms of office of the members appointed  
27 pursuant to subsection (a) shall be as follows:

1           (1) The two initial appointments by the commission  
2 shall be for four years.

3           (2) The two initial appointments by the Governor and  
4 the initial appointment by the Lieutenant Governor, Speaker of  
5 the House, and the President Pro Tempore of the Senate shall  
6 be for three years.

7           (3) The two initial appointments by the Chief  
8 Justice and the initial appointments by the Alabama State Bar  
9 Association, the Alabama Criminal Defense Lawyers Association,  
10 and the Alabama Lawyers Association shall be for two years.

11           (4) Initial terms to the commission shall be made  
12 within 90 days following the effective date of this act. At  
13 the expiration of these initial terms, successor terms shall  
14 be for four years and shall be made by the appointing  
15 authorities making the initial appointments as designated in  
16 subsection (a). New terms of office shall commence on the  
17 first day of the fiscal year for which the appointments are  
18 made. No person shall serve for more than two consecutive  
19 four-year terms plus any initial term of less than four years.

20           (c) Persons appointed to the commission shall have  
21 substantial experience in the defense of criminal cases or  
22 other cases subject to this act or shall have demonstrated a  
23 strong commitment to quality representation in indigent  
24 defense matters. No active prosecutors, law enforcement  
25 officials, or active employees of these persons may be  
26 appointed to or serve on the commission. No active judicial  
27 officials, or active employees of these persons may be

1 appointed to or serve on the commission, except the judicial  
2 members as provided in subdivision (1) of subsection (a). No  
3 active employees of the Office of Indigent Defense Services  
4 may be appointed to or serve on the commission.

5 (d) All members of the commission shall be entitled  
6 to vote on any matters coming before the commission unless  
7 otherwise prohibited by statute, court rules, or rules adopted  
8 by the commission concerning voting on matters in which a  
9 member has, or appears to have, a financial or other personal  
10 interest. Voting by proxy may not be allowed.

11 (e) Each member of the commission shall serve until  
12 his or her successor in office has been appointed. Vacancies  
13 shall be filled by the appointing authority for the unexpired  
14 term. Appointments shall be made within 90 days from the date  
15 notice of the vacancy is mailed by first class mail by the  
16 Director of the Office of Indigent Defense Services to the  
17 appointing authority. If the appointing authority fails to  
18 fill the vacancy within this 90-day period, the appointment  
19 shall be made by a majority vote of the commission. Removal of  
20 commission members shall be in accordance with policies and  
21 procedures adopted by the commission.

22 (f) A quorum for purposes of conducting commission  
23 business shall be a majority of the members of the commission.

24 (g) The commission shall elect a chair from the  
25 members of the commission for a term of not more than four  
26 years or the remainder of the term of the member elected  
27 chair. A member may serve more than one term as chair. An

1 appointee of the Chief Justice shall convene the first meeting  
2 and shall serve as acting chair until the appointments  
3 specified in this subsection have be made. No later than 30  
4 days after its first meeting, the commission shall make the  
5 appointments specified in this subsection have been made. At  
6 the next meeting of the commission following the appointments,  
7 the members of the commission shall elect a chair.

8 (h) Commission members shall serve without  
9 compensation.

10 (i) Members of the commission shall be entitled to  
11 reimbursement for expenses while on official business of the  
12 commission or attending its meetings. Expenses shall be paid  
13 out of funds available to the commission for travel and shall  
14 be reimbursed in accordance with Sections 36-7-20 to 36-7-22,  
15 inclusive, of Code of Alabama 1975.

16 (j) The commission shall meet quarterly and at  
17 other times upon the call of the chair. All meetings shall be  
18 in accordance with the Alabama Open Meetings Act.

19 Section 4. (a) The commission shall develop and  
20 improve programs to provide legal representation to indigents.

21 (b) The commission shall appoint the Director of the  
22 Office of Indigent Defense Services, who shall be chosen on  
23 the basis of training, experience, and other qualifications as  
24 deemed by the commission, and shall serve at the pleasure of  
25 the commission.

26 (c) The commission shall develop standards  
27 governing the provision of defense services under this act.

1 The standards may include, but not be limited to, any of the  
2 following:

3 (1) Standards for providing fiscal responsibility  
4 and accountability in indigent defense representation.

5 (2) Standards for maintaining and operating  
6 indigent defense systems whether appointed counsel, contract  
7 counsel, public defender or appellate defender offices or  
8 both.

9 (3) Standards prescribing minimum experience,  
10 training, and other qualifications for appointed counsel,  
11 contract counsel, and public defenders.

12 (4) Caseload management standards for appointed  
13 counsel, contract counsel, and public defenders.

14 (5) Standards for the performance of appointed  
15 counsel, contract counsel, and public defenders.

16 (6) Standards for the independent, competent, and  
17 efficient representation of clients whose cases present  
18 conflicts of interest.

19 (7) Standards for providing and compensating experts  
20 and others who provide services related to legal  
21 representation of indigents.

22 (d) The commission shall determine the methods for  
23 delivering indigent defense services in the state courts in  
24 each county or circuit, or parts of the county or circuit, and  
25 in the appellate courts of the state. The methods established  
26 for delivering defense services may include, but are not

1 limited to, appointed counsel systems, contract counsel  
2 systems, and part-time or full-time public defender systems.

3 (e) The commission shall determine the method of  
4 providing indigent defense services in the appellate courts,  
5 which may include state appellate defender offices for capital  
6 and non-capital cases and post-conviction representation in  
7 capital and non-capital cases. If a method is selected by the  
8 commission whereby someone other than the trial counsel shall  
9 serve as the appellate counsel of the appellant, the  
10 commission shall, to the extent possible, see that the system  
11 provides for the continuous representation of the appellant  
12 from the time the trial counsel is permitted to withdraw. In  
13 determining the method by which indigent defense services  
14 shall be provided in the appellate courts, the commission  
15 shall consult with the Supreme Court, the Court of Criminal  
16 Appeals, and the Court of Civil Appeals.

17 (f) In determining the method for providing indigent  
18 defense services in a particular jurisdiction, the commission  
19 shall consult with the local indigent defense advisory board,  
20 or, where no advisory board has been established, the circuit  
21 bar association and presiding circuit court judge of the  
22 circuit or circuits under consideration and shall adopt  
23 procedures ensuring that the affected local indigent defense  
24 advisory board or boards, or, where no advisory board or  
25 boards have been established, the circuit bar and presiding  
26 circuit court judge, have the opportunity to be heard before  
27 the commission determines the method or methods by which

1 indigent defense services shall be provided in their  
2 jurisdictions. The commission shall solicit written  
3 recommendations from the affected local indigent defense  
4 advisory board, or where no advisory board has been  
5 established, the circuit bar and presiding circuit court  
6 judge.

7 (g) The commission may make recommendations to the  
8 Legislature with respect to the rates of compensation for  
9 appointed counsel and other improvements in the provision of  
10 indigent defense services.

11 (h) The commission shall annually approve and  
12 recommend to the Legislature a unified budget for indigent  
13 defense systems including the Office of Indigent Defense  
14 Services.

15 (i) The commission shall adopt other rules and  
16 procedures it deems necessary for the conduct of business by  
17 the commission and the Office of Indigent Defense Services.

18 Section 5. (a) The Office of Indigent Defense  
19 Services is established to carry out the administrative duties  
20 of the commission. The commission shall appoint a director who  
21 shall serve at the pleasure of the commission, and establish  
22 all other employee positions as are needed for the efficient  
23 conduct of the business of the office. The director shall be  
24 responsible for the hiring and firing of all employees of the  
25 office. The director and other employees shall be compensated  
26 in an amount to be determined by the commission. Salaries  
27 shall be paid at the same time and in the same manner that



1 salaries of other state employees are paid. The director and  
2 other employees of the commission shall be entitled to annual  
3 and sick leave, insurance, retirement, and other state  
4 employee benefits, including cost-of-living raises and bonuses  
5 authorized by the Legislature for state employees.

6 (b) The office may enter into contracts, own  
7 property, and accept funds, grants, and gifts from any public  
8 or private source to pay expenses incident to implementing its  
9 purposes.

10 (c) The director shall attend all commission  
11 meetings except those relating to removal of the director or  
12 allegations of misconduct by the director. The director shall  
13 not vote on any matter decided by the commission.

14 (d) (1) The office shall be responsible for  
15 implementing in each judicial circuit the system determined  
16 and established by the commission for providing legal  
17 representation and related services for indigent defendants.

18 (2) The office shall develop policies and procedures  
19 for determining whether a person is an indigent defendant, and  
20 those policies and procedures shall be applied uniformly  
21 throughout the state. This act may not be construed to prevent  
22 the office from establishing guidelines for determining  
23 partial indigency and establishing policies and procedures for  
24 providing indigent defense services to persons determined to  
25 be partially indigent, including policies and procedures  
26 governing recoupment for the Fair Trial Tax Fund. In  
27 accordance with the policies and procedures established by the

1 office, the court shall determine in each case whether a  
2 person is an indigent defendant. If the court determines that  
3 a person is an indigent defendant, counsel shall be appointed  
4 as required by Section 15-12-5, Code of Alabama 1975.

5 (3) The office shall allocate and disburse funds  
6 appropriated for legal representation and related services in  
7 cases subject to this act pursuant to rules and procedures  
8 established by the commission and in accordance with the  
9 Budget Management Act. The office shall also have the  
10 authority to approve monetary allocations requested by and for  
11 appointed counsel, contract counsel, and public defender  
12 offices.

13 (e) In addition to any other duties and  
14 responsibilities that may be assigned to the director by the  
15 commission, he or she shall have the following duties and  
16 authority with respect to all indigent defense services,  
17 subject to the direction of the commission:

18 (1) Prepare and submit budget recommendations for  
19 state appropriations necessary for the maintenance and  
20 operation of the state indigent defense services including the  
21 operation of the commission, the office, local indigent  
22 defenses systems, appellate defender services and, if  
23 established, the appellate defender office, and request  
24 annually a sum certain necessary to be appropriated from the  
25 Fair Trial Tax Fund and the State General Fund for the Fair  
26 Trial Tax Fund pursuant to Section 12-19-252, Code of Alabama  
27 1975, and in accordance with this act.

1           (2) Prepare reports and collect and compile  
2     statistical data and all other information on the operations,  
3     costs, and needs of the office, and any other information the  
4     commission may require.

5           (3) Assist the commission in developing rules and  
6     standards for the delivery of services under this act.

7           (4) Administer and coordinate the operations of the  
8     office and supervise compliance with standards adopted by the  
9     commission.

10          (5) Subject to policies and procedures established  
11     by the commission, hire professional, technical, and support  
12     personnel as deemed necessary for the efficient operation of  
13     the Office of Indigent Defense Services.

14          (6) Keep and maintain proper financial records.

15          (7) Apply for and accept on behalf of the Office of  
16     Indigent Defense Services any funds that may become available  
17     from government grants, private gifts, donations, bequests, or  
18     otherwise from any source.

19          (8) Coordinate the services of the Office of  
20     Indigent Defense Services with any and all federal, county, or  
21     private programs established to provide assistance to indigent  
22     defendants, and consult with professional bodies concerning  
23     the improvement of the administration of indigent defense  
24     services.

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

1           (10) Approve and administer the processing of all  
2       claims from private counsel relative to appointments to handle  
3       indigent defense cases, effective the first day of the fiscal  
4       year next following the effective date of this act.

5           (11) Administer the processing of all contracts for  
6       contract counsel relating to handling indigent criminal cases,  
7       effective the first day of the fiscal year next following the  
8       effective date of this act.

9           (12) Administer the processing of all monetary  
10      allocations requested by and for a public defender office  
11      relating to the annual operation of the requesting public  
12      defender's office, effective the first day of the fiscal year  
13      next following the effective date of this act.

14          (13) Perform other duties as the commission may  
15      assign.

16          Section 6. Sections 12-19-252, 15-12-1, 15-12-4,  
17      15-12-5, 15-12-6, 15-12-21, 15-12-22, 15-12-23, 15-12-26,  
18      15-12-27, 15-12-29, 15-12-40, 15-12-41, 15-12-42, 15-12-43,  
19      15-12-44, 15-12-45, and 15-12-46 of the Code of Alabama 1975,  
20      are amended to read as follows:

21                "§12-19-252.

22                "There is hereby appropriated from the Fair Trial  
23      Tax Fund, annually, such amount as may be necessary to pay the  
24      fees of counsel, court reporters, clerks, registers and such  
25      other necessary expenses of indigent defense as are provided  
26      by law.

1           "There is also hereby appropriated from the Fair  
2 Trial Tax Fund, annually, such amount not exceeding \$50,000.00  
3 as may be necessary to pay the quarterly withdrawals of the  
4 State Comptroller for the expenses of administering such  
5 indigent defense.

6           "In addition thereto, there is also appropriated  
7 annually out of the General Fund in the State Treasury a sum  
8 ~~equal to the amount by which the cost of such necessary~~  
9 ~~expenses of indigent defense, as provided by law, exceeds the~~  
10 ~~amount available for such purpose in the Fair Trial Tax Fund.~~  
11 certain, to be appropriated by the Legislature, for the  
12 operation of the Indigent Defense Commission and the operation  
13 of the indigent defense systems throughout the State of  
14 Alabama.

15           "If the county maintains a public defender, there  
16 shall be paid a reasonable share of the cost of maintaining  
17 ~~such~~ the office, the amount appropriated for ~~such~~ the purpose  
18 to be prorated to the several counties maintaining public  
19 defender's offices on the basis of the case load of the  
20 respective public defender offices.

21           "§15-12-1.

22           "When used in this chapter, the following terms  
23 shall have the following meanings:

24           "~~(2)~~ (1) APPOINTED COUNSEL. Any attorney licensed to  
25 practice law in the State of Alabama who is appointed by the  
26 court to represent an indigent defendant.

1                   "(2) COMMISSION. The Alabama Indigent Defense  
2                   Commission.

3                   "(3) CONTRACT COUNSEL. Any attorney licensed to  
4                   practice law in the State of Alabama, or a firm, association,  
5                   corporation, or partnership of lawyers so licensed, executing  
6                   a contract for the provision of indigent defense services.

7                   "~~(1)~~ (4) INDIGENT DEFENDANT. Any person involved in a  
8                   criminal or juvenile proceeding in the trial or appellate  
9                   courts of the state for which proceeding representation of the  
10                  indigent person by counsel is constitutionally required or is  
11                  authorized or required by statute or court rule, who under  
12                  oath or affirmation states that he or she is unable to pay for  
13                  his or her defense, and who is found by the court to be  
14                  financially unable to pay for his or her defense. A child who  
15                  is found by the court to be in need of a guardian ad litem is  
16                  defined as an indigent person for the purposes of this  
17                  article.

18                  "(5) INDIGENT DEFENSE SERVICES. Those services that  
19                  are necessary for the legal defense of an indigent defendant.

20                  "~~(5)~~ (6) INDIGENT DEFENSE SYSTEM. Any method or  
21                  mixture of methods for providing legal representation to an  
22                  indigent defendant, including use of appointed counsel, or use  
23                  of contract counsel, use of public defenders ~~, or any~~  
24                  ~~alternative method meeting constitutional requirements.~~

25                  "(7) OFFICE. The Office of Indigent Defense  
26                  Services.

1           "~~(4)~~ (8) PUBLIC DEFENDER. Any attorney licensed to  
2 practice law in the State of Alabama, other than contract  
3 counsel or appointed counsel, who receives a salary for  
4 representing an indigent defendant.

5           "\$15-12-4.

6           "(a) Creation. In each judicial circuit, the  
7 presiding circuit judge ~~shall appoint~~ may establish an  
8 indigent defense ~~commission~~. advisory board.

9           "(b) Composition; qualifications, appointment, term  
10 of office and removal of members; vacancies. The indigent  
11 defense ~~commission~~ advisory board shall be composed of five  
12 members who are residents of the judicial circuit in which  
13 they are appointed. There shall be two members who are  
14 attorneys licensed to practice law in Alabama, one member who  
15 is a member of a county commission within the circuit, one  
16 member who is the mayor or a member of the governing body of a  
17 municipality within the circuit, and one member who is a  
18 nonlawyer citizen. Each member shall serve for a term of six  
19 years from the date of appointment, unless removed for cause  
20 by the presiding circuit judge after notice and a hearing.  
21 Vacancies on the ~~commission~~ advisory board shall be filled by  
22 the presiding judge. In judicial circuits wherein the indigent  
23 defense commission previously authorized under this section  
24 was active during the fiscal year prior to the effective date  
25 of the amendatory provisions of this act, the existing  
26 commission, if approved by the presiding circuit judge, shall  
27 become the indigent defense advisory board and the members of

1 the new advisory board shall serve for an additional six-year  
2 term of office. If the existing indigent defense commission is  
3 not approved by the presiding circuit judge, the presiding  
4 circuit judge may appoint an indigent defense advisory board  
5 pursuant to subsection (a) of Section 15-12-4.

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

12 "(d) Meetings generally; quorum; chair. The indigent  
13 defense ~~commission~~ advisory board shall meet at least once  
14 annually and shall meet whenever so requested by the presiding  
15 circuit judge or the chair of the board. Three members shall  
16 constitute a quorum for conducting business. One member shall  
17 be designated a chair by majority vote of the members.

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

21 "~~(1)~~ It shall ~~advise~~ recommend to the presiding  
22 circuit judge, the Director of the Office of Indigent Defense  
23 Services, and the commission on the system or systems of  
24 indigent defense ~~system~~ to be utilized in each county of the  
25 circuit. This recommendation shall be subject to the approval  
26 of the Alabama Indigent Defense Commission. Any systems or  
27 system of indigent defense programs in any circuit or portion



1 of the circuit shall be subject to the final approval of the  
2 Alabama Indigent Defense Commission.

3 ~~"(2) It shall advise the presiding circuit judge on~~  
4 ~~the operation and administration of indigent defense systems~~  
5 ~~within the circuit.~~

6 ~~"(3) It shall select the public defender by majority~~  
7 ~~vote, if a public defender system is established within the~~  
8 ~~circuit, determine the budget for the public defender and~~  
9 ~~supervise the operation of the public defender office. It may~~  
10 ~~remove the public defender for cause after notice and a~~  
11 ~~hearing.~~

12 ~~"(4) It shall select, in accordance with procedures~~  
13 ~~promulgated by the Administrative Director of Courts, one or~~  
14 ~~more contract counsel by majority vote, if a contract counsel~~  
15 ~~system is established within the circuit; contract with such~~  
16 ~~entities, subject to the approval of the presiding circuit~~  
17 ~~judge; and determine the compensation to be paid to contract~~  
18 ~~counsel under each contract, subject to the review of the~~  
19 ~~Administrative Director of Courts and the approval of the~~  
20 ~~State Comptroller. Notwithstanding this section or any other~~  
21 ~~law to the contrary, no presiding judge or indigent defense~~  
22 ~~commission shall by rule, regulation, or otherwise prohibit a~~  
23 ~~circuit court judge or a district court judge from appointing~~  
24 ~~any attorney licensed in Alabama to represent an indigent~~  
25 ~~defendant.~~

26 "§15-12-5.

1           "(a) Judicial role in determining indigency. The  
2 trial judge first having cognizance of a criminal or juvenile  
3 proceeding in his or her court shall determine if an accused  
4 person or petitioner for post conviction relief is an indigent  
5 defendant as defined in Section 15-12-1. Upon appeal from a  
6 trial court to ~~the a state appellate courts court,~~ the trial  
7 judge ~~or the presiding circuit judge~~ who presided over the  
8 proceedings on appeal shall determine if the appellant is an  
9 indigent defendant as defined in Section 15-12-1.~~In~~ If an  
10 indigency determination is necessary in any proceeding  
11 initiated originally in a state appellate court ~~or in any case~~  
12 ~~appealed to a state appellate court without a determination of~~  
13 ~~indigency,~~ the presiding judge or chief justice of the  
14 appellate court shall determine if the appellant or petitioner  
15 is an indigent defendant as defined in Section 15-12-1.

16           "(b) Criteria for determining indigency. In  
17 determining indigency, the judge shall recognize ability to  
18 pay as a variable depending on the nature, extent and  
19 liquidity of assets, the disposable net income of the  
20 defendant, the nature of the offense, the effort and skill  
21 required to gather pertinent information and the length and  
22 complexity of the proceedings.

23           "(c) Investigation of indigency. In determining the  
24 fact of indigency a judge may require an investigation and  
25 report by a district attorney, public defender, sheriff,  
26 probation officer or other officer of the court ~~and report by~~  
27 ~~a district attorney, public defender, or sheriff, probation~~

1 ~~officer or other officer of the court. Provided, further, that~~  
2 ~~the~~ The trial court judge shall, in all cases requiring a  
3 determination of indigency, require the accused to execute an  
4 affidavit of substantial hardship on a form approved by ~~the~~  
5 ~~Supreme Court~~ Alabama Indigent Defense Commission. The  
6 completed affidavit of substantial hardship and the subsequent  
7 order of the court either denying or granting court appointed  
8 counsel to the accused shall become a part of the official  
9 court record in the case.

10 "(d) Provision of defense counsel. The judge making  
11 a determination of indigency shall provide legal  
12 representation for the indigent defendant. To the extent  
13 possible, judges shall provide continuity in legal  
14 representation. In capital cases, the trial court, after  
15 consultation with the Office of Indigent Defense Services  
16 shall assign at least two defense counsel in each case. At  
17 least one member of each capital defense team, where  
18 practicable, shall be a member of the bar in that circuit. All  
19 attorneys appointed in capital cases shall meet all of the  
20 requirements established by the commission, for appointment in  
21 capital cases.

22 "§15-12-6.

23 "Compensation of counsel appointed to represent  
24 indigent defendants shall be paid by the state in such amounts  
25 as otherwise provided by law. The procedure for approval and  
26 payment for such services shall be as provided by law or rule

1 ~~as may be promulgated by the Supreme Court or regulation~~  
2 ~~adopted by the Indigent Defense Commission.~~

3 "§15-12-21.

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

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

24 "(c) If it appears to the trial court that the  
25 parents, guardian, or custodian of a juvenile who is a party  
26 in a judicial proceeding, are entitled to counsel and the  
27 parties are unable to afford counsel, upon request, the court

1 shall appoint counsel to represent and assist the parents,  
2 guardian, or custodian. It shall be the duty of the appointed  
3 counsel, as an officer of the court and as a member of the  
4 bar, to represent and assist the parties to the best of his or  
5 her ability.

6 "(d) Counsel appointed in cases described in  
7 subsections (a), (b), and (c), including cases tried de novo  
8 in circuit court on appeal from a juvenile proceeding, shall  
9 be entitled to receive for their services a fee to be approved  
10 by the ~~trial court~~ Office of Indigent Defense Services. The  
11 amount of the fee shall be based on the number of hours spent  
12 by the attorney in working on the case and shall be ~~computed~~  
13 ~~at the rate of fifty dollars (\$50) per hour for time expended~~  
14 ~~in court and thirty dollars (\$30) per hour for time reasonably~~  
15 ~~expended out of court in the preparation of the case.~~  
16 ~~Effective October 1, 2000, the amount of the fee shall be~~  
17 ~~based on the number of hours spent by the attorney in working~~  
18 ~~on the case and shall be computed at the rate of sixty dollars~~  
19 ~~(\$60) per hour for time expended in court and forty dollars~~  
20 ~~(\$40) per hour for time reasonably expended out of court in~~  
21 ~~the preparation of the case~~ determined by the Indigent  
22 Defense Commission. The total fees paid to any one attorney in  
23 any one case, from the time of appointment through the trial  
24 of the case, including motions for new trial, shall not exceed  
25 the 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 ~~three thousand five hundred dollars (\$3,~~  
7 ~~500)~~ four thousand five hundred dollars (\$4,500).

8           "(3) In cases where the original charge is a Class B  
9 felony, the total fee shall not exceed ~~two thousand five~~  
10 ~~hundred dollars (\$2,500)~~ three thousand five hundred dollars  
11 (\$3,500).

12           "(4) In cases where the original charge is a Class C  
13 felony, the total fee shall not exceed ~~one thousand five~~  
14 ~~hundred dollars (\$1,500)~~ two thousand dollars (\$2,000).

15           "(5) In juvenile cases, the total fee shall not  
16 exceed ~~two thousand dollars (\$2,000)~~ two thousand five hundred  
17 dollars (\$2,500).

18           "(6) In all other cases, the total fee shall not  
19 exceed ~~one thousand dollars (\$1,000)~~ one thousand five hundred  
20 dollars (\$1,500).

21           "Notwithstanding the above, the ~~court~~ Office of  
22 Indigent Defense Services for good cause shown may approve an  
23 attorney's fee in excess of the maximum amount allowed.  
24 Counsel shall also be entitled to be reimbursed for any  
25 expenses reasonably incurred in the defense of his or her  
26 client, with any expense in excess of three hundred dollars  
27 (\$300), to be approved in advance by the Indigent Defense

1 Commission upon consultation with the trial court. The  
2 reasonableness of an attorney's reimbursable expenses shall be  
3 determined by the Office of Indigent Defense Services at the  
4 time reimbursement is requested. Fees and expenses of all  
5 expert investigators and others rendering defense service to  
6 be used by counsel for an indigent defendant shall be approved  
7 in advance by the trial judge. ~~Preapproved expert fees shall~~  
8 ~~be billed at the time the court is notified that all work by~~  
9 ~~the expert has been completed, and shall be paid forthwith.~~  
10 ~~Once an expert has been paid for services on a particular~~  
11 ~~case, that expert shall not be allowed to receive further~~  
12 ~~payment on the case. Retrials of any case shall be considered~~  
13 ~~a new case. Upon review, the director may approve interim~~  
14 ~~payments of attorney fees or expenses, or both.~~

15 "(e) Within a reasonable time after the conclusion  
16 of the trial or ruling on a motion for a new trial or after an  
17 acquittal or other judgment disposing of the case, not to  
18 exceed 90 days, counsel shall submit ~~to the trial court~~ a bill  
19 for services rendered, not to exceed the amount provided in  
20 subsection (d). If counsel has submitted a bill in excess of  
21 the amount allowed in subsection (d), a sworn affidavit shall  
22 be attached to the bill stating the basis of the claim of the  
23 counsel for additional money, and setting out the good cause  
24 required by subsection (d). The bill for compensation of  
25 appointed counsel shall be submitted to the clerk of the court  
26 and then to the Office of Indigent Defense Services. An audit  
27 shall be made and if approved, that office ~~The bill, after~~

1 ~~approval by the trial court, shall be submitted by the clerk~~  
2 ~~of the court to the State Comptroller for audit and, if~~  
3 ~~approved by the Comptroller, shall be forwarded~~ forward such  
4 bill to the ~~State Treasurer~~ State Comptroller for payment.

5 "§15-12-22.

6 "(a) In all criminal cases wherein a defendant has  
7 been convicted of a ~~serious~~ criminal or a juvenile offense in  
8 which an appeal lies directly to the Supreme Court or Court of  
9 Criminal Appeals and the defendant expresses his or her desire  
10 to appeal the conviction, the court shall cause to be entered  
11 upon its minutes a recital of notice of appeal, and the court  
12 shall then ascertain and make findings in reference to the  
13 appeal concerning those items listed in Section 15-12-20.

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

26 "(c) If it appears that a juvenile who is a party to  
27 an appeal is otherwise required by law or by rule of court to



1 be represented by appointed counsel, the trial court shall  
2 appoint counsel to represent and assist the juvenile on  
3 appeal. The presiding judge of the court to which the appeal  
4 is taken shall have authority to appoint counsel in the event  
5 the trial court fails to appoint and in the event it becomes  
6 necessary to further provide for counsel. It shall be the duty  
7 of the counsel, as an officer of the court and as a member of  
8 the bar, to represent and assist the juvenile in the appeal.

9 "(d) Counsel appointed to defend any indigent  
10 defendant for the appeal from a decision in any criminal or  
11 juvenile proceeding, excluding cases tried de novo in circuit  
12 court on appeal from a juvenile proceeding, shall be entitled  
13 to receive for their services a fee to be approved by the  
14 ~~appellate court~~ Office of Indigent Defense Services.

15 "(1) The amount of the fee shall be based on the  
16 number of hours spent by the counsel in working on the appeal  
17 and ~~shall be computed at the rate of fifty dollars (\$50) per~~  
18 ~~hour~~ for time reasonably expended in the prosecution of the  
19 appeal, and any subsequent petition for writ of certiorari.

20 ~~"(2) Effective October 1, 2000, the amount of the~~  
21 ~~fee shall be based on the number of hours spent by the~~  
22 ~~attorney in working on the prosecution of the appeal and shall~~  
23 ~~be computed at the rate of sixty dollars (\$60) per hour for~~  
24 ~~time reasonably expended in the prosecution of the appeal, and~~  
25 ~~any subsequent petition for writ of certiorari.~~

26 ~~"(3) The~~ a. Except in capital cases in which the  
27 death penalty has been imposed, the total fees awarded to any

1 one attorney in any appeal and any subsequent petition for  
2 writ of certiorari, shall not, however, exceed ~~two thousand~~  
3 ~~dollars (\$2,000)~~ two thousand five hundred dollars (\$2,500),  
4 and shall be in addition to any fees awarded on the trial  
5 court level. In those cases where the state takes a pretrial  
6 appeal, appointed counsel shall be entitled to bill separately  
7 for services on the pretrial and post-trial appeals, up to ~~two~~  
8 ~~thousand dollars (\$2,000)~~ two thousand five hundred dollars  
9 (\$2,500) for each appeal. In those cases where a petition for  
10 writ of certiorari is filed in the Alabama Supreme Court,  
11 counsel shall be entitled to bill separately for all services  
12 rendered after the Court of Criminal Appeals overrules the  
13 application for rehearing, or after the decision of the Court  
14 of Criminal Appeals in the case of a pretrial appeal, up to a  
15 separate limit of ~~two thousand dollars (\$2,000)~~ two thousand  
16 five hundred dollars (\$2,500) over and above any funds  
17 received for services rendered in the Court of Criminal  
18 Appeals. The counsel shall also be entitled to be reimbursed  
19 for any expenses reasonably incurred in preparing and handling  
20 the appeal, to be approved in advance by the ~~appellate court~~  
21 Office of Indigent Defense Services.

22 "b. In the appeal of a capital case in which the  
23 death penalty has been imposed, the total fees awarded to any  
24 one attorney shall not exceed fifteen thousand dollars  
25 (\$15,000) and shall be in addition to any fees awarded at the  
26 trial court level. Any amounts billed in those cases in which  
27 the state has taken a pretrial appeal, shall not be counted

1 against the fifteen thousand dollars (\$15,000) limit imposed.  
2 Counsel shall be reimbursed for any expenses reasonably  
3 incurred in preparing and handling the appeal, to be approved  
4 for reasonableness by the Office of Indigent Defense Services.

5 "(e) Within a reasonable time after the disposition  
6 of the appeal, not to exceed 90 days, counsel shall submit ~~to~~  
7 ~~the appellate court~~ a bill for services rendered, not to  
8 exceed the amount provided in subsection (d), and the bill,  
9 ~~when approved by the presiding judge or chief justice of the~~  
10 ~~appellate court, shall be submitted by the clerk of the~~  
11 ~~appellate court to the state Comptroller~~ Office of Indigent  
12 Defense Services for audit review and approval and, if  
13 approved, ~~by the Comptroller office shall forward,~~ forwarded  
14 ~~the bill to the State Treasurer~~ State Comptroller for payment.

15 "§15-12-23.

16 "(a) In proceedings filed in the district or circuit  
17 court involving the life and liberty of those charged with or  
18 convicted of serious criminal offenses including proceedings  
19 for habeas corpus or other post conviction remedies, and in  
20 post-trial motions or appeals in the proceedings, the trial or  
21 presiding judge or chief justice of the court in which the  
22 proceedings may be commenced or pending may appoint counsel to  
23 represent and assist those persons charged or convicted if it  
24 appears to the court that the person charged or convicted is  
25 unable financially or otherwise to obtain the assistance of  
26 counsel and desires the assistance of counsel and it further

1 appears that counsel is necessary in the opinion of the judge  
2 to assert or protect the right of the person.

3 "(b) In proceedings filed in the district or circuit  
4 court involving juvenile offenses including proceedings for  
5 habeas corpus or other post conviction remedies, and in  
6 post-trial motions or appeals in the proceedings, the trial or  
7 presiding judge or chief justice of the court in which the  
8 proceedings may be commenced or pending may appoint counsel to  
9 represent and assist those juveniles so charged or convicted  
10 if it appears to the court that the juvenile charged or  
11 convicted is unable financially or otherwise to obtain the  
12 assistance of counsel and it further appears that counsel is  
13 necessary in the opinion of the judge to assert or protect the  
14 rights of the person, or court appointed counsel is otherwise  
15 required by law or rule of court.

16 "(c) It shall be the duty of such counsel as  
17 provided in subsections (a) and (b) to represent and assist  
18 the person in the proceedings.

19 "(d) The counsel appointed in the proceedings shall  
20 be entitled to receive for his or her services a fee to be  
21 approved by the ~~judge appointing him or her~~ Office of Indigent  
22 Defense Services. The amount of the fee shall be based on the  
23 number of hours spent by counsel ~~in working on the proceedings~~  
24 ~~and shall be computed at the rate of fifty dollars (\$50) per~~  
25 ~~hour for time expended in court and thirty dollars (\$30) per~~  
26 ~~hour for time reasonably expended in preparation of the~~  
27 ~~proceedings. Effective October 1, 2000, the fee shall be~~

1 ~~computed at the rate of sixty dollars (\$60) per hour for time~~  
2 ~~expended in court and forty dollars (\$40) per hour for time~~  
3 reasonably expended in preparation of the proceedings. ~~The~~  
4 Except in capital cases in which the death penalty may be  
5 imposed, the total fees to counsel for the proceedings shall  
6 not exceed one thousand dollars (\$1,000) one thousand five  
7 hundred dollars (\$1,500). In capital cases in which the death  
8 penalty has been or could have been imposed, total fees shall  
9 not exceed fifteen thousand dollars (\$15,000) for work  
10 performed at the trial court level. Fees awarded for work  
11 performed in appeals in capital cases to the Court of Criminal  
12 Appeals and the Alabama Supreme Court shall not exceed fifteen  
13 thousand dollars (\$15,000). The total fees to counsel for the  
14 proceedings shall not exceed one thousand dollars (\$1,000).

15 "(e) Counsel shall also be entitled to be reimbursed  
16 for any expenses reasonably incurred at the trial court level  
17 in representing the defendant in the proceedings, with any  
18 expenses in excess of three hundred dollars (\$300) to be  
19 approved in advance by the director. Fees and expenses of all  
20 experts, investigators, and others providing defense services  
21 shall be approved in advance by the director. Upon review, the  
22 director may authorize interim payment of the attorney fees or  
23 expenses, or both.

24 ~~"(e)~~ (f) Claim for the fee shall be submitted,  
25 approved, and paid in the same manner as provided in  
26 subsection (e) of Section 15-12-22.

27 "§15-12-26.

1           ~~" (a) In any county or circuit where a contract~~  
2 ~~counsel system is chosen as a method of providing indigent~~  
3 ~~defense, the circuit indigent defense commission shall choose~~  
4 ~~one or more contract counsel. After notice to, and~~  
5 ~~consultation with, the circuit indigent defense advisory board~~  
6 ~~or, where no advisory board has been established, the affected~~  
7 ~~circuit bar and presiding circuit court judge, the commission~~  
8 ~~may establish that a contract counsel system be used as the~~  
9 ~~method to provide indigent defense services within the circuit~~  
10 ~~or part thereof.~~

11           ~~" (b) Each contract counsel chosen shall be employed~~  
12 ~~pursuant to a contract containing terms and conditions as~~  
13 ~~deemed necessary between the attorney, firm, association,~~  
14 ~~corporation, or partnership, as the case may be, and the~~  
15 ~~ccircuit indigent defense commission. The contract shall be~~  
16 ~~subject to the approval of the presiding circuit judge. Unless~~  
17 ~~the contract is disapproved by the presiding circuit judge~~  
18 ~~within 30 days of the execution of the contract on behalf of~~  
19 ~~the circuit indigent defense commission, the contract shall be~~  
20 ~~deemed approved~~ Indigent Defense Commission.

21           ~~"§15-12-27.~~

22           ~~"Any provision of this chapter to the contrary~~  
23 ~~notwithstanding, each contract counsel shall receive~~  
24 ~~compensation as set by the circuit indigent defense~~  
25 ~~commission, reviewed by the Administrative Director of Courts,~~  
26 ~~and approved by the State Comptroller, to be paid from the~~

1 ~~Fair Trial Tax Fund or other funds as provided by law~~ Indigent  
2 Defense Commission.

3 "§15-12-29.

4 "Sections 15-12-26, 15-12-27, and 15-12-28 shall not  
5 be construed to preclude judges from appointing counsel for  
6 indigent defendants, or from assigning representation of an  
7 indigent defendant to other contract counsel where there is a  
8 conflict of interest involving the contract counsel, or if the  
9 contract counsel is unable to provide prompt and adequate  
10 representation. ~~Sections 15-12-26, 15-12-27, and 15-12-28~~  
11 ~~shall not be construed to supersede any provision of the~~  
12 ~~Alabama Rules of Criminal Procedure or any other provision of~~  
13 ~~law relating to public defenders.~~

14 "§15-12-40.

15 "~~In any county or circuit where a public defender~~  
16 ~~system is chosen as a method of providing indigent defense,~~  
17 ~~the indigent defense commission shall choose a public~~  
18 ~~defender.~~

19 "(a) After notice to, and consultation with the  
20 circuit indigent defense advisory board or, where no circuit  
21 indigent defense advisory board has been established, the  
22 affected circuit bar, the presiding circuit judge, or the  
23 commission may establish a public defender office as the  
24 method to provide indigent defense services within the  
25 circuit.

26 "(b) For each new term, and to fill any vacancy, the  
27 commission shall have the authority to select and appoint a

1 public defender for the circuit. In making this selection and  
2 appointment, the commission shall consider any recommendations  
3 of attorneys made by the circuit indigent defense advisory  
4 board or where no indigent defense advisory board has been  
5 established, by the affected circuit's bar and presiding  
6 circuit judge. These recommendations may include both resident  
7 and non-resident attorneys of the affected circuit. These  
8 recommendations shall be submitted to the commission within 60  
9 days of a request for the same by the commission. Attorneys  
10 appointed hereunder as public defenders shall be licensed to  
11 practice law in Alabama at the time of the appointment or by  
12 the time they assume office, are licensed to practice law in  
13 Alabama.

14 "§15-12-41.

15 "(a) The public defender shall be appointed for a  
16 fixed term not to exceed six years subject to reappointment by  
17 the commission and may be removed from office for cause by the  
18 ~~indigent defense~~ commission.

19 "(b) The ~~indigent defense~~ commission may require  
20 that the public defender serve full time or part time.

21 "§15-12-42.

22 "The public defender shall have the following powers  
23 and duties:

24 "(1) Within his or her geographic jurisdiction, the  
25 public defender shall provide defense services to indigent  
26 ~~defendants charged with misdemeanors and felonies and referred~~  
27 ~~to him by the court~~ persons as defined in Section 15-21-1.



1           "~~(2) The public defender shall, at the request and~~  
2 ~~with the consent of a municipal governing body and the~~  
3 ~~indigent defense commission, represent indigent defendants in~~  
4 ~~a municipal court within his geographic jurisdiction.~~

5           "~~(3)~~ (2) The public defender ~~may~~, with consent of  
6 the ~~indigent defense~~ commission, may represent an indigent  
7 defendant in a state appellate court.

8           "~~(4) The public defender may, if empowered by the~~  
9 ~~presiding circuit judge and the indigent defense commission,~~  
10 ~~administer the system of appointing private counsel for~~  
11 ~~indigent defendants within his geographic jurisdiction.~~

12           "§15-12-43.

13           "(a) The public defender shall receive a salary set  
14 by the ~~indigent defense commission and approved by the~~  
15 ~~Administrative Director of Courts~~ commission. The salary shall  
16 not exceed the state salary paid to a district attorney in the  
17 circuit and shall be paid in the same manner as employees of  
18 the state.

19           "(b) All salary and expenses of a public defender  
20 shall be paid by the state out of the ~~fair trial tax fund~~ Fair  
21 Trial Tax Fund or other funds appropriated by the Legislature  
22 for such purposes; except, that in counties authorized to  
23 impose a court cost for defender services, the county shall  
24 fund defender services from the revenues of said court cost,  
25 and the state shall pay a reasonable share of the cost of  
26 maintaining such office, such reasonable share to be

1 determined by the ~~Administrative Director of Courts~~ Indigent  
2 Defense Commission.

3 "§15-12-44.

4 "The public defender shall keep such records and  
5 make ~~such~~ reports on matters related to the operation of the  
6 office of the public defender as are required by the ~~indigent~~  
7 ~~defense commission director~~, ~~except, that~~ The attorney-client  
8 communications involving the defender or attorneys employed by  
9 him or her shall remain confidential.

10 "§15-12-45.

11 ~~"The indigent defense commission, subject to the~~  
12 ~~approval of the Administrative Director of Courts, (a) The~~  
13 director in compliance with procedures adopted by commission  
14 may approve expenditures for attorneys, investigators, other  
15 personnel and nonpersonnel expenses of the public defender.  
16 Authorized employees of the public defender offices shall be  
17 entitled to annual and sick leave, insurance, retirement, and  
18 other state employee benefits, including cost-of-living raises  
19 and bonuses authorized by the Legislature for state employees.

20 "(b) The operating expenses and staff salaries and  
21 benefits for the offices of the public defenders shall be  
22 approved in advance by the Office of Indigent Defense Services  
23 as part of an annual budget for the subject public defender's  
24 office, and once the budget is approved, shall be paid by the  
25 state from funds appropriated annually from the Fair Trial Tax  
26 Fund or other funds appropriated by the Legislature for this  
27 purpose. The expenses shall include, but not be limited to,

1 the salary, benefits, and expenses of all eligible employees  
2 and positions, training and education, travel, research,  
3 equipment, and supplies.

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

10 "\$15-12-46.

11 "Nothing in this article shall be construed to  
12 ~~exclude establishment of appointed counsel systems parallel to~~  
13 ~~a public defender system or to~~ preclude judges from appointing  
14 counsel for indigent defendants where there is a conflict of  
15 interest involving the public defender or if the public  
16 defender is unable to provide prompt and adequate  
17 representation."

18 Section 7. Section 15-12-2 of the Code of Alabama  
19 1975, providing for the determination as to indigent defense  
20 systems to be used in circuit, district, and municipal courts;  
21 Section 15-12-3 of the Code of Alabama 1975, providing for the  
22 presiding circuit judges to administer the circuit indigent  
23 defense system; and Section 15-12-24.1 of the Code of Alabama  
24 1975, providing for withdrawals from the Fair Trail Tax Fund  
25 to pay expenses of the State Comptroller for administering the  
26 defense of indigents are specifically repealed.

1           Section 8. Transition and effective dates. The  
2     Director of the Administrative Office of Courts shall assist  
3     the Chair of the Alabama Indigent Defense Commission in  
4     retaining the initial director of indigent defense services of  
5     the commission. The Director of the Administrative Office of  
6     Courts shall recruit and interview prospective candidates and  
7     shall submit at least three names to the commission for its  
8     consideration. The commission may hire its initial director of  
9     indigent defense services from the list or may request the  
10    chair of the commission and the Director of the Administrative  
11    Office of Courts to submit additional names.

12           Section 9. Persons holding the position of public  
13    defender or appellate defender on the date this act becomes  
14    effective shall be entitled to serve the remainder of their  
15    terms of office.

16           Section 10. 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.