



2026 South Dakota Legislature

House Bill 1252

Introduced by: **Representative Jamison**

1 **An Act to provide for indigent legal services by the Commission on Indigent Legal**
 2 **Services, and to provide an appropriation therefor.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That § 23A-40-7 be AMENDED:**

5 **23A-40-7.** ~~The board of county commissioners of each county and the governing~~
 6 ~~body of any municipality~~ Commission on Indigent Legal Services shall provide for the
 7 representation of indigent persons described in § 23A-40-6. ~~The board or body~~
 8 commission shall provide this representation by any or all of the following:

- 9 (1) Establishing and maintaining an office of a public defender;
 10 (2) Arranging with the courts in the county to appoint attorneys on an equitable basis
 11 through a systematic, coordinated plan; or
 12 (3) Contracting with any attorney licensed to practice law in this state.

13 In those counties which have established an office of public defender, any
 14 proceedings after judgment may be assigned to the public defender. The provisions of
 15 chapter 5-18A do not apply to this section.

16 **Section 2. That § 23A-40-8 be AMENDED:**

17 **23A-40-8.** Except as provided below, counsel assigned pursuant to § 23A-40-6
 18 and subdivision 23A-40-7(2) ~~shall~~ must, after the disposition of the cause, be paid by the
 19 ~~county in which the action is brought, or, in case of a parole revocation, by the county~~
 20 ~~from which the inmate was sentenced~~ Commission on Indigent Legal Services, a
 21 reasonable and just compensation for the services and for necessary expenses and costs
 22 incident to the proceedings in an amount to be fixed by a judge of the circuit court or a
 23 magistrate judge within guidelines established by the presiding judge of the circuit court.

24 If the cause originated from a criminal offense committed by an inmate under
 25 confinement in a facility operated by the Department of Corrections, the Department of

1 Corrections must, after the disposition of the cause, pay counsel assigned pursuant to
2 § 23A-40-6, a reasonable and just compensation for the services and for necessary
3 expenses and costs incident to the proceedings in an amount to be fixed by a judge of the
4 circuit court or a magistrate judge within guidelines established by the presiding judge of
5 the circuit court.

6 **Section 3. That § 23A-40-10 be AMENDED:**

7 **23A-40-10.** If the court finds that ~~funds~~ moneys are available for payment from
8 or on behalf of a defendant to carry out, in whole or in part, the provisions of this chapter,
9 the court may order that the funds be paid, as court costs or as a condition of probation,
10 to the court for deposit with the state, ~~county, or municipal treasurer,~~ to be placed in the
11 ~~state, county, or municipal~~ general fund or in the public defender fund in those counties
12 ~~establishing the office pursuant to subdivision 23A-40-7(1) as a reimbursement to the~~
13 ~~county or municipality to carry out the provisions of this section.~~ The court may also order
14 payment to be made in the form of installments or wage assignments, in amounts set by
15 a judge of the circuit court or a magistrate judge, either during the time a charge is
16 pending or after the disposition of the charge, regardless of whether the defendant has
17 been acquitted or the case has been dismissed by the prosecution or by order of the court.
18 The provisions of this section also apply to persons who have had counsel appointed under
19 chapters 26-7A, 26-8A, 26-8B, and 26-8C. The reimbursement is a credit against any lien
20 created by the provisions of this chapter against the property of the defendant.

21 **Section 4. That § 23A-40-11 be AMENDED:**

22 **23A-40-11.** A lien, enforceable as provided by this chapter, upon all the property,
23 both real and personal, of any person, including the parents of a minor child, for whom
24 legal counsel or a public defender has been appointed under the provisions of § 23A-40-
25 6, subdivisions 23A-40-7(2) and (3), or § 26-7A-31 may be filed. The services rendered
26 and expenses incurred are a claim against the person and that person's estate, enforceable
27 according to law in an amount to be determined by a judge of the circuit court or a
28 magistrate judge and paid by the ~~county or municipality chargeable for them.~~ Commission
29 on Indigent Legal Services. A lien on the parents of a minor child pursuant to this section
30 may not exceed one thousand five hundred dollars plus an amount equal to any taxable
31 court costs.

32 **Section 5. That § 23A-40-13 be AMENDED:**

1 **23A-40-13.** Immediately upon payment by the ~~chargeable county or municipality~~
2 Commission on Indigent Legal Services, or upon the setting of the public defender's lien
3 by a circuit court judge or magistrate judge, a statement of claim showing the name and
4 residence of the recipient ~~shall~~ must be filed by the county auditor or municipal, finance
5 officer in the office of the register of deeds in the county where the recipient resides. A
6 certified copy of the lien may be filed in any other county in which the recipient may have
7 or may acquire an interest in real or personal property. The lien is enforceable, until
8 satisfied or compromised.

9 **Section 6. That § 23A-40-20 be AMENDED:**

10 **23A-40-20.** All moneys in the court appointed attorney and public defender
11 payment fund ~~shall~~ must be annually distributed by the state treasurer to the ~~counties on~~
12 a pro rata basis. The state treasurer shall, ~~within sixty days of the end of the fiscal year,~~
13 ~~determine and verify from receipts and expenditure records the total expenditures by all~~
14 ~~counties in the state for court appointed attorneys and public defender offices. He shall~~
15 ~~then establish a percentage ratio between moneys collected in the fund for the past fiscal~~
16 ~~year and the total expenditures by counties for court appointed attorneys and public~~
17 ~~defender offices. That percentage ratio shall then be applied to each county's gross~~
18 ~~expenditure for court appointed attorneys and public defender offices to determine its~~
19 ~~respective payment from the fund~~ general fund.

20 **Section 7. That § 23A-51-8 be AMENDED:**

21 **23A-51-8.** The Office of Indigent Legal Services shall provide statewide indigent
22 representation services in direct appeals in criminal cases, habeas corpus appeals, ~~and~~
23 ~~abuse or neglect of a child appeal cases,~~ or cases provided in chapter 26-7A, 26-8A, 26-
24 8B, or 26-8C. The office may expand its scope of indigent representation services to
25 include additional case types as approved by the commission. The office shall determine
26 the method of delivering indigent representation services by utilizing public defenders,
27 private appointed attorneys, or a combination of both. The office may contract with private
28 appointed attorneys to deliver indigent representation and shall provide oversight and
29 review of any contracted attorneys.

30 **Section 8. That § 26-7A-31 be AMENDED:**

1 **26-7A-31.** If the child or the child's parents, guardian, or other custodian requests
2 an attorney in proceedings under this chapter or chapter 26-8A, 26-8B, or 26-8C and if
3 the court finds the party to be without sufficient financial means to employ an attorney,
4 the court ~~shall~~ must appoint an attorney for the party. The court may appoint an attorney
5 for any child or any party to the proceedings without request of the party if the court
6 deems representation by an attorney necessary to protect the interests of the party.

7 Reasonable and just compensation for services of a court-appointed attorney and
8 for necessary expenses and costs incident to the proceedings ~~shall~~ must be determined
9 by the court within guidelines established by the presiding judge of the circuit court and
10 ~~shall~~ must be paid by the ~~county in which the action is being conducted~~ Commission on
11 Indigent Legal Services according to the manner prescribed by the court. If the court-
12 appointed attorney is a party to a contract with the county to provide indigent counsel
13 pursuant to subdivision 23A-40-7(3), the compensation for that attorney ~~shall~~ must be
14 that which the attorney would receive under the contract. This section does not preclude
15 the court from appointment of an attorney for a child as required by provisions of chapter
16 26-8A.

17 **Section 9.** There is appropriated \$27,573,984 from the general fund, to the Commission on
18 Indigent Legal Services, to reimburse the cost of indigent legal services incurred by counties.

19 **Section 10.** The Commission on Indigent Legal Services shall distribute the moneys described
20 in section 9 of this Act to the counties based on the formula provided in this section. The
21 commission shall, within sixty days of the end of the fiscal year, determine and verify from
22 receipts and expenditure records the total expenditures by all counties for court appointed
23 attorneys and public defender offices. The commission shall then establish a percentage ratio
24 of the total expenditures by counties for court appointed attorneys and public defender offices.
25 The commission shall apply that percentage ratio to each county's gross expenditure for court
26 appointed attorneys and public defender offices to determine its respective payment.

27 **Section 11.** The chief defender of the Office of Indigent Services shall approve vouchers and
28 the state auditor shall draw warrants to pay expenditures authorized in this Act.

29 **Section 12.** Any amounts appropriated in this Act not lawfully expended or obligated shall
30 revert in accordance with the procedures prescribed in chapter 4-8.

1 **Section 13.** Whereas, this Act is necessary for the support of the state government and its
2 existing public institutions, an emergency is hereby declared to exist, and sections 7 to 10,
3 inclusive, of this Act shall be in full force and effect from and after its passage and approval.

4 **Section 14.** Sections 1 to 8, inclusive, of this Act are effective July 1, 2028.

5 **Section 15.** Sections 9 to 13, inclusive, of this Act are effective June 30, 2026.