

SB2818



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2818

Introduced 2/13/2018, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

725 ILCS 5/102-11.5 new
725 ILCS 5/113-3

from Ch. 38, par. 113-3

Amends the Code of Criminal Procedure of 1963. Provides that the posting of bail by a defendant shall not be a factor when considering if he or she qualifies for the appointment of a Public Defender. Defines "indigent". Effective immediately.

LRB100 19036 SLF 34290 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by adding Section 102-11.5 and by changing Section
6 113-3 as follows:

7 (725 ILCS 5/102-11.5 new)

8 Sec. 102-11.5. "Indigent".

9 "Indigent" means: (1) the person is receiving assistance
10 under one or more of the following public benefits programs:
11 Supplemental Security Income, Aid to the Aged, Blind, and
12 Disabled, Temporary Assistance for Needy Families, Food
13 Stamps, Supplemental Nutrition Assistance Program, General
14 Assistance, Transitional Assistance, or State Children and
15 Family Assistance; (2) the person's available income is 125% or
16 less of the current poverty level as established by the United
17 States Department of Health and Human Services, unless the
18 person's assets are of a nature and value that the court
19 determines that the person is able to pay the fees, costs, and
20 charges; or (3) the person is, in the discretion of the court,
21 unable to proceed in an action without payment of fees, costs,
22 and charges and the payment of those fees, costs, and charges
23 would result in substantial hardship to the person or his or

1 her family.

2 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

3 Sec. 113-3. Right to counsel.

4 (a) Every person charged with an offense shall be allowed
5 counsel before pleading to the charge. If the defendant desires
6 counsel and has been unable to obtain same before arraignment
7 the court shall recess court or continue the cause for a
8 reasonable time to permit defendant to obtain counsel and
9 consult with him before pleading to the charge. If the accused
10 is a dissolved corporation, and is not represented by counsel,
11 the court may, in the interest of justice, appoint as counsel a
12 licensed attorney of this State.

13 (b) In all cases, except where the penalty is a fine only,
14 if the court determines that the defendant is indigent and
15 desires counsel, the Public Defender shall be appointed as
16 counsel. The posting of bail by the defendant shall not be a
17 factor when considering if he or she qualifies for the
18 appointment of a Public Defender. If there is no Public
19 Defender in the county or if the defendant requests counsel
20 other than the Public Defender and the court finds that the
21 rights of the defendant will be prejudiced by the appointment
22 of the Public Defender, the court shall appoint as counsel a
23 licensed attorney at law of this State, except that in a county
24 having a population of 2,000,000 or more the Public Defender
25 shall be appointed as counsel in all misdemeanor cases where

1 the defendant is indigent and desires counsel unless the case
2 involves multiple defendants, in which case the court may
3 appoint counsel other than the Public Defender for the
4 additional defendants. The court shall require an affidavit
5 signed by any defendant who requests court-appointed counsel.
6 Such affidavit shall be in the form established by the Supreme
7 Court containing sufficient information to ascertain the
8 assets and liabilities of that defendant. The Court may direct
9 the Clerk of the Circuit Court to assist the defendant in the
10 completion of the affidavit. Any person who knowingly files
11 such affidavit containing false information concerning his
12 assets and liabilities shall be liable to the county where the
13 case, in which such false affidavit is filed, is pending for
14 the reasonable value of the services rendered by the public
15 defender or other court-appointed counsel in the case to the
16 extent that such services were unjustly or falsely procured.

17 (c) Upon the filing with the court of a verified statement
18 of services rendered the court shall order the county treasurer
19 of the county of trial to pay counsel other than the Public
20 Defender a reasonable fee. The court shall consider all
21 relevant circumstances, including but not limited to the time
22 spent while court is in session, other time spent in
23 representing the defendant, and expenses reasonably incurred
24 by counsel. In counties with a population greater than
25 2,000,000, the court shall order the county treasurer of the
26 county of trial to pay counsel other than the Public Defender a

1 reasonable fee stated in the order and based upon a rate of
2 compensation of not more than \$40 for each hour spent while
3 court is in session and not more than \$30 for each hour
4 otherwise spent representing a defendant, and such
5 compensation shall not exceed \$150 for each defendant
6 represented in misdemeanor cases and \$1250 in felony cases, in
7 addition to expenses reasonably incurred as hereinafter in this
8 Section provided, except that, in extraordinary circumstances,
9 payment in excess of the limits herein stated may be made if
10 the trial court certifies that such payment is necessary to
11 provide fair compensation for protracted representation. A
12 trial court may entertain the filing of this verified statement
13 before the termination of the cause, and may order the
14 provisional payment of sums during the pendency of the cause.

15 (d) In capital cases, in addition to counsel, if the court
16 determines that the defendant is indigent the court may, upon
17 the filing with the court of a verified statement of services
18 rendered, order the county Treasurer of the county of trial to
19 pay necessary expert witnesses for defendant reasonable
20 compensation stated in the order not to exceed \$250 for each
21 defendant.

22 (e) If the court in any county having a population greater
23 than 2,000,000 determines that the defendant is indigent the
24 court may, upon the filing with the court of a verified
25 statement of such expenses, order the county treasurer of the
26 county of trial, in such counties having a population greater

1 than 2,000,000 to pay the general expenses of the trial
2 incurred by the defendant not to exceed \$50 for each defendant.

3 (f) The provisions of this Section relating to appointment
4 of counsel, compensation of counsel, and payment of expenses in
5 capital cases apply except when the compensation and expenses
6 are being provided under the Capital Crimes Litigation Act.

7 (Source: P.A. 91-589, eff. 1-1-00.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.