

SECOND REGULAR SESSION

HOUSE BILL NO. 2094

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CHIPMAN.

4711H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 600.042 and 600.044, RSMo, and to enact in lieu thereof three new sections relating to public defenders, with an effective date.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 600.042 and 600.044, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 600.042, 600.044, and 600.052, to read as follows:

600.042. 1. The director shall:

(1) Direct and supervise the work of the deputy directors and other state public defender office personnel appointed pursuant to this chapter; and he or she and the deputy director or directors may participate in the trial and appeal of criminal actions at the request of the defender;

(2) Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;

(3) With the approval of the commission, establish such divisions, facilities and offices and select such professional, technical and other personnel, including investigators, as he deems reasonably necessary for the efficient operation and discharge of the duties of the state public defender system under this chapter;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (4) Administer and coordinate the operations of defender services and be responsible for
18 the overall supervision of all personnel, offices, divisions and facilities of the state public
19 defender system, except that the director shall have no authority to direct or control the legal
20 defense provided by a defender to any person served by the state public defender system;

21 (5) Develop programs and administer activities to achieve the purposes of this chapter;

22 (6) Keep and maintain proper financial records with respect to the provision of all public
23 defender services for use in the calculating of direct and indirect costs of any or all aspects of the
24 operation of the state public defender system;

25 (7) Supervise the training of all public defenders and other personnel and establish such
26 training courses as shall be appropriate;

27 (8) With approval of the commission, promulgate necessary rules, regulations and
28 instructions consistent with this chapter defining the organization of the state public defender
29 system and the responsibilities of division directors, district defenders, deputy district defenders,
30 assistant public defenders and other personnel;

31 (9) With the approval of the commission, apply for and accept on behalf of the public
32 defender system any funds which may be offered or which may become available from
33 government grants, private gifts, donations or bequests or from any other source. Such moneys
34 shall be deposited in the state general revenue fund;

35 (10) [Contract for legal services with private attorneys on a case-by-case basis and with
36 assigned counsel as the commission deems necessary considering the needs of the area, for fees
37 approved and established by the commission;

38 (11)] With the approval and on behalf of the commission, contract with private attorneys
39 for the collection and enforcement of liens and other judgments owed to the state for services
40 rendered by the state public defender system;

41 **(11) Contract out for legal services with private attorneys for all felony cases,**
42 **except class A or B felony cases, all misdemeanor cases, all traffic cases, and all probation**
43 **violation cases. The office of administration shall handle the bidding process for all such**
44 **contracts in accordance with the provisions of section 600.052;**

45 (12) Prepare a plan to establish district offices, the boundaries of which shall coincide
46 with existing judicial circuits. Any district office may contain more than one judicial circuit
47 within its boundaries, but in no event shall any district office boundary include any geographic
48 region of a judicial circuit without including the entire judicial circuit. The director shall submit
49 the plan to the chair of the house judiciary committee and the chair of the senate judiciary
50 committee, with fiscal estimates, by December 31, 2014. The plan shall be implemented by
51 December 31, 2018.

52 2. No rule or portion of a rule promulgated under the authority of this chapter shall
53 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

54 3. The director and defenders shall, within guidelines as established by the commission
55 and as set forth in subsection 4 of this section, accept requests for legal services from eligible
56 persons entitled to counsel under this chapter or otherwise so entitled under the Constitution or
57 laws of the United States or of the state of Missouri and provide such persons with legal services
58 when, in the discretion of the director or the defenders, such provision of legal services is
59 appropriate.

60 4. **Except as provided in subsection 5 of this section**, the director and defenders shall
61 provide legal services to an eligible person:

62 (1) Who is detained or charged with a **class A or B** felony, including appeals from a
63 conviction in such a case;

64 (2) [Who is detained or charged with a misdemeanor which will probably result in
65 confinement in the county jail upon conviction, including appeals from a conviction in such a
66 case, unless the prosecuting or circuit attorney has waived a jail sentence;

67 (3) Who is charged with a violation of probation when it has been determined by a judge
68 that the appointment of counsel is necessary to protect the person's due process rights under
69 section 559.036;

70 (4) Who has been taken into custody pursuant to section 632.489, including appeals from
71 a determination that the
72 person is a sexually violent predator and petitions for release, notwithstanding any provisions
73 of law to the contrary;

74 (5)] For whom the Federal Constitution or the State Constitution requires the
75 appointment of counsel; and

76 [(6)] **(3)** Who is charged in a case in which he or she faces a loss or deprivation of
77 liberty, and in which the federal or the State Constitution or any law of this state requires the
78 appointment of counsel; however, the director and the defenders shall not be required to provide
79 legal services to persons charged with violations of county or municipal ordinances, or
80 misdemeanor offenses except as provided in this section.

81 5. The director may:

82 (1) [Delegate the legal representation of any person to any member of the state bar of
83 Missouri;

84 (2)] Designate persons as representatives of the director for the purpose of making
85 indigency determinations and assigning counsel;

86 **(2) Contract out for legal services with private attorneys direct appeals of any cases**
87 **handled by public defenders.**

88 **6. The director and defenders shall not provide legal services or contract out for**
89 **legal services with private attorneys for the following types of cases:**

90 **(1) Motions under Rule 24.035 or 29.15 claiming ineffective assistance of counsel;**

91 **or**

92 **(2) Representation of any crime or witness.**

93 **7. The public defender shall provide legal services in those cases in which a private**
94 **attorney who has a contract for the provision of legal services under section 600.052 has**
95 **a conflict of interest.**

 600.044. **Except as provided in subdivision (2) of subsection 5 of section 600.042,**
2 a defender who undertakes to represent an eligible person shall continue to do so at every stage
3 of the case or proceeding, including the filing of a motion for new trial and the processing,
4 briefing, and argument of an appeal, until the defender is relieved of his duties by the director
5 or is permitted by a court to withdraw.

600.052. The office of administration shall award contracts under this section
2 **through a competitive bidding process. The competitive bidding process shall be designed**
3 **to award contracts to the lowest and best bidder and shall give priority to bidders who**
4 **exhibit experience in criminal law, demonstrate the capacity to provide effective**
5 **representation in all assigned cases, and carry sufficient malpractice insurance. The office**
6 **of administration shall also administer all contracts made by the director, including**
7 **contracts for cases which are conflicts of the public defender. The office of administration**
8 **may promulgate rules and regulations necessary to carry out the provisions of this**
9 **subsection.**

 Section B. Section A of this act shall become effective July 1, 2017.

✓