

FIRST REGULAR SESSION

HOUSE BILL NO. 796

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEMBKE.

Read 1st time March 15, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2053L.011

AN ACT

To repeal sections 600.042 and 600.086, RSMo, and to enact in lieu thereof two new sections relating to public defenders, with a penalty provision.

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

Section A. Sections 600.042 and 600.086, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 600.042 and 600.086, to read as follows:

600.042. 1. The director shall:

2 (1) Direct and supervise the work of the deputy directors and other state public defender
3 office personnel appointed pursuant to this chapter; and [he] **the director** and the chief deputy
4 director may participate in the trial and appeal of criminal actions at the request of the defender
5 or upon order of the commission;

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

14 (3) With the approval of the commission, establish such divisions, facilities and offices
15 and select such professional, technical and other personnel, including investigators, as [he] **the**
16 **director** deems reasonably necessary for the efficient operation and discharge of the duties of

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 the state public defender system under this chapter;

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

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

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

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

28 (8) With approval of the commission, promulgate necessary rules, regulations and
29 instructions consistent with this chapter defining the organization of [his] **the director's** office
30 and the responsibilities of public defenders, assistant public defenders, deputy public defenders
31 and other personnel;

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

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

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

42 2. No rule or portion of a rule promulgated under the authority of this chapter shall
43 become effective unless it has been promulgated pursuant to the provisions of section 536.024,
44 RSMo.

45 3. The director and defenders shall, within guidelines as established by the commission
46 and as set forth in subsection 4 of this section, accept requests for [legal services] **representation**
47 from eligible persons entitled to counsel under this chapter or otherwise so entitled under the
48 constitution or [laws] **statutes** of the United States or of the state of Missouri and provide such
49 persons with [legal services] **representation** when, in the discretion of the director or the
50 defenders, such provision of [legal services] **representation** is appropriate.

51 4. The director and defenders shall provide [legal services] **representation** to an eligible
52 person:

53 (1) Who is detained or charged with a felony, including appeals from a conviction in
54 such a case;

55 (2) Who is detained or charged with a misdemeanor which will probably result in
56 confinement in the county jail upon conviction, including appeals from a conviction in such a
57 case;

58 (3) Who is detained or charged with a violation of probation or **judicial** parole;

59 (4) Who has been taken into custody pursuant to section 632.489, RSMo, including
60 appeals from a determination that the person is a sexually violent predator, notwithstanding any
61 provisions of law to the contrary;

62 **(5) Who is in the custody of the Missouri department of corrections and is seeking**
63 **post conviction relief pursuant to section 547.360 or 547.370, RSMo, including appeals**
64 **from a denial of post conviction relief as provided in those same sections; and**

65 **(6) Who is in the custody of the Missouri department of corrections and has been**
66 **granted a hearing pursuant to subsection 6 of section 547.035, RSMo, and has been**
67 **determined by the defender to be indigent as provided in this chapter; and**

68 **(7) Who is an indigent committed person seeking conditional or unconditional**
69 **release under section 552.040, RSMo; and**

70 [(5)] **8.** For whom the federal [constitution] or [the] state constitution requires the
71 appointment of counsel **in a criminal case**; and

72 [(6)] **9.** For whom, in a case in which he **or she** faces a loss or deprivation of liberty, any
73 [law] **statute** of this state **specifically enumerated in this section** requires the appointment of
74 counsel; however, the director and the defenders shall not be required to provide [legal services]
75 **representation** to persons charged with violations of county or municipal ordinances.

76 5. The director may:

77 (1) Delegate the legal representation of any person to any member of the state bar of
78 Missouri;

79 (2) Designate persons as representatives of the director for the purpose of making
80 indigency determinations and assigning counsel[.];

81 **(3) Refuse representation in any case, even where the accused is otherwise eligible,**
82 **when the director determines that resources and caseloads in a jurisdiction are such that**
83 **the public defender cannot provide competent and effective assistance of counsel as**
84 **provided under guidelines for representation or caseload standards established by the**
85 **commission;**

86 **(4) In any case in which the director declines representation to an otherwise eligible**
87 **defendant as provided in subdivision (3) of subsection 5 of this section, the court may**
88 **appoint a member of the Missouri bar who is not employed by the Missouri state public**

89 **defender. Any payment to the private attorney for his or her services or for the costs of**
90 **litigation in any case in which the court appointed private counsel shall not be paid from**
91 **the budget of the Missouri public defender system, but may be paid as an expenditure**
92 **under section 476.270, RSMo.**

600.086. 1. A person shall be considered eligible for representation under sections
2 600.011 to 600.048 and 600.086 to 600.096 when it appears from all the circumstances of the
3 case including [his] **such person's** ability to make bond, [his] **such person's** income and the
4 number of persons dependent on [him] **such person** for support that the person does not have
5 the means at his **or her** disposal or available to him **or her** to obtain counsel in his **or her** behalf
6 and is indigent as hereafter determined.

7 2. Within the parameters set by subsection 1 of this section, the commission may
8 establish and enforce such further rules for courts and defenders in determining indigency as may
9 be necessary.

10 3. The determination of indigency of any person seeking the services of the state public
11 defender system shall be made by the defender or anyone serving under [him] **the defender** at
12 any stage of the proceedings. [Upon motion by either party, the court in which the case is
13 pending shall have authority to determine whether the services of the public defender may be
14 utilized by the defendant. Upon the courts finding that the defendant is not indigent, the public
15 defender shall no longer represent the defendant. Any such person claiming indigency shall file
16 with the court an affidavit which shall contain the factual information required by the
17 commission under rules which may be established by the commission in determining indigency]
18 **A court or party seeking public defender services may appeal the determination of the**
19 **defender to the director. No further appeal is allowed. No court may appoint the public**
20 **defender or any attorney employed by the Missouri state public defender to undertake**
21 **representation in any case. The provisions of this chapter shall not prevent the court from**
22 **appointing any member of the Missouri bar who is not employed by the Missouri state**
23 **public defender, in which case all fees and costs may be paid as an expenditure as provided**
24 **in section 476.270, RSMo.**

25 4. Any person who intentionally falsifies such affidavit in order to obtain state public
26 defender system services shall be guilty of a class A misdemeanor.

27 5. The director or anyone serving under [him] **the director** may institute an investigation
28 into the financial status of any person seeking the services of the state public defender system
29 at such times as the circumstances shall warrant. In connection therewith he **or she** shall have
30 the authority to require any person seeking the services of the state public defender system or the
31 parents, guardians or other persons responsible for the support of a person seeking the services
32 of the state public defender system who is a minor or those persons holding property in trust or

33 otherwise for such person to execute and deliver such written authorization as may be necessary
34 to provide the director or anyone serving under [him] **the director** with access to records of
35 public or private sources, otherwise confidential, or any other information which may be relevant
36 to the making of a decision as to eligibility under this chapter. The director, chief deputy
37 director, each public defender and each assistant and deputy public defender or designee are
38 authorized to obtain information from any office of the state or any subdivision, or agency
39 thereof or political subdivision on request and without payment of any fees. Any office of the
40 state or any subdivision, or agency thereof or political subdivision from which the director, chief
41 deputy director, public defender and each assistant and deputy public defender or designee
42 requests information pursuant to this section shall supply such information, without payment of
43 any fees.

44 6. The burden shall lie on the accused or the defendant to convince the defender or the
45 [court] **director** of his **or her** eligibility to receive legal services, in any conference, hearing or
46 question thereon. **If at anytime during the disposition of the case an accused or defendant**
47 **becomes financially able or has the means to acquire counsel, the director shall notify the**
48 **court and the Missouri state public defender system may at the discretion of the director**
49 **cease representing the accused.**