

HCS SCS SB 767 -- PUBLIC DEFENDER SYSTEM

SPONSOR: Goodman (Stevenson)

COMMITTEE ACTION: Voted "do pass" by the Committee on Judiciary by a vote of 6 to 3.

This substitute authorizes the addition of one associate circuit judge in the 16th, 39th, and 40th judicial circuits and two associate circuit judges in the 21st and 31st judicial circuits. Six circuit judges are removed from the 22nd judicial circuit, and one circuit judge is removed from the 43rd judicial circuit.

A court is authorized to waive, without the necessity of a motion, all costs and expenses related to the prosecution of a suit when a party is represented by a legal aid clinic utilizing the services of law students licensed to provide legal services to indigent persons in accordance with Missouri Supreme Court Rule 13.01.

The Public Defender Commission is required to establish maximum public defender caseload standards to ensure the system fulfills the state's constitutional obligations to provide effective legal representation and comply with the rules of professional conduct for attorneys. The caseload standards must take into account national public defender caseload standards, the particulars of attorney practice in local jurisdictions, and the needs of the criminal justice system. The commission may authorize the Director of the Office of State Public Defender to contract with private attorneys to provide defense services when caseload standards cannot be met. Any person determined to be eligible for public defender services but the services are not available will be placed on a waiting list. The substitute specifies that the public defender must provide services to eligible persons in any misdemeanor case only when the prosecuting attorney has requested a jail sentence which will probably result in confinement. The public defender will not be available for appointment by the court in noncapital state post-conviction proceedings.

When the public defender is unavailable to accept additional cases because maximum caseloads have been met, the court and the public defender must proceed as follows:

- (1) The public defender must continue to make indigency determinations and inform the court of its determinations;
- (2) The court may proceed without providing counsel to the defendant if, after consulting with the prosecuting attorney, it determines that a case can be disposed of without a jail or

prison sentence;

(3) The court must place the case on a waiting list for public defender services if a jail or prison sentence remains a possible disposition; and

(4) The court determines the order in which cases are placed on the waiting list depending on specified circumstances.

The office director will set the compensation of all personnel of the public defender system except for deputy directors and must ensure that public defender caseloads remain within the maximum standards established by the commission.

Any unexpended balance in the Legal Defense and Defender Fund equal to 20% of the current annual appropriation will be exempt from the provisions requiring its reversion to general revenue.

FISCAL NOTE: Estimated Income on General Revenue Fund of \$119,997 in FY 2009, \$239,856 in FY 2010, and \$245,571 in FY 2011. No impact on Other State Funds in FY 2009, FY 2010, and FY 2011.

PROPOSERS: Supporters say that the bill provides a badly needed safety measure for the growing caseload of Missouri public defenders; helps reduce caseloads by not requiring public defenders in post-conviction proceedings in noncapital cases where a defendant has filed a pro-se motion for relief; creates a system of priorities for the appointment of public defenders; and codifies various practices of the state legal public defender system.

Testifying for the bill were Senator Goodman; and Cathy Kelly, Missouri State Public Defender System.

OPPOSERS: There was no opposition voiced to the committee.