

SECOND REGULAR SESSION

HOUSE BILL NO. 2396

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROSS.

6205H.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 legal services for indigent defendants.

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Section A. Sections 600.042 and 600.044, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 600.042, 600.044, and 600.052, to read as follows: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]~~ **all class C, D, and E felony cases, all**
38 **misdemeanor cases, all traffic cases, and all probation violation cases;**

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 (12) Prepare a plan to establish district offices, the boundaries of which shall coincide
43 with existing judicial circuits. Any district office may contain more than one judicial circuit
44 within its boundaries, but in no event shall any district office boundary include any geographic
45 region of a judicial circuit without including the entire judicial circuit. The director shall submit
46 the plan to the chair of the house judiciary committee and the chair of the senate judiciary
47 committee, with fiscal estimates, by December 31, 2014. The plan shall be implemented by
48 December 31, 2021.

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

51 3. The director and defenders shall, within guidelines as established by the commission
52 and as set forth in subsection 4 of this section, accept requests for legal services from eligible

53 persons entitled to counsel under this chapter or otherwise so entitled under the constitution or
54 laws of the United States or of the state of Missouri and provide such persons with legal services
55 when, in the discretion of the director or the defenders, such provision of legal services is
56 appropriate.

57 4. The director and defenders shall provide legal services to an eligible person:

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

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

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

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

69 ~~[(5)] (3) For whom the federal constitution or the state constitution requires the~~
70 ~~appointment of counsel; and~~

71 ~~[(6)] (4) Who is charged in a case in which he or she faces a loss or deprivation of~~
72 ~~liberty, and in which the federal or the state constitution or any law of this state requires the~~
73 ~~appointment of counsel; however, the director and the defenders shall not be required to provide~~
74 ~~legal services to persons charged with violations of county or municipal ordinances, or~~
75 ~~misdemeanor offenses except as provided in this section.~~

76 5. The director may:

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

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

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

83 **6. The public defender shall provide legal services in those cases in which a private**
84 **attorney who has a contract for the provision of legal services under section 600.052 has**
85 **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 for legal services under
2 section 600.042 through a competitive bidding process with the approval of the presiding
3 judge of the judicial circuit where the services are rendered. The competitive bidding
4 process shall be designed to award contracts to the lowest and best bidder. In determining
5 the lowest and best bidder, priority shall be given to bidders who exhibit experience in
6 criminal law, demonstrate the capacity to provide effective representation in all assigned
7 cases, and carry sufficient malpractice insurance. The office of administration shall also
8 administer all contracts made by the director, including contracts for cases which are
9 conflicts of the public defender. The office of administration shall establish a quality
10 assurance program, with the assistance of each presiding circuit judge, to ensure that
11 defendants are being provided quality representation by private attorneys awarded
12 contracts under this section. The office of administration may promulgate rules and
13 regulations necessary to carry out the provisions of this subsection. Any rule or portion
14 of a rule, as that term is defined in section 536.010, that is created under the authority
15 delegated in this section shall become effective only if it complies with and is subject to all
16 of the provisions of chapter 536 and, if applicable, section 536.028. This section and
17 chapter 536 are nonseverable, and if any of the powers vested with the general assembly
18 pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul
19 a rule are subsequently held unconstitutional, then the grant of rulemaking authority and
20 any rule proposed or adopted after August 28, 2018, shall be invalid and void.**

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