

FIRST REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 245

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

0307S.03P

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 600.042 and 600.063, RSMo, and to enact in lieu thereof two new sections relating to the office of the public defender.

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

Section A. Sections 600.042 and 600.063, RSMo, are
2 repealed and two new sections enacted in lieu thereof, to be
3 known as sections 600.042 and 600.063, to read as follows:

600.042. 1. The director shall:

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

8 (2) Submit to the commission, between August fifteenth
9 and September fifteenth of each year, a report which shall
10 include all pertinent data on the operation of the state
11 public defender system, the costs, projected needs, and
12 recommendations for statutory changes. Prior to October
13 fifteenth of each year, the commission shall submit such
14 report along with such recommendations, comments,
15 conclusions, or other pertinent information it chooses to

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 make to the chief justice, the governor, and the general
17 assembly. Such reports shall be a public record, shall be
18 maintained in the office of the state public defender, and
19 shall be otherwise distributed as the commission shall
20 direct;

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

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

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

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

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

44 (8) With approval of the commission, promulgate
45 necessary rules, regulations and instructions consistent
46 with this chapter defining the organization of the state
47 public defender system and the responsibilities of division

48 directors, district defenders, deputy district defenders,
49 assistant public defenders and other personnel;

50 (9) With the approval of the commission, apply for and
51 accept on behalf of the public defender system any funds
52 which may be offered or which may become available from
53 government grants, private gifts, donations or bequests or
54 from any other source. Such moneys shall be deposited in
55 the [state general revenue] **public defender - federal and**
56 **other** fund;

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

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

67 2. No rule or portion of a rule promulgated under the
68 authority of this chapter shall become effective unless it
69 has been promulgated pursuant to the provisions of section
70 536.024.

71 3. The director and defenders shall, within guidelines
72 as established by the commission and as set forth in
73 subsection 4 of this section, accept requests for legal
74 services from eligible persons entitled to counsel under
75 this chapter or otherwise so entitled under the constitution
76 or laws of the United States or of the state of Missouri and
77 provide such persons with legal services when, in the
78 discretion of the director or the defenders, such provision
79 of legal services is appropriate.

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

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

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

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

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

98 (5) For whom the federal constitution or the state
99 constitution requires the appointment of counsel; and

100 (6) Who is charged in a case in which he or she faces
101 a loss or deprivation of liberty, and in which the federal
102 or the state constitution or any law of this state requires
103 the appointment of counsel; however, the director and the
104 defenders shall not be required to provide legal services to
105 persons charged with violations of county or municipal
106 ordinances, or misdemeanor offenses except as provided in
107 this section.

108 5. The director may:

109 (1) Delegate the legal representation of an eligible
110 person to any member of the state bar of Missouri;

111 (2) Designate persons as representatives of the
112 director for the purpose of making indigency determinations
113 and assigning counsel.

114 **6. There is hereby created within the state treasury**
115 **the "Public Defender - Federal and Other Fund", which shall**
116 **be funded annually by appropriation, and which shall contain**
117 **moneys received from any other funds from government grants,**
118 **private gifts, donations, bequests, or any other source to**
119 **be used for the purpose of funding local offices of the**
120 **office of the state public defender. The state treasurer**
121 **shall be the custodian of the fund and shall approve**
122 **disbursements from the fund upon the request of the director**
123 **of the office of state public defender. Any interest or**
124 **other earnings with respect to amounts transferred to the**
125 **fund shall be credited to the fund. Notwithstanding the**
126 **provisions of section 33.080 to the contrary, any unexpended**
127 **balances in the fund at the end of any fiscal year shall not**
128 **be transferred to the general revenue fund or any other fund.**

600.063. 1. Upon approval by the director or the
2 commission, any district defender may file a motion to
3 request a conference to discuss caseload issues involving
4 any individual public defender or defenders, but not the
5 entire office, with the presiding judge of any circuit court
6 served by the district office. The motion shall state the
7 reasons why the individual public defender or public
8 defenders will be unable to provide effective assistance of
9 counsel due to caseload concerns. When a motion to request
10 a conference has been filed, the clerk of the court shall
11 immediately provide a copy of the motion to the prosecuting
12 or circuit attorney who serves the circuit court.

13 2. If the presiding judge approves the motion, a date
14 for the conference shall be set within thirty days of the

15 filing of the motion. The court shall provide notice of the
16 conference date and time to the district defender and the
17 prosecuting or circuit attorney.

18 3. Within thirty days of the conference, the presiding
19 judge shall issue an order either granting or denying
20 relief. If relief is granted, it shall be based upon a
21 finding that the individual public defender or defenders
22 will be unable to provide effective assistance of counsel
23 due to caseload issues. The judge may order one or more of
24 the following types of relief in any appropriate combination:

25 (1) Appoint private counsel to represent any eligible
26 defendant pursuant to the provisions of section 600.064;

27 (2) Investigate the financial status of any defendant
28 determined to be eligible for public defender representation
29 under section 600.086 and make findings regarding the
30 eligibility of such defendants;

31 (3) Determine, with the express concurrence of the
32 prosecuting or circuit attorney, whether any cases can be
33 disposed of without the imposition of a jail or prison
34 sentence and allow such cases to proceed without the
35 provision of counsel to the defendant;

36 (4) Modify the conditions of release ordered in any
37 case in which the defendant is being represented by a public
38 defender, including, but not limited to, reducing the amount
39 of any bond required for release; **and**

40 (5) [Place cases on a waiting list for defender
41 services, taking into account the seriousness of the case,
42 the incarceration status of the defendant, and such other
43 special circumstances as may be brought to the attention of
44 the court by the prosecuting or circuit attorney, the
45 district defender, or other interested parties; and

46 (6)] Grant continuances.

47 4. Upon receiving the order, the prosecuting or
48 circuit attorney and the district defender shall have ten
49 days to file an application for review to the appropriate
50 appellate court. Such appeal shall be expedited by the
51 court in every manner practicable.

52 5. Nothing in this section shall deny any party the
53 right to seek any relief authorized by law nor shall any
54 provisions of this section be construed as providing a basis
55 for a claim for post-conviction relief by a defendant.

56 6. The commission and the supreme court may make such
57 rules and regulations to implement this section. Any rule
58 or portion of a rule, as that term is defined in section
59 536.010, that is created by the commission under the
60 authority delegated in this section shall become effective
61 only if it complies with and is subject to all of the
62 provisions of chapter 536 and, if applicable, section
63 536.028. This section and chapter 536 are nonseverable and
64 if any of the powers vested with the general assembly
65 pursuant to chapter 536 to review, to delay the effective
66 date, or to disapprove and annul a rule are subsequently
67 held unconstitutional, then the grant of rulemaking
68 authority and any rule proposed or adopted after August 28,
69 2013, shall be invalid and void.

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