

# State Senator Robert Mayer The Mayer Memo

Senator Robert Mayer - Serving Butler, Dunklin, New Madrid, Pemiscot, Ripley, Stoddard & Wayne Counties



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## State Supreme Court Makes Ruling Regarding Right to Representation by a Public Defender

The Missouri Supreme Court made a ruling on Dec. 8 that impacts our public defender system in Missouri. The ruling came following three cases involving public defender caseload: a public defender commission rule that permits declining a client who had previously hired a private attorney, a public defender rule that permits declining a client facing less serious crimes and a case regarding whether a judge may appoint a public defender to represent a client as a private attorney.

In its opinion, the Missouri Supreme Court concluded public defenders — even with significant caseload overload problems — are still required by Missouri law to provide representation for indigent defendants. The Court declared public defenders cannot base rules for refusal to represent indigent defendants upon *classifications*. However, the Court does leave public defender offices with alternate avenues in which to seek caseload relief.

When a public defender's office considers itself to have been overburdened for three consecutive months, it may declare "limited availability" and notify the presiding judge in the judicial circuit and prosecutors. Then those parties must try to work together to decide how best to manage the public defender caseload. Their options for reducing the demand for public defender services, which must be agreed to by all parties, include:

- Reaching an agreement with prosecutors to limit the cases in which the state seeks prison time;
- Determining what cases or categories of cases in which a private attorney instead of a public defender can be appointed to represent a defendant; and
- Judges can elect not to appoint counsel in certain cases, which would result in cases being dismissed.

In instances in which the public defender's office is overburdened and an agreement cannot be reached, the office may suspend taking all cases until the caseload is alleviated (rather than refusing cases based upon the above classifications).

You may recall the General Assembly passed a bill ([Senate Bill 37](#)) earlier this year that was designed to alleviate the public defender caseload by creating more flexibility and efficiency and addressing a backlog of cases and resource shortages. The governor vetoed the legislation, saying establishing caseload limits would burden other parts of the criminal justice system.

In the meantime, however, I do believe the recent Missouri Supreme Court decision has provided guidance to our state's public defenders, prosecutors and judges regarding caseload reduction in accordance with Missouri law.

While there may be some disagreement among prosecutors and public defenders across the state about the severity of challenges within our public defender system, there is no question our state relies on its public defenders to represent about 80 percent of all people charged with crimes carrying the potential for jail time. Through this state-supported program, public defenders provide an

important service to those who cannot afford legal representation and help our state meet its obligations of justice for poor and indigent citizens.

As always, if you have comments or questions about this week's column or any other matter involving state government, please do not hesitate to contact me. You can reach my office by phone at 1-877-291-5584.

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