

FIRST REGULAR SESSION

SENATE BILL NO. 414

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Read 1st time February 27, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1820S.03I

AN ACT

To repeal sections 217.720, 559.036, 600.011, 600.040, 600.042, and 600.048, RSMo, and to enact in lieu thereof eight new sections relating to the legal defense of indigent persons, with existing penalty provisions.

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

Section A. Sections 217.720, 559.036, 600.011, 600.040, 600.042, and
2 600.048, RSMo, are repealed and eight new sections enacted in lieu thereof, to be
3 known as sections 217.720, 559.036, 600.011, 600.040, 600.042, 600.048, 600.062,
4 and 600.064, to read as follows:

217.720. 1. At any time during release on parole or conditional release
2 the board may issue a warrant for the arrest of a released offender for violation
3 of any of the conditions of parole or conditional release. The warrant shall
4 authorize any law enforcement officer to return the offender to the actual custody
5 of the correctional center from which the offender was released, or to any other
6 suitable facility designated by the board. If any parole or probation officer has
7 probable cause to believe that such offender has violated a condition of parole or
8 conditional release, the probation or parole officer may issue a warrant for the
9 arrest of the offender. The probation or parole officer may effect the arrest or
10 may deputize any officer with the power of arrest to do so by giving the officer a
11 copy of the warrant which shall outline the circumstances of the alleged violation
12 and contain the statement that the offender has, in the judgment of the probation
13 or parole officer, violated conditions of parole or conditional release. The warrant
14 delivered with the offender by the arresting officer to the official in charge of any
15 facility designated by the board to which the offender is brought shall be
16 sufficient legal authority for detaining the offender. After the arrest the parole

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

17 or probation officer shall present to the detaining authorities a similar statement
18 of the circumstances of violation. Pending hearing as hereinafter provided, upon
19 any charge of violation, the offender shall remain in custody or incarcerated
20 without consideration of bail.

21 2. If the offender is arrested under the authority granted in subsection 1
22 of this section, the offender shall have the right to a preliminary hearing on the
23 violation charged unless the offender waives such hearing. **At the preliminary**
24 **hearing, or final hearing if the preliminary hearing is waived, the judge**
25 **shall inform the offender that he or she may have the right to request**
26 **the appointment of counsel if the offender is unable to retain counsel.**
27 **If the offender requests counsel, the judge shall determine whether**
28 **counsel is necessary to protect the offender's due process rights. If the**
29 **judge determines that counsel is not necessary, the judge shall state the**
30 **grounds for the decision in the record.** Upon such arrest and detention, the
31 parole or probation officer shall immediately notify the board and shall submit
32 in writing a report showing in what manner the offender has violated the
33 conditions of his parole or conditional release. The board shall order the offender
34 discharged from such facility, require as a condition of parole or conditional
35 release the placement of the offender in a treatment center operated by the
36 department of corrections, or shall cause the offender to be brought before it for
37 a hearing on the violation charged, under such rules and regulations as the board
38 may adopt. If the violation is established and found, the board may continue or
39 revoke the parole or conditional release, or enter such other order as it may see
40 fit. If no violation is established and found, then the parole or conditional release
41 shall continue. If at any time during release on parole or conditional release the
42 offender is arrested for a crime which later leads to conviction, and sentence is
43 then served outside the Missouri department of corrections, the board shall
44 determine what part, if any, of the time from the date of arrest until completion
45 of the sentence imposed is counted as time served under the sentence from which
46 the offender was paroled or conditionally released.

47 3. An offender for whose return a warrant has been issued by the board
48 shall, if it is found that the warrant cannot be served, be deemed to be a fugitive
49 from justice or to have fled from justice. If it shall appear that the offender has
50 violated the provisions and conditions of his parole or conditional release, the
51 board shall determine whether the time from the issuing date of the warrant to
52 the date of his arrest on the warrant, or continuance on parole or conditional

53 release shall be counted as time served under the sentence. In all other cases,
54 time served on parole or conditional release shall be counted as time served under
55 the sentence.

56 4. At any time during parole or probation, the board may issue a warrant
57 for the arrest of any person from another jurisdiction, the visitation and
58 supervision of whom the board has undertaken pursuant to the provisions of the
59 interstate compact for the supervision of parolees and probationers authorized in
60 section 217.810, for violation of any of the conditions of release, or a notice to
61 appear to answer a charge of violation. The notice shall be served personally
62 upon the person. The warrant shall authorize any law enforcement officer to
63 return the offender to any suitable detention facility designated by the
64 board. Any parole or probation officer may arrest such person without a warrant,
65 or may deputize any other officer with power of arrest to do so by issuing a
66 written statement setting forth that the defendant has, in the judgment of the
67 parole or probation officer, violated the conditions of his release. The written
68 statement delivered with the person by the arresting officer to the official in
69 charge of the detention facility to which the person is brought shall be sufficient
70 legal authority for detaining him. After making an arrest the parole or probation
71 officer shall present to the detaining authorities a similar statement of the
72 circumstances of violation.

559.036. 1. A term of probation commences on the day it is imposed.
2 Multiple terms of Missouri probation, whether imposed at the same time or at
3 different times, shall run concurrently. Terms of probation shall also run
4 concurrently with any federal or other state jail, prison, probation or parole term
5 for another offense to which the defendant is or becomes subject during the
6 period, unless otherwise specified by the Missouri court.

7 2. The court may terminate a period of probation and discharge the
8 defendant at any time before completion of the specific term fixed under section
9 559.016 if warranted by the conduct of the defendant and the ends of justice. The
10 court may extend the term of the probation, but no more than one extension of
11 any probation may be ordered except that the court may extend the term of
12 probation by one additional year by order of the court if the defendant admits he
13 or she has violated the conditions of probation or is found by the court to have
14 violated the conditions of his or her probation. Total time on any probation term,
15 including any extension shall not exceed the maximum term established in
16 section 559.016. Procedures for termination, discharge and extension may be

17 established by rule of court.

18 3. If the defendant violates a condition of probation at any time prior to
19 the expiration or termination of the probation term, the court may continue him
20 on the existing conditions, with or without modifying or enlarging the conditions
21 or extending the term.

22 4. (1) If a continuation, modification, enlargement or extension is not
23 appropriate under this section, the court shall order placement of the offender in
24 one of the department of corrections' one hundred twenty-day programs so long
25 as:

26 (a) The underlying offense for the probation is a class C or D felony or an
27 offense listed in chapter 195; except that, the court may, upon its own motion or
28 a motion of the prosecuting or circuit attorney, make a finding that an offender
29 is not eligible if the underlying offense is involuntary manslaughter in the first
30 degree, involuntary manslaughter in the second degree, aggravated stalking,
31 assault in the second degree, sexual assault, domestic assault in the second
32 degree, assault of a law enforcement officer in the second degree, statutory rape
33 in the second degree, statutory sodomy in the second degree, deviate sexual
34 assault, sexual misconduct involving a child, incest, endangering the welfare of
35 a child in the first degree under subdivision (1) or (2) of subsection 1 of section
36 568.045, abuse of a child, invasion of privacy or any case in which the defendant
37 is found guilty of a felony offense under chapter 571;

38 (b) The probation violation is not the result of the defendant being an
39 absconder or being found guilty of, pleading guilty to, or being arrested on
40 suspicion of any felony, misdemeanor, or infraction. For purposes of this
41 subsection, "absconder" shall mean an offender under supervision who has left
42 such offender's place of residency without the permission of the offender's
43 supervising officer for the purpose of avoiding supervision;

44 (c) The defendant has not violated any conditions of probation involving
45 the possession or use of weapons, or a stay-away condition prohibiting the
46 defendant from contacting a certain individual; and

47 (d) The defendant has not already been placed in one of the programs by
48 the court for the same underlying offense or during the same probation term.

49 (2) Upon receiving the order, the department of corrections shall conduct
50 an assessment of the offender and place such offender in the appropriate one
51 hundred twenty-day program under subsection 3 of section 559.115.

52 (3) Notwithstanding any of the provisions of subsection 3 of section

53 559.115 to the contrary, once the defendant has successfully completed the
54 program under this subsection, the court shall release the defendant to continue
55 to serve the term of probation, which shall not be modified, enlarged, or extended
56 based on the same incident of violation. Time served in the program shall be
57 credited as time served on any sentence imposed for the underlying offense.

58 5. If the defendant is not eligible under subsection 4 of this section for
59 placement in a program and a continuation, modification, enlargement, or
60 extension of the term under this section is not appropriate, the court may revoke
61 probation and order that any sentence previously imposed be executed. If
62 imposition of sentence was suspended, the court may revoke probation and
63 impose any sentence available under section 557.011. The court may mitigate
64 any sentence of imprisonment by reducing the prison or jail term by all or part
65 of the time the defendant was on probation. The court may, upon revocation of
66 probation, place an offender on a second term of probation. Such probation shall
67 be for a term of probation as provided by section 559.016, notwithstanding any
68 amount of time served by the offender on the first term of probation.

69 6. Probation shall not be revoked without giving the probationer notice
70 and an opportunity to be heard on the issues of whether **[he] such probationer**
71 **violated a condition of probation and, if [he did] a condition was violated,**
72 **whether revocation is warranted under all the circumstances. At any**
73 **preliminary hearing, or final hearing if a preliminary hearing is not**
74 **held, on the violation, the judge shall inform the probationer that he or**
75 **she may have the right to request the appointment of counsel if the**
76 **probationer is unable to retain counsel. If the probationer requests**
77 **counsel, the judge shall determine whether counsel is necessary to**
78 **protect the probationer's due process rights. If the judge determines**
79 **that counsel is not necessary, the judge shall state the grounds for the**
80 **decision in the record.**

81 7. The prosecuting or circuit attorney may file a motion to revoke
82 probation or at any time during the term of probation, the court may issue a
83 notice to the probationer to appear to answer a charge of a violation, and the
84 court may issue a warrant of arrest for the violation. Such notice shall be
85 personally served upon the probationer. The warrant shall authorize the return
86 of the probationer to the custody of the court or to any suitable detention facility
87 designated by the court. Upon the filing of the prosecutor's or circuit attorney's
88 motion or on the court's own motion, the court may immediately enter an order

89 suspending the period of probation and may order a warrant for the defendant's
90 arrest. The probation shall remain suspended until the court rules on the
91 prosecutor's or circuit attorney's motion, or until the court otherwise orders the
92 probation reinstated.

93 8. The power of the court to revoke probation shall extend for the duration
94 of the term of probation designated by the court and for any further period which
95 is reasonably necessary for the adjudication of matters arising before its
96 expiration, provided that some affirmative manifestation of an intent to conduct
97 a revocation hearing occurs prior to the expiration of the period and that every
98 reasonable effort is made to notify the probationer and to conduct the hearing
99 prior to the expiration of the period.

600.011. The following words and phrases as used in this chapter have the
2 following meanings, unless the context otherwise requires:

3 (1) "Assigned counsel" means private attorneys who are hired by the state
4 public defender director to handle the cases of eligible persons from time to time
5 on a case basis;

6 (2) ["Chief deputy director" means the attorney appointed by the
7 commission to assist the state public defender director and to exercise the duties
8 and powers of the director in his absence or upon his resignation;

9 (3) **"Assistant public defender", a staff attorney within a
10 particular public defender office responsible for the handling of cases
11 of eligible persons;**

12 (3) "Commission" [means], the public defender commission;

13 (4) "Defender(s)", includes both attorneys which serve as staff attorneys
14 in the state defender system and [assigned] **contract** counsel [who provide
15 defense services on a case basis], but does not include secretarial, investigative,
16 social service, or paraprofessional staff;

17 (5) **"Deputy director", the attorney or attorneys appointed by the
18 commission to assist the state public defender director and to
19 temporarily exercise the duties and powers of the director in his or her
20 absence or upon his or her resignation, pending the commission's
21 appointment of a new director;**

22 (6) **"Deputy district defender", an attorney who assists the
23 district defender in the management and supervision of a public
24 defender district office and performs the duty of the district defender
25 in his or her absence;**

- 26 (7) "Director" [means], the state public defender director;
- 27 [(6)] (8) "District defender", the managing attorney in charge of
- 28 a public defender district office;
- 29 (9) "Division director", an employee responsible for the
- 30 supervision and management of multiple district offices or areas of
- 31 statewide responsibility as assigned by the director, or both;
- 32 (10) "Eligible person" [means], a person who falls within the financial
- 33 rules for legal representation at public expense prescribed by section 600.086;
- 34 [(7)] (11) "State public defender system" [means], a system for providing
- 35 defense services to every jurisdiction within the state by means of a centrally
- 36 administered organization having a full-time staff.

600.040. 1. The city or county shall provide office space and utility

2 services, other than telephone service, for the [circuit or regional] **district** public

3 defender and his **or her** personnel. If there is more than one county in a [circuit

4 or region] **district**, each county shall contribute, on the basis of population, its

5 pro rata share of the costs of office space and utility services, other than

6 telephone service. The state shall pay, within the limits of the appropriation

7 therefor, all other expenses and costs of the state public defender system

8 authorized under this chapter.

9 2. A complete budget for the state public defender system shall be

10 provided through an annual appropriation subject to approval by the governor

11 and the general assembly. The budget request for the state public defender

12 system shall be approved by the commission and submitted directly to the

13 governor and the general assembly by the director and shall not be subject to

14 diminution or alteration by the judicial department of state government.

15 3. Any person who is a public defender or employee of a public defender

16 shall be entitled to all benefits of the Missouri state employees' retirement system

17 as defined in sections 104.310 to 104.550.

600.042. 1. The director shall:

2 (1) Direct and supervise the work of the deputy directors and other state

3 public defender office personnel appointed pursuant to this chapter; and he **or**

4 **she** and the [chief] deputy director **or directors** may participate in the trial and

5 appeal of criminal actions at the request of the defender;

6 (2) Submit to the commission, between August fifteenth and September

7 fifteenth of each year, a report which shall include all pertinent data on the

8 operation of the state public defender system, the costs, projected needs, and

9 recommendations for statutory changes. Prior to October fifteenth of each year,
10 the commission shall submit such report along with such recommendations,
11 comments, conclusions, or other pertinent information it chooses to make to the
12 chief justice, the governor, and the general assembly.

13 Such reports shall be a public record, shall be maintained in the office of the state
14 public defender, and shall be otherwise distributed as the commission shall
15 direct;

16 (3) With the approval of the commission, establish such divisions,
17 facilities and offices and select such professional, technical and other personnel,
18 including investigators, as he deems reasonably necessary for the efficient
19 operation and discharge of the duties of the state public defender system under
20 this chapter;

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

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

28 (6) Keep and maintain proper financial records with respect to the
29 **[providing] provision** of all public defender services for use in the calculating
30 of direct and indirect costs of any or all aspects of the operation of the state
31 public defender system;

32 (7) Supervise the training of all public defenders, **[assistant public**
33 **defenders, deputy public defenders]** and other personnel and establish such
34 training courses as shall be appropriate;

35 (8) With approval of the commission, promulgate necessary rules,
36 regulations and instructions consistent with this chapter defining the
37 organization of **[his office] the state public defender system** and the
38 responsibilities of **[public] division directors, district** defenders, **[assistant**
39 **public] deputy district** defenders, **[deputy] assistant** public defenders and
40 other personnel;

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

45 revenue fund;

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

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

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

55 3. The director and defenders shall, within guidelines as established by
56 the commission and as set forth in subsection 4 of this section, accept requests
57 for legal services from eligible persons entitled to counsel under this chapter or
58 otherwise so entitled under the constitution or laws of the United States or of the
59 state of Missouri and provide such persons with legal services when, in the
60 discretion of the director or the defenders, such provision of legal services is
61 appropriate.

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

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

66 (2) Who is detained or charged with a misdemeanor **in which the**
67 **prosecuting attorney has requested a jail sentence and which** will
68 probably result in confinement in the county jail upon conviction, including
69 appeals from a conviction in such a case;

70 (3) Who is [detained or] charged with a violation of probation or parole
71 **when it has been determined by a judge that the appointment of**
72 **counsel is necessary to protect the person's due process rights under**
73 **section 217.720 or section 559.036;**

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

78 (5) [For whom the federal constitution or the state constitution requires
79 the appointment of counsel; and

80 (6) For whom,] **Who is charged** in a case in which he **or she** faces a loss

81 or deprivation of liberty, **and in which the federal or the state constitution**
82 **or** any law of this state requires the appointment of counsel; however, the
83 director and the defenders shall not be required to provide legal services to
84 persons charged with violations of county or municipal ordinances, **or**
85 **misdemeanor offenses except as provided in this section.**

86 5. The director may:

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

89 (2) Designate persons as representatives of the director for the purpose
90 of making indigency determinations and assigning counsel.

600.048. 1. It shall be the duty of every person in charge of a jail, police
2 station, constable's or sheriff's office, or detention facility provided by any county
3 to post in a conspicuous place a notice stating in effect:

4 (1) That every person held in custody under a charge or suspicion of a
5 crime is entitled to have a lawyer;

6 (2) That if any such person is held in custody in connection with any of
7 the cases or proceedings set out in section 600.042, and wants a lawyer to
8 represent him **or her** and is unable, without substantial financial hardship to
9 [himself] **self** or his **or her** dependents, to obtain a lawyer, the state will provide
10 a lawyer to represent him [if he requests such representation] **or her upon**
11 **request**; and

12 (3) That if the state provides **such** a lawyer [for him, he], **the client** may
13 be liable to the state for the cost of the services and expenses of the lawyer who
14 handles [his] **the** case if he **or she** is or will be able to pay all or any part of such
15 costs. The notice shall also contain a listing of the cases and proceedings for
16 which defender services are available under section 600.042, and the telephone
17 number of a person or answering service to call to request that a person
18 designated by the state public defender system visit and interview him **or her**,
19 and [give him] **provide** further information.

20 2. A person who is charged or detained in any case listed in section
21 600.042 or who appears in court without counsel at any stage of a case, or any
22 other person on behalf of such person, may request that legal representation be
23 furnished to him **or her** by the state. The court or any person representing the
24 state public defender system to whom such request is made shall first [give him]
25 **provide** a copy of the notice referred to in subsection 1 of this section or call the
26 posted notice to [his] **the charged or detained person's** attention and permit

27 him **or her** to read it or [explain it] **have it explained** to him **or her**. If such
28 person renews a request for state public defender system services, he **or she**
29 shall be required to complete and sign an affidavit in accordance with section
30 600.086[. He] **and** shall be orally informed of the punishment for intentionally
31 falsifying such affidavit.

32 3. It shall be the duty of every person in charge of a jail, police station,
33 constable's or sheriff's office, or detention facility to make a room or place
34 available therein where any person held in custody under a charge or suspicion
35 of a crime will be able to talk privately with his **or her** lawyer, [his] lawyer's
36 representative, or any authorized person responding to [his] **a** request for an
37 interview concerning his **or her** right to counsel.

600.062. 1. Notwithstanding the provisions of sections 600.017
2 **and 600.042 to the contrary, neither the director nor the commission**
3 **shall have the authority to limit the availability of a district office or**
4 **any division director, district defender, deputy district defender, or**
5 **assistant public defender to accept cases based on a determination that**
6 **the office has exceeded a caseload standard.**

7 2. Upon approval by the director or the commission, any district
8 defender may file a motion to request a conference to discuss caseload
9 issues with the presiding judge of any circuit court served by the
10 district office. The motion shall state the reasons why the district
11 defender is seeking the conference. When a motion to request a
12 conference has been filed, the clerk of the court shall immediately
13 provide a copy of the motion to the prosecuting or circuit attorney who
14 serves the circuit court.

15 3. If the presiding judge approves the motion, a date for the
16 conference shall be set within thirty days of the filing of the
17 motion. The court shall provide notice of the conference date and time
18 to the district defender and the prosecuting or circuit attorney.

19 4. Within thirty days of the conference, the presiding judge shall
20 issue an order either granting or denying relief. The judge may order
21 one or more of the following types of relief in any appropriate
22 combination:

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

25 (2) Investigate the financial status of any defendant determined
26 to be eligible for public defender representation under section 600.086

27 and make findings regarding the eligibility of such defendants;

28 (3) Determine, after consultation with the prosecuting or circuit
29 attorney, whether any cases can be disposed of without the imposition
30 of a jail or prison sentence and allow such cases to proceed without the
31 provision of counsel to the defendant;

32 (4) Modify the conditions of release ordered in any case in which
33 the defendant is being represented by a public defender, including, but
34 not limited to, reducing the amount of any bond required for release;

35 (5) Place cases on a waiting list for defender services, taking into
36 account the seriousness of the case, the incarceration status of the
37 defendant, and such other special circumstances as may be brought to
38 the attention of the court by the prosecuting or circuit attorney, the
39 district defender, or other interested parties; and

40 (6) Grant continuances.

41 5. Upon receiving the order, the prosecuting or circuit attorney
42 and the district defender shall have ten days to file an application for
43 review to the appropriate appellate court. Such appeal shall be
44 expedited by the court in every manner practicable.

45 6. Nothing in this section shall deny any party the right to seek
46 any relief authorized by law.

47 7. The commission and the supreme court may make such rules
48 and regulations to implement this section. Any rule or portion of a
49 rule, as that term is defined in section 536.010, that is created by the
50 commission under the authority delegated in this section shall become
51 effective only if it complies with and is subject to all of the provisions
52 of chapter 536 and, if applicable, section 536.028. This section and
53 chapter 536 are nonseverable and if any of the powers vested with the
54 general assembly pursuant to chapter 536 to review, to delay the
55 effective date, or to disapprove and annul a rule are subsequently held
56 unconstitutional, then the grant of rulemaking authority and any rule
57 proposed or adopted after August 28, 2013, shall be invalid and void.

 600.064. 1. Before a circuit court judge appoints private counsel
2 to represent an indigent defendant, the judge shall:

3 (1) Investigate the defendant's financial status to verify that the
4 defendant does not have the means to obtain counsel; and

5 (2) Provide each appointed lawyer, upon request, with an
6 evidentiary hearing as to the propriety of the appointment, taking into

7 consideration the lawyer's right to earn a livelihood and be free from
8 involuntary servitude. If the judge determines after the hearing that
9 the appointment will cause any undue hardship to the lawyer, the judge
10 shall appoint another lawyer.

11 2. No judge shall require a lawyer to advance personal funds in
12 any amount for the payment of litigation expenses to prepare a proper
13 defense for an indigent defendant. If reasonable and necessary costs
14 are not available for the preparation of a proper defense for the
15 defendant within the time required by law for the trial of the defendant
16 and if the court is unable to appoint another lawyer for the defendant
17 who can prepare for trial within the time required by law, the judge
18 shall order the dismissal of the case without prejudice when necessary
19 to protect the defendant's constitutional rights.

20 3. If an employee of the general assembly is appointed to
21 represent an indigent defendant during the time period beginning
22 January first and ending June first of each year, or whenever the
23 general assembly is in a veto session or special session or is holding
24 out-of-session committee hearings, the judge who made the
25 appointment shall postpone the trial and all other proceedings of any
26 kind or nature to a date that does not fall within such time period or
27 appoint a different lawyer who is not an employee of the general
28 assembly to represent the defendant.

29 4. Private counsel appointed to represent an indigent defendant
30 may seek payment of litigation expenses from the public defender
31 system. Such litigation expenses shall not include counsel fees and
32 shall be limited to those expenses approved in advance by the director
33 as reasonably necessary for the proper defense of the defendant.

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