

SENATE BILL NO. 1039

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ARTHUR.

4956S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To repeal section 600.042, RSMo, and to enact in lieu thereof one new section relating to the funding for the office of the public defender.

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

Section A. Section 600.042, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 600.042,
3 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
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

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

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.

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