

SENATE RESOLUTION NO. 224

BY SENATOR BARROW

A RESOLUTION

To recreate the Louisiana Public Defender Optimal Funding Group to continue to study and to make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board.

WHEREAS, the Louisiana Public Defender Board was created and established as a state agency within the office of the governor to provide for the supervision, administration, and delivery of a statewide public defender system, to deliver uniform public defender services in all courts in this state; and

WHEREAS, Article I, Section 13 of the Constitution of Louisiana of 1974, in accordance with the state's obligation under the Sixth and Fourteenth Amendments of the United States Constitution, provides that at "each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment", and Section 13 further mandates that the legislature provide for "a uniform system for securing and compensating qualified counsel for indigents"; and

WHEREAS, under both the United States and Louisiana constitutions, it is the obligation of the legislature to provide for the general framework and resources necessary to deliver public defender services in this state; and

WHEREAS, in 2007, the legislature enacted the Louisiana Public Defender Act to provide all of the following:

(1) Ensuring that adequate public funding of the right to counsel is provided and managed in a cost-effective and fiscally responsible manner.

(2) Ensuring that the public defender system is free from undue political and judicial interference and free of conflicts of interests.

(3) Establishing a flexible delivery system that is responsive to and respectful of jurisdictional variances and local community needs and interests.

(4) Providing that the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.

(5) Providing for statewide oversight with the objective that all indigent criminal defendants who are eligible to have appointed counsel at public expense receive effective assistance of counsel at each critical stage of the proceeding.

(6) Providing for the ability to collect and verify objective statistical data on public defense workload and other critical data needed to assist state policymakers in making informed decisions on the appropriate funding levels to ensure an adequate service delivery system.

(7) Providing for the development of uniform binding standards and guidelines for the delivery of public defender services and for an effective management system to monitor and enforce compliance with such standards and guidelines; and

WHEREAS, the right to a public defender has been guaranteed to poor defendants in criminal court since the landmark 1963 Supreme Court decision *Gideon v. Wainwright*, but advocates say that right has been eroded by a lack of funding, which has led to a scarcity of resources, staggering caseloads, and in some cases, the agencies have rejected clients because they could not afford to defend them; and

WHEREAS, Louisiana funds representation for noncapital defendants through legislative appropriations at the state level, supplemented by traffic tickets and other local fines assessed by each defender district; and

WHEREAS, about eighty-five percent of criminal defendants in 2016 qualified for a court-appointed lawyer and thirty-three of the state's forty-two public defender offices started turning away cases they no longer had the resources to handle, arguing that whatever legal assistance they could provide would be so ineffective as to violate the defendant's constitutional rights anyway; and

WHEREAS, in 2016, the Louisiana State Public Defender was a defendant in the federal case *Yarls v. Bunton*, which challenged the constitutionality of the Louisiana public defenders' practice of placing indigent, noncapital defendants on wait lists for appointed counsel due to chronic budgetary shortfalls, thus violating poor defendants' Sixth and Fourteenth Amendments rights to a speedy trial and to assistance of counsel; and

WHEREAS, full realization of the Louisiana Public Defender's Act of 2007 requires thoughtful consideration by a group to study and make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board; and

WHEREAS, the Senate originally established a group to conduct this study with Senate Resolution No. 20 of the 2020 First Extraordinary Session which directed a report to the Senate by April 1, 2021, however, the group was unable to complete its study; and

WHEREAS, the Senate recreated the group with Senate Resolution No. 247 of the 2021 Regular Session, which directed a report to the Senate by March 1, 2022, however, the group was unable to complete its study.

THEREFORE, BE IT RESOLVED that the Senate of the Legislature of Louisiana does hereby reestablish and provide for the Louisiana Public Defender Optimal Funding Group to study and to make recommendations regarding the feasibility of establishing an optimal funding mechanism for the Louisiana Public Defender Board, and to propose recommendations, together with specific proposals for legislation, by written report to the Senate and to the David R. Poynter Legislative Research Library as required by R.S. 24:771 and 772, no later than March 1, 2023.

BE IT FURTHER RESOLVED that the group should include consideration of all matter pertinent to establishing an optimal funding mechanism for the Louisiana Public Defender Board.

BE IT FURTHER RESOLVED that the group shall consist of the following members:

(1) Six members appointed by the governor, including one from his staff and one from each appellate court district.

(2) Four members appointed by the chief justice of the supreme court, including one juvenile justice advocate, one retired judge with criminal law experience, and two at-large members.

(3) One member appointed by the president of the Senate.

(4) The president of the Louisiana State Bar Association, or his designee.

(5) The chairman of the Louisiana State Law Institute's Children's Code Committee,

or his designee.

- (6) The chairman of the Senate Committee on Finance, or his designee.
- (7) The chairman of the Senate Committee on Judiciary B, or his designee.
- (8) The chairman of the Senate Committee on Judiciary C, or his designee.
- (9) The state public defender, or his designee.
- (10) The chairman of the Foundation for Louisiana, or his designee.

BE IT FURTHER RESOLVED that each designating authority shall submit the names of designees to the group to the president of the Senate no later than August 1, 2022.

BE IT FURTHER RESOLVED the group shall convene for its first meeting no later than September 15, 2022, at the call of the president of the Senate's appointee who shall serve as chair, and at the first meeting, the members shall elect other officers as the group may deem appropriate.

BE IT FURTHER RESOLVED that a majority of the group shall constitute a quorum for the transaction of business. All official actions of the group shall require the affirmative vote of a majority of the members.

BE IT FURTHER RESOLVED that the members of the group shall serve without compensation, except per diem or expenses reimbursement to which they may be individually entitled as members of their constituent organizations.

BE IT FURTHER RESOLVED that the group shall terminate on the date of the submission of its report or March 1, 2023, whichever occurs first.

BE IT FURTHER RESOLVED that this Resolution shall supercede Senate Resolution No. 193 of the 2022 Regular Session.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the governor, the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, the chairman of the Foundation of Louisiana, the state public defender, and the chairman of the Louisiana State Law Institute's Children's Code Committee.

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PRESIDENT OF THE SENATE