

SECOND REGULAR SESSION

# HOUSE BILL NO. 2370

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE EVANS.

4983H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

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

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*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Section A. Section 600.042, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 600.042, to read as follows:

600.042. 1. The director shall:

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

(2) Submit to the commission, between August fifteenth and September fifteenth of each year, a report which shall include all pertinent data on the operation of the state public defender system, the costs, projected needs, and recommendations for statutory changes. Prior to October fifteenth of each year, the commission shall submit such report along with such recommendations, comments, conclusions, or other pertinent information it chooses to make to the chief justice, the governor, and the general assembly. Such reports shall be a public record, shall be maintained in the office of the state public defender, and shall be otherwise distributed as the commission shall direct;

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

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

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

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

29 (8) With approval of the commission, promulgate necessary rules, regulations and  
30 instructions consistent with this chapter defining the organization of the state public defender  
31 system and the responsibilities of division directors, district defenders, deputy district  
32 defenders, assistant public defenders and other personnel;

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

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

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

44 2. No rule or portion of a rule promulgated under the authority of this chapter shall  
45 become effective unless it has been promulgated pursuant to the provisions of section  
46 536.024.

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

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

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

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

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

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

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

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

72 5. The director may:

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

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

77 **6. There is hereby created within the state treasury the "Public Defender-**  
78 **Federal and Other Fund", which shall be funded annually by appropriation and which**  
79 **shall contain moneys received from any other funds from government grants, private**  
80 **gifts, donations, bequests, or any other source to be used for the purpose of funding local**  
81 **offices of the office of state public defender. The state treasurer shall be the custodian of**  
82 **the fund and shall approve disbursements from the fund upon the request of the**  
83 **director of the office of state public defender. Any interest or other earnings with**  
84 **respect to amounts transferred to the fund shall be credited to the fund.**  
85 **Notwithstanding the provisions of section 33.080 to the contrary, any unexpended**  
86 **balances in the fund at the end of any fiscal year shall not be transferred to the general**  
87 **revenue fund or any other fund.**

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