

SECOND REGULAR SESSION

# HOUSE BILL NO. 2538

100TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE EVANS.

5501H.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 legal services provided by the state public defender system.

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Section A. Section 600.042, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 600.042, to read as follows: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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (4) **Who is charged with a violation of parole if appointment of counsel has been**  
59 **determined by the parole board to be necessary and required by law;**

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

63 [~~5~~] (6) For whom the federal constitution or the state constitution requires the  
64 appointment of counsel; and

65 [~~6~~] (7) Who is charged in a case in which he or she faces a loss or deprivation of  
66 liberty, and in which the federal or the state constitution or any law of this state requires the  
67 appointment of counsel[; however,].

68 5. The director and the defenders shall not be required to provide legal services to  
69 persons charged with violations of county or municipal ordinances, or misdemeanor offenses  
70 except as provided in this section.

71 [~~5~~] 6. The director may:

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

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

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