

SECOND REGULAR SESSION

SENATE BILL NO. 705

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR DIXON.

Pre-filed December 1, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4366S.011

AN ACT

To repeal sections 600.042 and 600.090, RSMo, and to enact in lieu thereof two new sections relating to the state public defender system.

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

Section A. Sections 600.042 and 600.090, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 600.042 and 600.090, to
3 read as follows:

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 she
4 and the deputy director or directors may participate in the trial and appeal of
5 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. Such reports shall be a
13 public record, shall be maintained in the office of the state public defender, and
14 shall be otherwise distributed as the commission shall direct;

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

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

19 this chapter;

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

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

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

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

33 (8) With approval of the commission, promulgate necessary rules,
34 regulations and instructions consistent with this chapter defining the
35 organization of the state public defender system and the responsibilities of
36 division directors, district defenders, deputy district defenders, assistant public
37 defenders and other personnel;

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

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

46 (11) With the approval and on behalf of the commission, contract with
47 private attorneys for the collection and enforcement of liens and other judgments
48 owed to the state for services rendered by the state public defender system;

49 (12) Prepare a plan to establish district offices, the boundaries of which
50 shall coincide with existing judicial circuits. Any district office may contain more
51 than one judicial circuit within its boundaries, but in no event shall any district
52 office boundary include any geographic region of a judicial circuit without
53 including the entire judicial circuit. The director shall submit the plan to the
54 chair of the house judiciary committee and the chair of the senate judiciary

55 committee, with fiscal estimates, by December 31, 2014. The plan shall be
56 implemented by December 31, [2018] **2021**.

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

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

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

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

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

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

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

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

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

90 5. The director may:

91 (1) Delegate the legal representation of [any] **an eligible** person to any
92 member of the state bar of Missouri;

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

600.090. 1. (1) If a person is determined to be eligible for the services
2 provided by the state public defender system and if, at the time such
3 determination is made, he is able to provide a limited cash contribution toward
4 the cost of his representation without imposing a substantial hardship upon
5 himself or his dependents, such contribution shall be required as a condition of
6 his representation by the state public defender system.

7 (2) If at any time, either during or after the disposition of his case, such
8 defendant becomes financially able to meet all or some part of the cost of services
9 rendered to him, he shall be required to reimburse the commission in such
10 amounts as he can reasonably pay, either by a single payment or by installments
11 of reasonable amounts, in accordance with a schedule of charges for public
12 defender services prepared by the commission.

13 (3) No difficulty or failure in the making of such payment shall reduce or
14 in any way affect the rendering of public defender services to such persons.

15 2. (1) The reasonable value of the services rendered to a defendant
16 pursuant to sections 600.011 to 600.048 and 600.086 to 600.096 may in all cases
17 be a lien on any and all property to which the defendant shall have or acquire an
18 interest. The public defender shall effectuate such lien whenever the reasonable
19 value of the services rendered to a defendant appears to exceed one hundred fifty
20 dollars and may effectuate such lien where the reasonable value of those services
21 appears to be less than one hundred fifty dollars.

22 (2) To effectuate such a lien, the public defender shall, prior to the final
23 disposition of the case or within ten days thereafter, file a notice of lien setting
24 forth the services rendered to the defendant and a claim for the reasonable value
25 of such services with the clerk of the circuit court. The defendant shall be
26 personally served with a copy of such notice of lien. The court shall rule on
27 whether all or any part of the claim shall be allowed. The portion of the claim
28 approved by the court as the value of defender services which has been provided
29 to the defendant shall be a judgment at law. The public defender shall not be
30 required to pay filing or recording fees for or relating to such claim.

31 (3) Such judgment shall be enforceable in the name of the state on behalf
32 of the commission by the prosecuting attorney of the circuit in which the

33 judgment was entered.

34 (4) The prosecuting attorney may compromise and make settlement of, or,
35 with the concurrence of the director, forego any claims for services performed for
36 any person pursuant to this chapter whenever the financial circumstances of such
37 person are such that the best interests of the state will be served by such action.

38 3. The commission may contract with private attorneys for the collection
39 and enforcement of liens and other judgments owed to the state for services
40 rendered by the state public defender system.

41 4. The lien created by this section shall be from the time filed in the court
42 by the defender a charge or claim against any assets of the defendant; provided
43 further that the same shall be served upon the person in possession of the assets
44 or shall be recorded in the office of the recorder of deeds in the county in which
45 the person resides or in which the assets are located.

46 5. Funds collected pursuant to this section and section 600.093 shall be
47 credited to the "Legal Defense and Defender Fund" which is hereby created. The
48 moneys credited to the legal defense and defender fund shall be used for the
49 purpose of training public defenders, assistant public defenders, deputy public
50 defenders and other personnel pursuant to subdivision (7) of subsection 1 of
51 section 600.042, and may be used to pay for expert witness fees, the costs of
52 depositions, travel expenses incurred by witnesses in case preparation and trial,
53 expenses incurred for changes of venue and for other lawful expenses as
54 authorized by the public defender commission.

55 6. The state treasurer shall be the custodian of the legal defense and
56 defender fund, moneys in the legal defense and defender fund shall be deposited
57 the same as are other state funds, and any interest accruing to the legal defense
58 and defender fund shall be added to the legal defense and defender fund. The
59 legal defense and defender fund shall be subject to audit, the same as other state
60 funds and accounts, and shall be protected by the general bond given by the state
61 treasurer.

62 7. Upon the request of the director of the office of state public defender,
63 the commissioner of administration shall approve disbursements from the legal
64 defense and defender fund. The legal defense and defender fund shall be funded
65 annually by appropriation, but any unexpended **remaining** balance in the fund
66 at the end of the appropriation period [not in excess of one hundred and fifty
67 thousand dollars] shall be exempt from the provisions of section 33.080,
68 specifically as they relate to the transfer of fund balances to the general revenue,

69 and shall be the amount of the fund at the beginning of the appropriation period
70 next immediately following.

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