

2024 Regular Session

SENATE BILL NO. 467

BY SENATOR REESE

PUBLIC DEFENDER. Provides for the office of the state public defender. (gov sig)

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AN ACT

To amend and reenact R.S. 15:150(C), 152(B)(2) and (13), 161(A), (E)(11), (H)(1), and (I), 162(D) and (F), 167(E), 168(A) and (E)(3), 175(A)(1)(d) and (f), 176(C), 185.2(4) and (8), 186.2(4) and (8), and 186.3(B)(10), relative to indigent defender representation; to provide for the executive staff general qualifications; to provide for duties of the state public defender; to provide for powers and duties of the district public defenders; to provide for vacancies of the district public defenders; to provide for the Louisiana Public Defender Fund; to provide for the district indigent defender fund; to provide for proceedings to determine indigency; to provide for partial reimbursement by indigents; to provide for definitions; to provide for the Safe Return Representation Program; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:150(C), 152(B)(2) and (13), 161(A), (E)(11), (H)(1), and (I), 162(D) and (F), 167(E), 168(A) and (E)(3), 175(A)(1)(d) and (f), 176(C), 185.2(4) and (8), 186.2(4) and (8), and 186.3(B)(10) are hereby amended and reenacted to read as follows:

§150. Executive staff for office; general qualifications

* * *

1 C. The executive staff positions shall be permanent, full-time state
 2 employees of the office ~~and these employees shall not otherwise engage in the~~
 3 ~~practice of law, where applicable, or engage in any other business or profession.~~

4 * * *

5 §152. State public defender; qualifications; powers and duties; salary

6 * * *

7 B. The state public defender shall:

8 * * *

9 (2) Develop, present for the board's approval, and implement a strategic plan,
 10 standards, and guidelines for the delivery of public defender services.

11 * * *

12 (13) ~~Assist the board in establishing~~ Establish the standards and guidelines,
 13 policies; and procedures for the statewide delivery of indigent defender services in
 14 accordance with rules adopted by the office and as required by statute.

15 * * *

16 §161. District public defender; powers; duties; accounting; audit reporting; existing
 17 ~~chief indigent~~ district public defenders continued; establishment of
 18 office of the district office public defender

19 A. Except as otherwise provided for in this Section, the office shall ~~employ~~
 20 ~~or~~ contract, for a period of up to five years, with a district public defender to provide
 21 for the delivery and management of public defender services in each judicial district
 22 through the office of the district public defender. The office of the district public
 23 defender shall be a local body corporate with the power to sue and be sued, to
 24 enter into contracts on such terms and conditions as it deems advisable, and
 25 with all other general obligations and privileges of local political subdivisions.
 26 The district public defender shall be the policymaker for the office of the
 27 district public defender and shall be responsible for ensuring that the office of
 28 the district public defender satisfies its obligations and privileges under
 29 Louisiana law.

* * *

E. Each district public defender shall:

* * *

(11) Maintain a client workload for the ~~district office~~ **of the district public defender** as determined by the state public defender.

* * *

H.(1) In an effort to maintain continuity of ~~indigent~~ **public** defender services in each judicial district, any person ~~employed~~ **serving** as the ~~chief indigent~~ **district public** defender of a judicial district shall continue to ~~be employed by, or enter into~~ a contract with, the office and serve as the district public defender of that district.

* * *

I. Notwithstanding any other provision of law to the contrary, any attorney ~~employed by or~~ under contract with the office, the district public defender, or nonprofit organization contracting with the office, district public defender, or the office to provide legal counsel to an indigent person in a criminal proceeding shall be licensed to practice law in the state of Louisiana. The provisions of this Subsection shall not be construed to prohibit the use of an attorney licensed to practice law in another state to provide legal counsel to an indigent person in a criminal proceeding on a pro bono basis or who is receiving compensation from a grant administered by the office or from a grant administered by any nonprofit organization contracting with the office, provided that the out-of-state attorney is authorized to perform those services by the Louisiana Supreme Court. The legislature hereby specifically states that the provisions of this Subsection are in no way intended to, nor shall they be, construed in any manner which will impair any contractual obligations heretofore existing on June 1, 2007, of any out-of-state attorney authorized by the Louisiana Supreme Court to practice law in this state to provide legal counsel to an indigent person in a criminal proceeding.

§162. Vacancies in position of district public defender; formation of district public defender selection committee; powers and duties of committee;

1 process for filling vacancy for district public defender; interim
2 district public defender

3 * * *

4 D. Within thirty days of receiving the nominations for the position of district
5 public defender from the selection committee, the office shall ~~employ or~~ contract
6 with a district public defender from the list of nominees submitted to the board.

7 * * *

8 F. Whenever a vacancy occurs for the position of district public defender in
9 any judicial district having a population of less than thirty thousand, or having less
10 than four attorneys providing public defender services, the office shall evaluate the
11 district and make a determination regarding the appropriateness of ~~employing or~~
12 contracting with a district public defender or authorizing a district public defender
13 from a contiguous judicial district to manage and supervise public defender services
14 in that judicial district. If a decision is made by the office to ~~employ or~~ contract with
15 a district public defender, the office shall use the selection process provided for in
16 this Section to fill that vacancy.

17 * * *

18 §167. Louisiana Public Defender Fund

19 * * *

20 E. The office shall dedicate and disburse at least seventy-five percent of the
21 entirety of its annual budget and its funds in the LPD Fund as defined in Subsection
22 A of this Section each fiscal year to the **offices of the** district ~~defender offices~~ **public**
23 **defenders** and their indigent defender funds as defined in R.S. 15:168(A) in the
24 various judicial districts throughout the state. The provisions of this Subsection shall
25 not apply to statutorily dedicated funds or funds received through the awarding of
26 grants.

27 §168. Judicial district indigent defender fund

28 A. There is hereby created within each judicial district an indigent defender
29 fund which shall be administered by the district public defender **on behalf of the**

1 **office of the district public defender for that judicial district** and composed of
 2 funds provided for by this Section and such funds as may be appropriated or
 3 otherwise made available to it.

4 * * *

5 E. * * *

6 (3) No court shall have jurisdiction to order the payment of any funds
 7 administered by the ~~Louisiana Public Defender Board~~ **office** or district public
 8 defender for expert witnesses, or for any other reason.

9 * * *

10 §175. Proceedings to determine indigency

11 A.(1) * * *

12 (d) If the court makes the preliminary determination that the accused is or
 13 may be indigent, the court shall require the accused to make application to the **office**
 14 **of the** district public defender ~~office~~ or an attorney appointed or under contract to
 15 provide indigent defender services, who shall inquire further into the accused's
 16 economic status and, upon determining that the accused is indigent, shall file a
 17 certification thereof, in such form as the court may require and without paying costs
 18 in advance, in the record of the proceeding or enroll as counsel.

19 * * *

20 (f) An accused person or, if applicable, a parent or legal guardian of an
 21 accused minor or an accused adult person who is claimed as a dependent on the
 22 federal income tax submission of his parent or legal guardian, who makes application
 23 to the **office of the** district ~~office~~ **public defender** certifying that he is financially
 24 unable to employ counsel and requesting representation by indigent defense counsel
 25 or conflict counsel, shall pay a nonrefundable application fee of forty dollars to the
 26 **office of the** district ~~office~~ **public defender** or its designee, which fee shall be in
 27 addition to all other fees or costs lawfully imposed. If the office or other appropriate
 28 official determines that the person does not have the financial resources to pay the
 29 application fee based upon the financial information submitted, the fee may be

1 waived or reduced. An accused who is found to be indigent may not be refused
2 counsel for failure to pay the application fee.

3 * * *

4 §176. Partial reimbursement by indigents

5 * * *

6 C.(1) When an accused is initially determined to be indigent and appointed
7 counsel but subsequently hires private counsel, the court shall conduct a
8 contradictory hearing to determine the expenses of representing the accused incurred
9 by the **office of the** district ~~office~~ **public defender** or the service region, where
10 applicable. Upon determining the expenses incurred, the accused shall, within the
11 discretion of the court, be liable to reimburse the **office of the** district ~~office~~ **public**
12 **defender** or service region, where applicable, those expenses, upon a determination
13 that the accused was in fact not initially indigent. A judgment for the amount owed
14 may be recorded in the mortgage records in favor of the board for the payment of
15 money against the accused and may be enforced as provided by law.

16 (2) All funds received by the **office of the** district ~~office~~ **public defender**
17 shall be deposited into the judicial district indigent defender fund as provided for in
18 R.S. 15:168.

19 (3) Failure of the accused to disclose the full amount involved in the hiring
20 shall constitute grounds for contempt of court.

21 * * *

22 §185.2. Definitions

23 As used in this Part, the following words shall have the following meanings:

24 * * *

25 (4) "District public defender", "chief indigent defender", or "chief public
26 defender" means an attorney ~~employed by or~~ under contract with the office to
27 supervise service providers and enforce standards and guidelines within a judicial
28 district or multiple judicial districts.

29 * * *

1 (8) "Public defender" or "indigent defender" means an attorney employed by
 2 or under contract with ~~the board~~; the **office of the** district public defender; or a
 3 nonprofit organization contracting with the board or the district public defender to
 4 provide representation, including curatorship appointments, to indigent or absent
 5 parents in child abuse and neglect cases as required by the provisions of the
 6 Children's Code.

7 * * *

8 §186.2. Definitions

9 For the purposes of this Part, the following words shall have the following meanings:

10 * * *

11 (4) "District public defender", "chief indigent defender", or "chief public
 12 defender" means an attorney ~~employed by or~~ under contract with the ~~board~~ **office** to
 13 supervise service providers and enforce standards and guidelines within a judicial
 14 district or multiple judicial districts.

15 * * *

16 (8) "Public defender" or "indigent defender" means an attorney employed by
 17 or under contract with the office; ~~of~~ **of** the district public defender; or a nonprofit
 18 organization contracting with the office ~~or of~~ **of** the district public defender to provide
 19 representation as required by the provisions of the Children's Code.

20 * * *

21 §186.3. Safe Return Representation Program; duties of the office; subject to
 22 appropriation

23 * * *

24 B. In the administration of the Safe Return Program, the office shall:

25 * * *

26 (10) ~~Employ and train~~ **Train** attorneys and other staff as may be necessary
 27 to carry out the functions of the program. All attorneys representing indigent children
 28 through this program shall be licensed to practice law in Louisiana and qualified in
 29 accordance with the standards and guidelines adopted by rule of the board.

* * *

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by Thomas L. Tyler.

DIGEST

SB 467 Reengrossed

2024 Regular Session

Reese

Present law authorizes the office of the state public defender (office) to enter into contracts to provide counsel for indigent defendants.

Present law requires that district public defender programs continue operating within the method of delivery of services in effect prior to April 30, 2007, and prohibits the office from using its power to contract to change the structure of a local program, delivery method, or to terminate personnel without cause in violation of present law.

Proposed law eliminates present law prohibition of the office from using its power to contract to change the structure of a local program, delivery method, or to terminate personnel without cause in violation of present law.

Present law requires that the office's executive staff positions be permanent, full-time employees of the office and these employees shall not otherwise engage in the practice of law, where applicable, or engage in any other business or profession.

Proposed law clarifies that the office's executive staff positions are state employees.

Present law prohibits employees of the office from engaging in the practice of law or any other business or profession.

Proposed law removes the present law prohibition that the office's employees not otherwise engage in the practice of law, where applicable, or engage in any other business or profession.

Present law requires the state public defender to develop and implement a strategic plan for delivery of public defender services with approval of the Louisiana Public Defender Oversight Board (board).

Proposed law retains present law and further requires the state public defender to develop and implement standards and guidelines with approval of the board.

Present law requires the state public defender to assist the board in establishing standards, guidelines, policies and procedures for statewide delivery of indigent defender services.

Proposed law requires the state public defender to establish policies and procedures for statewide delivery of indigent defender services.

Proposed law requires that offices of the district public defender be a local body corporate with the power to sue and be sued, to enter into contracts on such terms and conditions as it deems advisable, and with all other general obligations and privileges of local political subdivisions.

Proposed law requires the district public defender to be the policymaker for the office of the district public defender and to be responsible for ensuring that the office of the district public defender satisfies its obligations and privileges under present law.

Proposed law makes conforming changes consistent with Act No. 22 of the 2024 2nd Extraordinary Session.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 15:150(C), 152(B)(2) and (13), 161(A), (E)(11), (H)(1), and (I), 162(D) and (F), 167(E), 168(A) and (E)(3), 175(A)(1)(d) and (f), 176(C), 185.2(4) and (8), 186.2(4) and (8), and 186.3(B)(10))

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Technical legislative bureau amendments