

(KEYWORD, SUMMARY, AND DIGEST as amended by Senate committee amendments)

**INDIGENT DEFENSE. Creates the Louisiana Public Defender Board and provides with respect to the delivery of public defender services in the state of Louisiana.**

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DIGEST

Present constitution provides that when any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully of the reason for his arrest or detention, his right to remain silent, his right against self incrimination, his right to the assistance of counsel, and, if indigent, his right to court-appointed counsel. In a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. 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. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

Present constitution further provides that in a criminal prosecution, an accused shall be informed of the nature and cause of the accusation against him. 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. The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.

Present law further provides for a 15-member La. Indigent Defense Assistance Board (LIDAB).

Present law provides that this board may provide supplemental funds, when appropriated by the legislature for that purpose, to judicial district indigent defender boards only as authorized herein for the purposes of complying with the requirements of the state and federal constitutions and specific statutory provisions affording the right to counsel to indigent defendants in criminal cases.

Present law provides that the chief justice of the supreme court appoint two members to the board; one shall be a juvenile justice advocate.

Proposed law (R.S. 15:146) retains the provisions of present law and requires the other appointee to be a retired judge with criminal law experience.

Proposed law (R.S. 15:146) requires all members of the board who have not previously been confirmed by the Senate to be confirmed by the Senate.

Proposed law (R.S. 15:146) creates the Louisiana Public Defender Board (LPDB) and provides that the members of LIDAB will continue to serve as members of the new board and transfers all obligations, duties, powers, and responsibilities of LIDAB to LPDB. Provides that the board is a state agency subject to public records and open meetings, bid and procurement, and all other laws applicable to state agencies.

Proposed law provides that a member may be removed for excessive absences from meetings.

Proposed law (R.S. 15:147) provides that except for the inherent regulatory authority of the Louisiana Supreme Court provided for in La. Const. Art. V, §5 regarding the regulation of the practice of law, the LPDB shall have all regulatory authority, control, supervision, and jurisdiction, including auditing and enforcement, and all power incidental or necessary to such regulatory authority, control, supervision, and jurisdiction over all aspects of the delivery of public defender services throughout the courts of the state of Louisiana.

Proposed law (R.S. 15:148) provides for the adoption of rules to implement the provisions of proposed law and requires that the rules be adopted pursuant to the APA. Proposed law provides that oversight of the rules shall be conducted by the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary C.

Proposed law defines "board," "board office," "district indigent defender fund," "district public defender," "district office," "indigent defendant," "indigent defender services program," "public defender," "public defender services," "regional director," "regional office," "revenue," "service region," and "state public defender."

Present law provides for an indigent defender board in each judicial district; the members of the board are appointed pursuant to rules and regulations adopted by the judges of that judicial district which provide for the appointment of board members.

Present law provides that each district board select a procedure or combination of procedures provided for in present law to provide counsel for indigent defendants.

Proposed law repeals present law provisions providing for the judicial district indigent defender boards.

Proposed law (R.S. 15:148) provides that the domicile of the board and venue for any civil proceedings involving the board is East Baton Rouge Parish.

Proposed law (R.S. 15:149) provides for the location of the board office, branch offices, number of meetings per year, and parishes where those meetings will be held.

Proposed law (R.S. 15:150) provides for the executive staff of the board consisting of a state public defender, a deputy public defender-director of training, a deputy public defender-director of juvenile defender services, a budget officer, a technology and management officer, a trial-level compliance officer, and a juvenile justice compliance officer.

Proposed law (R.S. 15:150) provides that any person eligible to be employed in an executive staff position shall meet each of the following qualifications:

- (1) Be a person of good character, honesty, and integrity.
- (2) Be a citizen of the U.S.
- (3) Following his employment, be a domiciliary of Louisiana who is registered to vote in Louisiana.

Proposed law (R.S. 15:152) provides that the state public defender shall be an attorney licensed to practice law in the U.S. with at least seven years of experience as a criminal defense attorney and, if licensed as an attorney in a state other than Louisiana, become licensed as an attorney within one year of being employed by the board. Proposed law provides for the duties and responsibility of the state public defender.

Proposed law (R.S. 15:153) provides that the deputy public defender-director of training shall be an attorney licensed to practice law in the U.S. with at least five years of experience as a criminal defense attorney and, if licensed as an attorney in a state other than Louisiana, become licensed as an attorney in this state within one year of being employed by the board.

Proposed law (R.S. 15:153) provides for the duties and responsibilities of the deputy public defender-director of training.

Proposed law (R.S. 15:154) provides that the deputy public defender-director of juvenile defender services shall be an attorney licensed to practice law in the U.S. with at least five years of specific experience in the defense of juveniles in delinquency proceedings and, if licensed as an attorney in a state other than Louisiana, become licensed as an attorney in this state within one year of being employed by the board. Proposed law provides for the duties and responsibilities of the deputy public defender-director of juvenile defender services.

Proposed law (R.S. 15:155) provides that the board budget officer shall have expertise in matters of finance, which shall include at a minimum, possession of either a master's degree in economics, accounting, business administration, public administration, or finance from an accredited business school or a bachelor's degree in accounting, finance, or administration, with five years of progressively responsible experience in general accounting, general finance, or auditing and have a comprehensive knowledge of the principles and practices of corporate finance. Proposed law provides for the duties and responsibilities of the budget officer.

Proposed law (R.S. 15:156) provides that the information technology and management officer for the board shall have expertise in database management, information systems integration, analysis, and programming, which shall include, at a minimum, possession of bachelor's degree in information technology, or a master's degree in public administration or a related field, from an accredited university or college, or have five years of progressively responsible experience with database management, systems integration, systems analysis, programming, and mid-range client server and Internet systems, or an equivalent combination of education and experience. Proposed law provides for the duties and responsibilities of the information technology and management officer.

Proposed law (R.S. 15:157 and 158) provides that the trial-level compliance officer and the juvenile justice compliance officer shall be attorneys licensed to practice law in the U.S. with at least three years of experience as criminal defense attorneys, or possess master's degrees in public administration from an accredited school or university and possess five-years of progressively responsible experience conducting organizational assessments and, if licensed as attorneys in a state other than Louisiana, become licensed as attorneys in this state within one year of being employed by the board. Proposed law provides for the duties and responsibilities of the compliance officers.

Proposed law (R.S. 15:159) provides that the board is authorized to establish a maximum of eleven public defender service regions or "service regions" in the state of Louisiana to provide service to the board. The regions shall be defined by grouping contiguous judicial districts in a manner that provides for the most efficient, feasible, practical, and effective supervision and assistance to the districts by the regional office. Proposed law further provides that a regional office shall be maintained in each service region established by the board, the service region shall provide supervision over the district offices within that region, including budgetary and operational matters and additional services as authorized by the board, including but not limited to capital defense services, expert witness resources, and conflict counsel.

Proposed law (R.S. 15:160) provides that regional directors shall be attorneys licensed to practice law in the U.S. with at least five years of experience as criminal defense attorneys. If licensed as attorneys in a state other than Louisiana, become licensed as attorneys in this state within one year of being employed by the board. Proposed law provides for the duties and responsibilities of the regional director.

Proposed law provides that a service region shall not be established when the population is in excess of 500,000, unless a single judicial district is established as a service region consisting of that single judicial district.

Proposed law (R.S. 15:160(D)-(F)) provides for the method of selecting a regional director.

Proposed law (R.S. 15:161) provides for the duties and responsibilities of district public defenders and continuing of chief indigent defenders with the same salaries as district public defenders.

Proposed law (R.S. 15:162(A)-(G)) provides procedures for appointment of a selection committee and procedures and time periods for filling vacancies for district public defenders.

Proposed law (R.S. 15:162(H)) provides that the board shall evaluate any district where, as of January 1, 2007, there is no person employed as the chief indigent defender and shall do one of the following:

- (1) Employ a district public defender who meets the criteria provided for in this Section, using the selection process provided for in proposed law; or
- (2) Assign another district public defender from a contiguous judicial district to manage and supervise public defender services for both judicial districts; or
- (3) Determine whether the board shall regionalize the operation of the district, as provided for in proposed law.

Proposed law (R.S. 15:162.1) provides that a district public defender may establish a district public defender advisory board to provide information, assistance, and guidance with respect to the delivery of public defender services in that judicial district.

Proposed law provides that if the 29<sup>th</sup> JDC established a district public defender board, the members of the board may be paid a per diem.

Proposed law further provides that the number of board members, the makeup of the board, and the frequency of meetings of the board shall be determined by the district public defender, upon consultation with district judges having criminal jurisdiction in that judicial district. The advisory board may make comments, recommendations, findings, and suggestions regarding the delivery of indigent defender services in the judicial district, those comments, recommendations, and findings are nonbinding on the board.

Proposed law (R.S. 15:163) provides that in certain cases, the board shall regionalize and operate the public defender services of a district as a subdivision of the board through a regional office. When the public defender services of a district are taken over by the board in this manner, the district public defender shall be an employee of the region, and the regional director shall be the manager and supervisor of the district public defender office. A regionalization of the operation of a district public defender program shall occur, by a majority vote of the board, upon a finding that one of the following conditions have occurred:

- (1) The district, through its district public defender, petitions the board for the board to regionalize the delivery of indigent defender services in the district; or
- (2) The board upon its own motion, or upon petition of a regional director, if applicable, finds that the district public defender office has failed, after reasonable assistance, resourcing, and consultation with the board, to reasonably meet performance standards mandated by the board, to comply with data reporting, or any other rule adopted by the board; or
- (3) Due to a natural disaster or catastrophic emergency, the district public defender cannot operate or function normally, provided that this shall apply for not longer than a period of six months, renewable by the board on an interim basis at six-month intervals.

Proposed law (R.S. 15:163) provides that in any district where the board takes over the operation of indigent defender services, the district office shall be maintained for client services in the judicial district. The district public defender in a district regionalized shall be a day-to-day manager and shall work out of the district office. Proposed law provides that when the operation of a district office is regionalized, the supervision of compliance with state standards shall be carried out by an officer of the board as part of its supervision of the regional office.

Proposed law provides that prior to regionalizing a district, the board shall send written notice to the chief judge and the district public defender of that judicial district of the board's intention to regionalize the district.

Present law provides that in cases where a sentence of death has been imposed, the board shall promptly cause counsel to be enrolled to represent the defendant. The board shall adopt rules and retain only such staff counsel or other counsel, who will work under the supervision of the board, as are necessary to provide counsel to represent capital defendants on direct appeal to the Supreme Court of Louisiana and to seek post-conviction relief if appropriate in state and federal court.

Proposed law (R.S. 15:169) retains the provisions of present law.

Proposed law (R.S. 15:167) provides for the creation of the Louisiana Public Defender Fund and the composition of the fund, administration of the fund, and use of monies from the fund.

Proposed law (R.S. 15:168) further provides that there is hereby created within each judicial district an indigent defender fund which shall be administered by the district public defender.

Proposed law further provides that any surplus monies in the judicial district indigent defender fund on August 15, 2007, shall be retained in that judicial district and remain in the judicial district indigent defender fund. Any unexpended and unencumbered monies in the judicial district indigent defender fund at the close of each fiscal year shall remain in the judicial district indigent defender fund. Monies in the fund shall be administered and used solely and exclusively for purposes of delivering indigent defender services in that judicial district.

Proposed law (R.S. 15:170) provides that the board shall have the authority to take corrective or disciplinary action against any regional director or district public defender for failure to adhere to the standards and guidelines for rendering indigent defender services which shall include but not be limited to issuance of a warning, reprimand, issuance of a sanction, suspension, demotion, or termination.

Proposed law provides that prior to terminating or demoting a district public defender, the board shall send written notice to the chief judge of the judicial district of the board's intention to terminate or demote the district public defender of that judicial district.

Proposed law (R.S. 15:170) provides that a regional director or district public defender may be demoted or terminated for just cause. Proposed law defines "just cause" and provides that a regional director or district public defender who feels that he has been demoted or terminated without just cause may, within 15 days after the action, demand in writing a hearing and investigation by the board to determine the reasonableness of the action.

Proposed law (R.S. 15:170) provides procedures for the due process hearing.

Proposed law (R.S. 15:173) provides that it is not the intent of the legislature to create any new right, right of action, or cause of action or eliminate any right, right of action, or cause of action existing under proposed law. Nothing in proposed law shall create, expressly or by implication, any right, claim, or cause of action in favor of anyone in connection with the delivery of indigent defender services.

Proposed law (R.S. 15:173) further provides that nothing in proposed law, nor any standards, guidelines, or rules adopted as a result hereof, shall be construed to provide any criminal defendant the basis of any claim that the attorney or attorneys appointed to him pursuant to this statute performed in an ineffective manner. It shall be presumptive evidence that any attorney performing criminal defense services pursuant to the auspices of this statute is currently certified to have met the standards and guidelines adopted by the board to provide criminal defense services in an effective manner. Nothing contained in proposed law shall be construed to overrule, expand, or extend, whether directly or by analogy, the decision reached by the U.S. Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) nor its progeny as adopted by the Louisiana Supreme Court.

Proposed law provides that any delivery model in existence prior to April 30, 2007, shall be presumed to be acceptable and meet standards guidelines pursuant to rules adopted by the board, and as provided by statute until the delivery model is proven not to meet those standards and guidelines. Proposed law states that it is to be construed to preserve the operation of district public defender programs which provide effective assistance of counsel and meet performance standards in whatever form of delivery that local district has adopted, provided that method of delivery is consistent with standards and guidelines adopted by the board pursuant to rules and as required by statute.

Proposed law provides that the board shall adopt rules for the establishment of salary ranges for attorneys and support staff delivering public defender services, taking into consideration

variations in public defense practices and procedures in rural, urban, and suburban districts as well as professional experience.

Proposed law further provides that certain provisions of proposed law are subject to the intent of proposed law that district public defender programs shall continue operating within the method of delivery of services in effect prior to April 30, 2007, and the board is prohibited from using its power to contract to change the structure of a local program, delivery method, or to terminate personnel without cause.

Proposed law provides that in developing training and educational programs, the director of training shall work in conjunction with the regional director, where applicable, or district public defender to develop a scheduling for training which will consider the daily responsibilities and obligations of attorneys providing public defender services, and minimize any disruption of the delivery of public defender services.

Proposed law provides that the board shall provide notice of a public hearing to the district public defender, district advisory panel, if applicable, and the chief judge of the judicial district prior to changing any delivery model, regionalizing a district, or terminating or demoting a district public defender.

Proposed law provides that any attorney providing public defender services in a district shall be licensed to practice law in the state of Louisiana. Proposed law shall not prohibit an attorney licensed to practice in another state from providing an indigent person in a criminal case on a pro-bono basis. Proposed law shall not apply to any out of state attorney with a contractual obligation prior to June 1, 2007.

Proposed law provides for a severability clause.

(Amends R.S. 9:2800.16, R.S. 15:85.1(A)(2)(b), 146-149.1, 150, 151, 1202(A)(13), and 1424(B)(3), R.S. 24:513(A)(3), 515.1(A), (B)(intro. para.), and (D), and 517.1(F)(1) and (2), R.S. 33:1342(1), R.S. 36:4(D) and 801.1(A), R.S. 39:1302(1)(f), R.S. 46:236.5(B)(2), Ch.C. Arts. 321(C) and (D), 607(A), 608(B), 740(B), and 809(C) and (E), and C.Cr.P. Arts. 944(A), 948(A), and 953; adds R.S. 15:141-143, 149.2, and 152-184; repeals R.S. 15:144, 145, 145.1, and 151.2)

#### Summary of Amendments Adopted by House

##### Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

1. Makes technical change to reflect proper designation of state public defender serving as a member of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.
2. Adds that prior to regionalizing a district, the board shall send written notice to the chief judge and the district public defender of that judicial district of the board's intention to regionalize the district.
3. Adds that prior to terminating or demoting a district public defender, the board shall send written notice to the chief judge of the judicial district of the board's intention to terminate or demote the district public defender of that judicial district.

##### House Floor Amendments to the engrossed bill.

1. Adds provision allowing for the establishment of public defender advisory boards.
2. Adds that any delivery model in existence prior to April 30, 2007, shall be presumed to be acceptable until proven not to meet standards and guidelines.

3. Provides that the board shall adopt rules for the establishment of salary ranges for attorneys and support staff delivering public defender services.
4. Adds that any surplus, unexpended, and unencumbered monies in the judicial district indigent defender fund on August 15, 2007, shall be retained in that judicial district and remain in the judicial district indigent defender fund.
5. Amends definition of self-generated revenue to include grants, donations, or other forms of assistance.
6. Adds that the board is prohibited from using its power to contract to change the structure of a local program, delivery method, or to terminate personnel without cause.
7. Adds that in developing training and educational programs, the director of training shall work in conjunction with the regional director, where applicable, or district public defender to develop a scheduling for training.
8. Adds that the board shall provide notice of a public hearing to the district public defender, district advisory panel, if applicable, and the chief judge of the judicial district prior to changing any delivery model, regionalizing a district, or termination or demotion of the district public defender.
9. Adds provision providing that duties of trial-level and juvenile compliance officer do not limit the district public defender's ability to employ or terminate local attorneys and staff personnel.
10. Adds that any attorney providing public defender services in a district shall be licensed to practice law in the state of Louisiana.

#### Summary of Amendments Adopted by Senate

##### Committee Amendments Proposed by Senate Committee on Judiciary C to the reengrossed bill.

1. Provides that a board member may be removed for excessive absences from meetings.
2. Provides that a service region shall not be established when the population is in excess of 500,000, unless a single judicial district is established as a service region consisting of that single judicial district.
3. Provides that proposed law shall not prohibit an attorney licensed to practice in another state from providing service to an indigent person in a criminal case on a pro-bono basis. Shall not apply to any out of state attorney with a contractual obligation prior to June 1, 2007.
4. Provides for a severability clause.
5. Provides that if the 29<sup>th</sup> JDC established a district public defender board, the members of the board may be paid a per diem.