2015 Regular Session

HOUSE BILL NO. 605

BY REPRESENTATIVE SEABAUGH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

INDIGENT DEFENSE: Provides relative to indigent defender services in capital cases

AN ACT

To amend and reenact R.S. 15:142(B)(introductory paragraph), (C), and (D), 146(A)(1), 147(A) and (C)(1), 148(B)(1)(introductory paragraph), (2)(introductory paragraph), (3), (4), (5), (7), (8), (9), (10), (11), (12), (13), and (15), 152(B)(1), (2), (5), (8), (13), and (15), 153(B)(1), (2), (3), (4), and (6), 155(B)(4) and (8), 157(B)(1) and (2) and (C), 159(D), 160(B)(1), (2), (5), and (7), 161(A) and (E)(1), (6), (7), (8), (9), and (13), 164(B), (C), and (F)(1), 165(A), (B)(introductory paragraph) and (3), and (E), and 167(C), to enact Part I-A of Code Title XIV of Chapter 1 of Title 15 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 15:184, 184.1, 184.2, 184.3, 184.4, 184.5, 184.6, 184.7, and 184.8, and to repeal R.S. 15:169, 178, and 182, relative to indigent defender representation; to provide relative to the powers, duties, and responsibilities of the Louisiana Public Defender Board; to provide relative to the provision of public defender services in capital cases; to provide relative to the establishment of a statewide system providing indigent defender services in capital cases; to establish the Committee for the Provision of Indigent Defense Services in Capital Cases; to provide for definitions; to provide for the membership, powers, duties, responsibilities, obligations, and compensation of the committee; to require the committee to develop a recommended master plan for the establishment of a statewide system for providing capital public defender services; to provide for the approval of the master plan by the Louisiana Supreme Court; to

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request that the Louisiana Supreme Court enact or amend its rules to establish and implement the master plan; to remove the responsibility of providing indigent defender services in capital cases from the Louisiana Public Defender Board; to create the Louisiana Capital Defense Services Fund; to provide for the appropriation and use of monies in the fund; to provide relative to the appropriation and use of monies in the Louisiana Public Defender Fund; to transfer all powers, duties, functions, and responsibilities of the Louisiana Public Defender Board with regard to capital cases to the Committee for the Provision of Indigent Defense Services in Capital Cases, the Louisiana Supreme Court, and the district courts for each judicial district of the state; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:184, 184.2, 184.3, 184.4, 184.5, and 184.6 are hereby enacted to read as follows:

PART I-A. INDIGENT REPRESENTATION IN CAPITAL CASES

§184. Short title

This Part may be referred to and cited as the "Louisiana Capital Defense Services Act".

* * *

§184.2. Definitions

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

(1) "Capital case" means a case in which the defendant has been indicted for first degree murder and the prosecuting attorney has filed a notice of intent to seek the death penalty or has otherwise notified the court before which the case is pending that the state will seek the death penalty against the defendant.

(2) "Capital public defender" or "capital indigent defender" means an attorney appointed pursuant to the provisions of this Part to provide legal counsel to an indigent defendant in a capital case.

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(3) "Capital public defender services" or "capital indigent defender services" means the provision of legal services to indigent persons in capital cases in which the right to counsel attaches under the United States and Louisiana constitutions.

(4) "Committee" means the Committee for the Provision of Indigent Defense Services in Capital Cases established by the provisions of this Part.

(5) "Indigent defendant" or "indigent person" means a person that has been determined under the provisions of R.S. 15:175 to be indigent and financially unable to retain private counsel.

(6) "Revenue" or "self-generated revenue" means all revenue received as a result of grants or donations or other forms of assistance.

§184.3. Committee for the Provision of Indigent Defender Services in Capital Cases; membership; meetings; per diem

A. There is hereby created and established within the Judicial Administrator's Office, Louisiana Supreme Court, the Committee for the Provision of Indigent Defender Services in Capital Cases. The committee shall study, develop, and issue a report to the Louisiana Supreme Court with recommendations for a master plan to establish a statewide system of providing indigent defender services in capital cases in all courts in this state.

B.(1) The committee shall be comprised of the following members, each of whom shall possess the qualifications required of a juror in a capital cases provided by Code of Criminal Procedure Article 797(4):

(a) Three retired or active judges with experience presiding over capital cases appointed by the Louisiana District Judges Association.

(b) One criminal defense attorney with experience representing defendants in capital cases appointed by the Louisiana Association of Criminal Defense Lawyers.

(c) One prosecutor with experience prosecuting capital cases appointed by the Louisiana District Attorneys Association.

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(2) If at any time it appears that a member of the committee lacks any qualification required by this Section, the member may be removed from the committee by a unanimous vote of the remaining members of the committee. Upon removal of a member, the committee shall notify the entity that appointed the member that the member was removed. The entity that appointed the removed member shall, within thirty days after receiving notice of the removal, appoint another person who meets the qualifications set forth in this Section to replace the committee member that was removed.

C.(1) At the first meeting of the committee, the committee shall elect a chairman and vice chairman and may elect other necessary officers from among its membership as needed.

(2) The first meeting shall take place no later than August 1, 2015, and thereafter, the committee shall meet at such additional times as it deems necessary and appropriate. Meetings may be held at any place chosen by a majority of the committee members, and members may attend meetings through means of audio or audio-visual transmission.

(3) A meeting may be called by the chairman on his own initiative and shall be called by the chairman upon written request of a majority of the committee.

(4) Three members of the committee shall constitute a quorum for transacting business. A vote of a majority of the membership of the committee shall be required to take action.

D. Members of the committee shall receive a per diem at the same rate as members of the legislature for each day that the committee meets. They shall also receive reimbursement for travel and other expenses at the rate established for state employees.

§184.4. Powers, duties, and responsibilities of the committee; presentation of master plan; approval by the Louisiana Supreme Court

A. The committee shall study and develop a master plan for the establishment of a statewide system for providing indigent defender services in

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capital cases in all courts in this state. The master plan shall be provided to the Louisiana Supreme Court for its review and approval and shall generally include a recommendation for the establishment, implementation, administration, and oversight of the statewide system for providing indigent defender services in capital cases in all courts of this state.

B. In addition to the requirements set forth in Subsection A of this Section, the master plan shall include recommendations for all of the following:

(1) Mandatory statewide public defender standards and guidelines for capital cases that require capital public defender services to be provided in a manner that is uniform, fair, and consistent throughout the state.

(2) Mandatory qualifications for capital public defenders including the specific training programs that must be completed and the minimum number of years spent in the practice of law in good standing with the Louisiana State Bar Association.

(3) Constitutionally appropriate workloads that permit the rendering of competent representation.

(4) Performance supervision and evaluation protocols and methods for monitoring and evaluating compliance with the mandatory standards and guidelines for capital cases.

(5) Appropriate sanctions for the failure to adhere to the mandatory standards and guidelines for capital cases.

(6) Polices and procedures for ensuring that cases are handled pursuant to the Rules of Professional Conduct.

(7) Methods for ensuring that data, including workload data, is collected and maintained in a uniform and timely manner through the state.

(8) Administrative salary ranges for compensation of attorneys delivering capital public defender services throughout the state so that compensation is based on objective policymaking, including years of services, nature of the work and workload, and in consideration of variations in public defense practices and

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procedures in rural, urban, and suburban districts as well as prosecutorial and judicial processing practices, trial rates, sentencing practices, and attorney experience.

(9) Minimum salary and compensation standards for attorneys, investigators, paraprofessionals, and any and all other staff, employees, or contractors necessary for the adequate provision of capital indigent defender services and comparable to other positions of similar stature through the state.

(10) The method by which an attorney is appointed to represent and provide legal counsel to the defendant in a capital case.

C. The committee may:

(1) Employ secretarial, clerical, and other such personnel as may be necessary in the operation of the business of the committee and fix their compensation.

(2) Enter into a contract or contracts providing for office space, telephone, internet, office machines, or other necessary components for the completion of any work required of the committee.

§184.5. Presentation of master plan; supreme court approval; transfer of capital defense services

A.(1) The committee shall present its report and recommended master plan to the Louisiana Supreme Court at an open meeting that shall take place no later than January 1, 2016, and shall be subject to the provisions of the Open Meetings Law. A record of the proceedings shall be kept and shall be open to public inspection, except as otherwise provided by R.S. 42:17.

(2) If the Louisiana Supreme Court fails to approve the master plan or any part thereof, the Louisiana Supreme Court may work with the committee to make any adjustments to the master plan that it deems necessary.

(3) Upon approval by the Louisiana Supreme Court of the master plan recommended by the committee, the Louisiana Legislature urges and requests the Louisiana Supreme Court to amend its rules to establish and implement the statewide

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system for providing indigent defender services in capital cases as set forth in the master plan.

B. All powers, duties, functions, and responsibilities of the Louisiana Public Defender Board relative to capital cases shall be transferred to and shall be performed by the committee, the Louisiana Supreme Court, and the district courts for each judicial district pursuant to the provisions of this Act when both of the following occur:

(1) The Louisiana Supreme Court approves the master plan recommended by the committee pursuant to the provisions of Subsection A of this Section.

(2) The Louisiana Legislature enacts legislation, or the Louisiana Supreme Court amends or enacts rules in the Rules of the Louisiana Supreme Court, that establishes and implements the statewide system for providing indigent defender services in capital cases as set forth in the master plan.

§184.6. Right of action not created

A. 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 any provision of law. Nothing in the provisions of this Part shall create, expressly or by implication, any right, claim, or cause of action in favor of anyone in connection with the delivery of capital indigent defender services.

B. In addition to the provisions of Subsection A of this Section, nothing herein, 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 represent him pursuant to this statute performed in an ineffective manner. It shall be presumptive evidence that any attorney performing capital public defender services pursuant to the auspices of this Part 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 herein shall be construed to overrule, expand, or extend, whether directly or by analogy, the decision reached by the Supreme Court of the United States in *Strickland v. Washington*, 466

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U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) nor its progeny as adopted by the Louisiana Supreme Court.

Section 2. R.S. 15:142(B)(introductory paragraph), (C), and (D), 146(A)(1), 147(A) and (C)(1), 148(B)(1)(introductory paragraph), (2)(introductory paragraph), (3), (4), (5), (7), (8), (9), (10), (11), (12), (13), and (15), 152(B)(1), (2), (5), (8), (13), and (15), 153(B)(1), (2), (3), (4), and (6), 155(B)(4) and (8), 157(B)(1) and (2) and (C), 159(D), 160(B)(1), (2), (5), and (7), 161(A) and (E)(1), (6), (7), (8), (9), and (13), 164(B), (C), and (F)(1), 165(A), (B)(introductory paragraph) and (3), and (E), and 167(C) are hereby amended and reenacted and R.S. 15:184.1, 184.7, and 184.8 are hereby enacted to read as follows:

§142. Legislative findings

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B. In recognition of its mandates under both the United States and Louisiana constitutions, the legislature enacts the Louisiana Public Defender Act of 2007 to provide for all of the following in noncapital cases:

* * *

C. The legislature recognizes that the uniform application of statewide standards and guidelines to be established by the Louisiana Public Defender Board in noncapital cases is an important means of achieving a more consistent delivery of quality representation throughout the state. To that end, it is the express intention of the legislature that the Louisiana Public Defender Act of 2007 is designed, to the extent practicable and feasible, to provide for the delivery of public defender services which meet the requirements established by *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and its progeny as adopted by the Louisiana Supreme Court.

D. The legislature recognizes that the Louisiana Supreme Court in *State v. Citizen*, 2004-KA-1841 (La. 2005), 898 ~~So. 2nd~~ So.2d 325 ~~(La. 2005)~~ authorized trial judges to halt prosecutions in capital cases, upon motion of defense counsel, until adequate funding is provided to ensure an adequate defense, and it is the express intention of the legislature to ensure adequate resources, consistent with the

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Citizen opinion, which allow prosecutions in such cases to continue to conclusion resulting in verdicts that are fair, correct, swift, and final.

* * *

§146. Louisiana Public Defender Board

A.(1) There is hereby created and established as a state agency within the office of the governor the Louisiana Public Defender Board to provide for the supervision, administration, and delivery of a statewide public defender system <u>for noncapital cases</u>, which must deliver uniform public defender services in <u>noncapital cases in</u> all courts in this state. The board shall be a body corporate with the power to sue and be sued.

* * *

§147. Powers, duties, responsibilities

A. Except for the inherent regulatory authority of the Louisiana Supreme Court provided for in Article V, Section 5 of the Constitution of Louisiana regarding the regulation of the practice of law, the Louisiana Public Defender Board 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 <u>noncapital</u> public defender services throughout the courts of the state of Louisiana.

* * *

C. The board may:

(1) Enter into a contract or contracts, on such terms and conditions as it deems advisable, with one or more attorneys licensed to practice law in this state, a consortia of lawyers, or an independent public defender organization qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code to provide counsel for <u>noncapital</u> indigent defendants. The provisions of this Paragraph are subject to the intent of the Louisiana Public Defender Act that district public defender programs shall continue operating within the method of delivery of services in effect prior to April 30, 2007,

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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 in violation of R.S. 15:165(C).

* * *

§148. Rulemaking; considerations in developing rules

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B. The rules shall include but not be limited to:

(1) Creating mandatory statewide public defender standards and guidelines for noncapital cases that require noncapital public defender services to be provided in a manner that is uniformly fair and consistent throughout the state. Those standards and guidelines shall take into consideration all of the following:

* * *

(2) Creating mandatory qualification standards for public defenders in noncapital cases that ensure that ~~the~~ noncapital public defender services are provided by competent counsel. Those standards shall ensure that public defenders are qualified to handle specific case types which shall take into consideration the level of education and experience that is necessary to competently handle certain cases and case types such as juvenile delinquency, ~~capital,~~ appellate, and other case types in order to provide effective assistance of counsel. Qualification standards shall include all of the following:

* * *

(3) Establishing methods of monitoring and evaluating compliance with the mandatory public defender standards and guidelines for noncapital cases and the performance of counsel in noncapital cases in order to ensure competent representation of defendants in all courts of the state.

(4) Establishing procedures to handle complaints about public defender performance in noncapital cases and to ensure that public defenders, office personnel, and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the supervisory jurisdiction of the

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Louisiana Supreme Court and pursuant to the court's inherent authority provided for in Article V, Section 5 of the Constitution of Louisiana.

(5) Establishing appropriate sanctions for failure to adhere to the mandatory standards and guidelines for the delivery of public defender services in noncapital cases.

* * *

(7) Establishing policies and procedures for ensuring that noncapital cases are handled according to the Rules of Professional Conduct.

(8) Establishing policies and procedures for handling noncapital conflict of interest cases and noncapital overflow cases when workload standards which are established by rules of the board are breached.

(9) Establishing policies and procedures to ensure that detailed expenditure and workload data in noncapital cases is collected, recorded, and reported to support strategic planning efforts for the system.

(10) Creating separate performance standards and guidelines for attorney performance in ~~capital case representation,~~ juvenile delinquency representation, appellate representation, and any other subspecialties of criminal defense practice in noncapital cases as well as children in need of care cases determined to be feasible, practicable, and appropriate by the board.

(11) Ensuring data, including workload, is collected and maintained for all noncapital cases in a uniform and timely manner throughout the state to allow the board sound data to support resource needs.

(12) Providing for minimum salary and compensation standards for attorney, investigator, paraprofessional, and any and all other staff necessary for the adequate defense of noncapital indigent defendants in criminal courts and comparable to other positions of similar stature throughout the state.

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(13) Establishing processes and procedures to ensure that when a noncapital case that is assigned presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically.

* * *

(15) Establishing administrative salary ranges for compensation of attorneys delivering public defender services in noncapital cases throughout the state so that compensation is based on objective policymaking, including years of service, nature of the work and workload, and in consideration of variations in public defense practices and procedures in rural, urban, and suburban districts as well as prosecutorial and judicial processing practices, trial rates, sentencing practices, and attorney experience.

* * *

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

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B. The state public defender shall:

(1) Recommend to the board how to establish and maintain, in a cost-effective manner, the delivery of legal services in noncapital cases to persons entitled to, and financially eligible for, appointed counsel in criminal proceedings at state expense under Louisiana law, the Constitution of Louisiana, and the United States Constitution and consistent with the standards of national justice and those established by the Louisiana Supreme Court.

(2) Develop and present for the board's approval a strategic plan for the delivery of public defender services in noncapital cases.

* * *

(5) Negotiate contracts, as appropriate, for providing legal services in noncapital cases to persons financially eligible for appointed counsel at state expense. No contract so negotiated is binding or enforceable until the contract has been reviewed and approved by the board at a public hearing as provided for in R.S. 15:147(D). The provisions of this Paragraph are subject to the intent of the

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Louisiana Public Defender Act 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 in violation of R.S. 15:165(C).

* * *

(8) Prepare and submit to the board an annual report of the indigent defender services provided in noncapital cases by the service regions, where applicable, and the districts.

* * *

(13) Assist the board in establishing the standards and guidelines, policies, and procedures for the statewide delivery of indigent defender services in noncapital cases in accordance with rules adopted by the board and as required by statute.

* * *

(15) Review, monitor, and assess the performance of all attorneys, consortia of attorneys, or independent public defender organizations qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code to provide counsel for indigent defendants in noncapital cases.

* * *

§153. Deputy public defender-director of training; qualifications; duties

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B. The director of training shall:

(1) Coordinate training of noncapital public defenders in current aspects of criminal and civil law and procedure involving public defense, including the representation of juveniles.

(2) Establish and supervise a training and performance evaluation program for attorneys and non-attorney staff members and contractors in noncapital cases.

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(3) Establish training and educational programs for all noncapital public defender attorneys. Such programs shall not be "continuing legal education" as mandated by the Louisiana State Bar Association. The training sponsored by the state program shall be practical training based on models in other states, including trial advocacy and criminal procedure in the nature of mock trials, working seminars, and mentoring. Such educational programs shall also include annual educational programs and introductory educational programs for attorneys prior to providing public defender services.

(4) Assist in the development and dissemination of standards and guidelines, procedures, and policies that will ensure that public defender services in noncapital cases are provided consistently throughout the state.

* * *

(6) Provide assistance with research or briefs and provide other technical assistance requested by a public defender or any other person providing ~~public defender~~ legal services in a criminal case to an indigent defendant.

* * *

§155. Budget officer; qualifications; duties

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B. The budget officer shall:

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(4) Develop and make available to the board such fiscal information as will assist the board in evaluating the delivery of public defender services in noncapital cases throughout the state with the view of pointing out unnecessary programs, projects, and functions, calling attention to inefficient and uneconomical practices, monitoring, reviewing, and analyzing the performance of the districts and service regions, where applicable, making recommendations for improvement, and carrying out other similar functions.

* * *

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(8) Evaluate legislative proposals for fiscal effect on the delivery of public defender services in noncapital cases and report the findings of those evaluations to the state public defender and the board.

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§157. Trial-level compliance officer

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B. The trial-level compliance officer shall in all noncapital cases:

(1) Develop evaluation protocols to assess trial-level district compliance with board-adopted standards and guidelines for noncapital cases.

(2) Develop an effective evaluation implementation plan that allows for regular assessments and ongoing monitoring of each district public defender system's compliance of board-adopted standards and guidelines for noncapital cases.

* * *

C. All standards and guidelines for the delivery of public defender services in noncapital cases shall be rules adopted by the board pursuant to R.S. 15:148 and in accordance with the Administrative Procedure Act.

* * *

§159. Public defender service regions

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D. The service region shall provide, as authorized by the board, such additional services as the board finds necessary to providing competent counsel in the judicial districts within the region, including but not limited to ~~capital defense services,~~ expert witness resources, and conflict counsel. Such additional services as the board deems necessary or advisable may be provided to clients through the regional offices.

* * *

§160. Regional director for service regions; qualifications; duties; selection process

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B. Each regional director shall:

(1) Supervise public defender services in noncapital cases provided within his assigned service region.

(2) Work in conjunction with the compliance officers to ensure that noncapital public defender assignments within the service region comply with the standards and guidelines for noncapital cases adopted pursuant to rule by the board and the Rules of Professional Conduct.

* * *

(5) Keep a record of all public defender services and expenses in noncapital cases in the service region and submit the records to the state public defender as requested.

* * *

(7) Develop a method or methods of delivery of public defender services in noncapital cases for the service region, for submission to the board for board approval, upon consultation with and recommendations of the district public defenders in each judicial district within the service region. The regional director shall consider any delivery model in existence prior to August 15, 2007, or prior to establishment of the region, as acceptable until that delivery model fails to comply with the uniform standards and guidelines for the delivery of public defender services in accordance with rules adopted by the board and as required by statute, unless the region is established for districts which have previously been determined not to be in compliance with the uniform standards and guidelines.

* * *

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

A. Except as otherwise provided for in this Section, the board shall employ or contract with a district public defender to provide for the delivery and management of public defender services in noncapital cases in each judicial district.

* * *

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E. Each district public defender shall:

(1) Manage and supervise public defender services in noncapital cases provided within his judicial district.

* * *

(6) Supervise the work of the noncapital district personnel.

(7) Employ noncapital district personnel, subject to review by the state public defender or the regional director, where applicable, for compliance with qualifications and standards and guidelines established by statute and by rules adopted by the board.

(8) Contract for noncapital services in accordance with the standards and guidelines adopted by rule by the board, and as authorized by the regional director, where applicable.

(9) Keep a record of all public defender services and expenses in noncapital cases in the district and submit the records to the regional director, where applicable, or state public defender as requested.

* * *

(13) Employ or terminate noncapital district personnel, manage and supervise all noncapital district level work, including establishment of noncapital district personnel salaries, subject to review by the board for compliance with salary guidelines established by the board through the adoption of rules.

* * *

§164. Regional defense service centers

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B. As used in this Section, the term "regional defense service center" means:

(1) A regional appellate resource center.

(2) ~~A regional death penalty center.~~

~~(3)~~ A regional juvenile defense center.

C.(1) A regional defense service center may be granted authority to contract with counsel for defense at trial in the district court ~~for defendants charged with~~

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~~capital offenses,~~ for appeals in noncapital cases and in capital cases in which a sentence of life imprisonment was imposed, and for representation of juveniles in juvenile courts and in all other courts with juvenile jurisdiction. The center may also contract for other specific functions other than appeals and post-conviction representation in capital cases in which the death penalty was imposed, and for the operation of an office, library, and other reasonably necessary services and authority as the contracting boards deem appropriate.

(2) ~~A regional death penalty center may retain a supervising attorney or chief defender, whose job description and compensation shall be specifically set out in the contract by the districts which establishes the regional defense service center. No attorney with less than five years' criminal trial practice shall serve as lead counsel in any death penalty case assigned to the regional death penalty center.~~

~~(3)~~ A regional defense service center may apply for grants from any source of funding for the center's operation. The funds from such grants shall belong to the regional center.

* * *

F.(1) The purpose of regional defense service centers shall be to improve services and reduce cost by creating a regional defense service center for appellate work, ~~death penalty defense,~~ juvenile representation, and such other specific related purposes as the districts involved shall define by the contract.

* * *

§165. Methods of delivery of public defender services; selection of methods; emergency circumstances

A. The method of delivery <u>of services in noncapital cases</u> in each judicial district shall be approved to the extent that it is meeting or able to meet the performance standards and guidelines of the board. The board may change the method of delivery in order to ensure compliance with best practices reflected in the performance standards and guidelines.

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B. The board shall approve the method of delivery of public defender services in noncapital cases for each district upon consultation with and recommendations of the state public defender, the director of juvenile defender services, the regional director for the service region, where applicable, and the district public defenders from the following service delivery methods or any combination thereof:

* * *

(3) The board may authorize the district public defender or regional director, where applicable, to enter into a contract or contracts, on such terms and conditions as it deems advisable, with one or more attorneys licensed to practice law in this state to provide counsel for indigent defendants in noncapital criminal proceedings.

* * *

E. An independent public defender organization qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code existing as of August 15, 2007, may, with the approval of current local indigent defender boards of other judicial districts in its region, provide administration, management, and supervision of noncapital services and budgets for those districts, with due consideration for local variances from judicial district to judicial district within the region, and establish, where necessary, satellite offices or part-time satellite offices to maintain easy access to clients in each judicial district within their purview.

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§167. Louisiana Public Defender Fund

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C. (1) ~~Monies~~ Except as provided in Paragraph (2) of this Subsection, monies in the fund shall be appropriated and used solely and exclusively to provide for the implementation of the Louisiana Public Defender Act and the program.

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(2) The state treasurer is authorized and directed to transfer an amount equal to twenty-five percent of any monies deposited into the fund to the Louisiana Capital Defense Services Fund in accordance with R.S. 15:184.7.

* * *

§184.1. Provision of indigent defender services in capital cases

Notwithstanding any provision of law to the contrary, the statewide system for providing capital public defender services throughout the state of Louisiana shall be in accordance with the provisions of this Part.

* * *

§184.7. Louisiana Capital Defense Services Fund

A. There is hereby created in the state treasury a special fund to be known as the "Louisiana Capital Defense Services Fund", hereinafter referred to as the "the LCDS Fund". The source of monies in the fund shall be an amount transferred by the state treasurer into the LCDS Fund equal to twenty-five percent of any monies deposited into the Louisiana Public Defender Fund, in accordance with R.S. 15:167, or any other monies appropriated or deposited to the fund including any grants, gifts or donations if the grants, gifts, and donations are not otherwise prohibited by law. The monies in the LCDS Fund shall be invested by the treasurer in the same manner as monies in the state general fund and all interest earned from the investment of the monies in the LCDS Fund shall be deposited to and remain to the credit of the LCDS Fund. All unexpended and unencumbered monies remaining in the LCDS Fund at the close of the fiscal year shall remain in the LCDS Fund.

B. The monies in the LCDS Fund shall be subject to annual appropriation and shall be used by the judicial administrator's office of the Louisiana Supreme Court to administer the statewide system of providing capital public defender services to all judicial districts in the state pursuant to the provisions of this Part.

§184.8. Partial reimbursement by indigents

A. To the extent that a person is financially able to provide for an attorney, other necessary services, and facilities of representation and court costs, the court

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shall order him to pay for these items. The court may order payment in installments or in any manner which it believes reasonable and compatible with the defendant's financial ability. Payments so made shall be transmitted to and become a part of the LCDS Fund.

B.(1) When an accused is initially determined to be indigent and a capital public defender is appointed, but the accused subsequently hires private counsel, the court shall conduct a contradictory hearing to determine the expenses of representing the accused incurred by the capital public defender pursuant to the provisions of this Part. Upon determining the expenses incurred, the accused shall, within the discretion of the court, be liable to reimburse the LCDS Fund for those expenses, upon a determination that the accused was in fact not initially indigent. A judgment for the amount owed may be recorded in the mortgage records in favor of the board for the payment of money against the accused and may be enforced as provided by law. Failure of the accused to disclose the full amount involved in the hiring shall constitute grounds for contempt of court.

(2) All funds received pursuant to Paragraph (1) of this Subsection shall be deposited into the LCDS Fund.

Section 3. R.S. 15:169, 178, and 182 are hereby repealed in their entirety.

Section 4. Upon approval by the Louisiana Supreme Court of the master plan recommended by the Committee for the Provision of Indigent Defender Services in Capital Cases pursuant to the provisions of this Act, the Legislature of Louisiana hereby urges and requests the Louisiana Supreme Court to amend Rule XXXI of the Rules of the Louisiana Supreme Court and to enact or amend any other provisions of the Rules of the Louisiana Supreme Court to establish and implement the statewide system for providing indigent defender services in capital cases as set forth in the master plan.

Section 5. All powers, duties, functions, and responsibilities of the Louisiana Public Defender Board relative to capital cases are transferred to and shall be performed and exercised by the Committee for the Provision of Indigent Defense Services in Capital Cases, the Louisiana Supreme Court, and the district courts for each judicial district in this state

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pursuant to the provisions of this Act. Upon the transfer of the powers, duties, functions, and responsibilities provided by this Act, any pending or unfinished business of the Louisiana Public Defender Board relative to capital cases shall become the business of and shall be completed the Committee for the Provision of Indigent Defense Services in Capital Cases, the Louisiana Supreme Court, and the district courts for each judicial district in this state pursuant to the provisions of this Act. Such entities shall have the same power and authority as the entity from which the functions were transferred.

Section 6.(A) This Section and Sections 1 and 4 of 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.

(B) Sections 2, 3, and 5 of this Act shall become effective when both of the following have occurred:

(1) The Louisiana Supreme Court approves the master plan recommended by the Committee for the Provision of Indigent Defense Services in Capital Cases pursuant to the provisions of this Act.

(2) The Louisiana Legislature enacts legislation, or the Louisiana Supreme Court amends or enacts rules in the Rules of the Louisiana Supreme Court, that establishes and implements the statewide system for providing indigent defender services in capital cases as set forth in the master plan recommended by the Committee for the Provision of Indigent Defense Services in Capital Cases pursuant to the provisions of this Act.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 605 Original 2015 Regular Session Seabaugh

Abstract: Provides relative to the provision of indigent defender services in capital cases.

Present law (Art. I, Sec. 13 of the La. Const. and the 6th and 14th Amendments of the U.S. Constitution) provides that 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

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with an offense punishable by imprisonment." Present law (Art. I, Sec. 13 of the La. Const.) further requires that the legislature provide for "a uniform system for securing and compensating qualified counsel for indigents".

Present law provides for the constitutionally required delivery of public defender services in La. through the La. Public Defender Act which created and established the La. Public Defender Board that supervises, administers, and delivers public defender services, including services in capital cases, statewide.

The present law La. Public Defender Act provides the Board with certain powers, duties, and responsibilities necessary to carry out the provisions of the Act, provides for the La. Public Defender Fund, and authorizes the La. Public Defender Board to use monies in the fund to implement the Act and public defender service programs statewide.

Effective upon signature of the governor, proposed law does the following:

(1) Establishes the Committee for the Provision of Indigent Defender Services in Capital Cases, hereinafter referred to as the "committee", provides for the membership of the committee, provides relative to the meetings and compensation of the committee, and provides for the duties, powers, and responsibilities of the committee.

(2) Requires the committee to study and develop a master plan for the establishment, implementation, administration, and oversight of a statewide system for providing indigent defender services in capital cases in all courts of this state. Requires the master plan to include recommendations for all of the following:

(a) Mandatory statewide public defender standards and guidelines for capital cases.

(b) Mandatory qualifications for capital public defenders.

(c) Constitutionally appropriate workloads.

(d) Performance supervision and evaluation protocols and methods for monitoring and evaluating compliance with the mandatory standards and guidelines for capital cases.

(e) Appropriate sanctions for the failure to adhere to the mandatory standards and guidelines.

(f) Polices and procedures for ensuring that cases are handled pursuant to the Rules of Professional Conduct.

(g) Methods for ensuring that data is collected and maintained in a uniform and timely manner through the state.

(h) Administrative salary ranges for compensation of attorneys delivering capital public defender services throughout the state so that compensation is based on objective policymaking, including years of services, nature of the work and workload, and in consideration of variations in public defense practices and procedures in rural, urban, and suburban districts as well as prosecutorial and judicial processing practices, trial rates, sentencing practices, and attorney experience.

(i) Minimum salary and compensation standards for attorneys, investigators, paraprofessionals, and any and all other staff, employees, or contractors necessary for the adequate provision of capital indigent defender services and comparable to other positions of similar stature through the state.

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(j) The method by which an attorney is appointed to represent and provide legal counsel to the defendant in a capital case.

(3) Requires the committee to present the master plan to the La. Supreme Court for its review and approval.

(4) Authorizes the committee to employ such personnel as may be necessary in the operation of the business of the committee and fix their compensation and to enter into a contract or contracts providing for office space, telephone, internet, office machines, or other necessary components for the completion of any work required of the committee.

Proposed law provides that the following provisions of proposed law shall become effective upon (1) approval of the master plan by the La. Supreme Court and (2) the enactment of legislation by the legislature, or the amendment or enactment of rules by the La. Supreme Court, that establishes and implements the statewide system for providing indigent defender services in capital cases as set forth in the master plan:

(1) Removes all powers, duties, functions, and responsibilities of the La. Public Defender Board relative to capital cases and transfers such powers, duties, functions, and responsibilities to the committee, the La. Supreme Court, and the district courts for each judicial district in the state pursuant to the provisions of proposed law.

(2) Enacts the La. Capital Defense Services Act and provides that the statewide system for providing public defender services in capital cases throughout the state of Louisiana shall be in accordance with the provisions of the La. Capital Defense Services Act.

(3) Requests the La. Supreme Court to enact or amend its rules to provide for establishment and implementation of the statewide system for providing indigent defender services in capital cases as set forth in the master plan.

(4) Creates the La. Capital Defense Services Fund, herein after referred to as the "LCDS Fund". The source of monies in the LCDS Fund is an amount transferred by the state treasurer into the LCDS Fund equal to 25% of any monies deposited into the La. Public Defender Fund or any other monies deposited or appropriated into the fund including grants, donations, and gifts not otherwise prohibited by law. Proposed law further provides that monies in the fund shall be used by the judicial administrator's office of the La. Supreme Court to administer the statewide system of providing public defender services in capital cases to all judicial districts in the state pursuant to proposed law.

(Amends R.S. 15:142(B)(intro. para.), (C), and (D), 146(A)(1), 147(A) and (C)(1), 148(B)(1)(intro. para.), (2)(intro. para.), (3), (4), (5), (7), (8), (9), (10), (11), (12), (13), and (15), 152(B)(1), (2), (5), (8), (13), and (15), 153(B)(1), (2), (3), (4), and (6), 155(B)(4) and (8), 157(B)(1) and (2) and (C), 159(D), 160(B)(1), (2), (5), and (7), 161(A) and (E)(1), (6), (7), (8), (9), and (13), 164(B), (C), and (F)(1), 165(A), (B)(intro. para.) and (3), and (E), and 167(C); Adds R.S. 15:184, 184.1, 184.2, 184.3, 184.4, 184.5, 184.6, 184.7, and 184.8; Repeals R.S. 15:169, 178, and 182)

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