

2021 Regular Session

HOUSE BILL NO. 586

BY REPRESENTATIVE MAGEE

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

GOVERNMENT ORGANIZATION: Creates the Office of the State Public Defender and Justice Investment and provides for the relocation of certain court-related service providers and related funding

1 AN ACT

2 To amend and reenact R.S. 15:142(C) and (F), 143, 146, 147, 148, 149.1, 152, 166, 167, and

3 168, and R.S. 36:4(D), to enact R.S. 15:142(G), and to repeal R.S. 15:149.2 through

4 151 and 153 through 158, relative to the creation of the Office of the State Public

5 Defender and Justice Investment; to provide for the termination of the Louisiana

6 Public Defender Board; to provide relative to legislative findings; to provide for

7 definitions; to provide for powers, duties, and responsibilities; to provide for the

8 appointment of certain persons; to provide relative to rulemaking; to provide for

9 domicile of the Office of the State Public Defender and Justice Investment; to

10 provide for the allocation and disbursement of funds; to provide relative to the state

11 public defender; to provide for the Justice Investment Fund; to provide relative to

12 judicial district indigent defender funds; to provide relative to the structure of the

13 executive branch of state government; to provide for the repeal of certain statutory

14 offices; to provide for the transition and authority of certain boards and offices; to

15 repeal the requirement to employ certain persons; to provide for transitional powers,

16 duties, functions, and responsibilities; to provide for technical changes in

17 terminology; and to provide for related matters.

18 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 15:142(C) and (F), 143, 146, 147, 148, 149.1, 152, 166, 167, and 168
2 are hereby amended and reenacted and R.S. 15:142(G) is hereby enacted to read as follows:

3 §142. Legislative findings

4 * * *

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

14 * * *

15 F. It is the express intention of the legislature that the ~~Louisiana Public~~
16 ~~Defender Board~~ Office of the State Public Defender and Justice Investment respect
17 local differences in practice and custom regarding the delivery of public defender
18 services. The provisions of this Part are to be construed to preserve the operation of
19 district public defender ~~programs~~ offices which provide effective assistance of
20 counsel and meet performance standards in whatever form of delivery that local
21 district has adopted, provided that method of delivery is consistent with standards
22 and guidelines adopted by the ~~board~~ office pursuant to rules and as required by
23 statute.

24 G. The office shall not be obligated to pay any moneys as contemplated by
25 the court in *State v. Touchet*, 642 So.2d 1213 (La. 1994), unless the accused is
26 represented by a public defender.

1 §143. Definitions

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

3 (1) ~~"Board" means the Louisiana Public Defender Board authorized to~~
4 ~~regulate public defender services.~~

5 (2) ~~"Board office" means the headquarters of the board located in East Baton~~
6 ~~Rouge Parish.~~

7 (3) ~~"District indigent defender fund" means the judicial district indigent~~
8 ~~defender fund as provided for in R.S. 15:168.~~

9 (4) ~~(2)~~ "District office" means the office of a district public defender as
10 provided for in R.S. 15:161.

11 (5) ~~(3)~~ "District public defender" or "chief indigent defender" means an
12 attorney employed by or under contract with the board to supervise service providers
13 and enforce standards and guidelines within a judicial district or multiple judicial
14 districts.

15 (6) ~~(4)~~ "Indigent defendant" means a person that has been determined under
16 the provisions of R.S. 15:175 to be indigent and financially unable to retain private
17 counsel.

18 (7) ~~(5)~~ ~~"Indigent defender services program"~~ "Contract programs" or "the
19 program" means the activities directed toward the accomplishment of providing
20 indigent defender services under the Louisiana Public Defender Act.

21 (6) "Office" means the Office of the State Public Defender and Justice
22 Investment authorized to regulate and fund public defender services and to provide
23 financial support to district public defender offices and other service programs that
24 provide services to persons in the criminal justice system.

25 (8) ~~(7)~~ "Public defender" or "indigent defender" means an attorney employed
26 by or under contract with the ~~board~~ office, the district public defender, or regional
27 director, where applicable, ~~or nonprofit organization contracting with the board,~~
28 ~~district public defender, regional director, where applicable, or the board to provide~~
29 legal counsel to an indigent person in a criminal proceeding.

1 ~~(9)~~(8) "Public defender services" or "indigent defender services" means the
2 providing of legal services to indigent persons in criminal proceedings in which the
3 right to counsel attaches under the United States and Louisiana constitutions.

4 ~~(10)~~(9) "Regional director" means the person in the employment of the ~~board~~
5 office chosen to oversee and enforce standards and guidelines within a service region
6 created by the ~~board~~ office.

7 ~~(11)~~(10) "Regional office" means the office established for a service region
8 as provided for in R.S. 15:159.

9 ~~(12)~~(11) "Revenue" or "self-generated revenue" means all revenue received
10 by a judicial district including revenue received as a result of grants or donations or
11 other forms of assistance.

12 (12) "Service program" means a non-governmental entity that provides
13 assistance to or representation of defendants or other persons in the criminal justice
14 system and that is qualified with the United States Internal Revenue Service for an
15 exemption from federal income tax under Section 501(c) of the Internal Revenue
16 Code.

17 (13) "Service region" means one of the public defender service regions
18 created by the ~~board~~ office as authorized in R.S. 15:159.

19 (14) "State ~~Public Defender~~ public defender" means the person ~~in the~~
20 ~~employment of the board~~ chosen pursuant to R.S. 15:146(B) to administer the
21 statewide public defender system for the delivery of public defender services.

22 §146. ~~Louisiana Public Defender Board~~ Office of the State Public Defender and
23 Justice Investment

24 A.~~(1)~~ There is hereby created and established as a state agency within the
25 office of the governor the ~~Louisiana Public Defender Board~~ Office of the State
26 Public Defender and Justice Investment to provide for the supervision,
27 administration, and delivery of a statewide public defender system, which shall
28 deliver uniform public defender services in all courts in this state, and to provide

1 financial support to programs that provide services to persons in the criminal justice
2 system. ~~The board shall be a body corporate with the power to sue and be sued.~~

3 (2) ~~The board and its agents and employees shall be subject to the Code of~~
4 ~~Governmental Ethics, the law relative to public records and open meetings, the law~~
5 ~~relative to public bid and procurement, and all other provisions of law applicable to~~
6 ~~state agencies.~~

7 (3) ~~The two members of the Louisiana Public Defender Board appointed by~~
8 ~~the president of the Louisiana State Bar Association, the member appointed by the~~
9 ~~chairman of the Louisiana State Law Institute's Children's Code Committee, the~~
10 ~~member appointed by the President of the Louisiana Chapter of the Louis A.~~
11 ~~Martinet Society, the member appointed by the Louisiana Interchurch Conference,~~
12 ~~the two members appointed by the governor and the four members appointed by the~~
13 ~~governor and nominated by the four law schools, as formerly provided in this~~
14 ~~Section, shall terminate their service on August 1, 2016.~~

15 (4) ~~To the extent practicable, the board shall be comprised of members who~~
16 ~~reflect the racial and gender makeup of the general population of the state, and who~~
17 ~~are geographically representative of all portions of the state.~~

18 (5) ~~When a vacancy occurs, whether by expiration of a term, resignation, or~~
19 ~~other event, the board shall submit to the appointing entity a list identifying the~~
20 ~~residency of the current board members by congressional district, and request that,~~
21 ~~to the extent possible, the entity make the appointment from the residents of under-~~
22 ~~represented districts.~~

23 B.(1) ~~The board shall consist of eleven members.~~

24 (2) ~~Persons appointed to the board shall have significant experience in the~~
25 ~~defense of criminal proceedings or shall have demonstrated a strong commitment to~~
26 ~~quality representation in indigent defense matters. No person shall be appointed to~~
27 ~~the board who has received compensation to be an elected judge, elected official,~~
28 ~~judicial officer, prosecutor, law enforcement official, indigent defense provider, or~~
29 ~~employees of all such persons, within a two-year period prior to appointment. No~~

1 active part-time, full-time, contract or court-appointed indigent defense provider, or
2 active employees of such persons, may be appointed to serve on the board as a voting
3 member. No person having an official responsibility to the board, administratively
4 or financially, or their employee shall be appointed to the board during their term of
5 office. The majority of board members shall be current members of the Louisiana
6 State Bar Association. Representatives of the client community shall not be
7 prohibited from serving as voting members of the board.

8 (3) The members shall be selected as follows:

9 (a) The governor shall appoint five members, one from each appellate court
10 district, and shall designate the chairman.

11 (b) The five members shall be appointed from a list of three nominees
12 submitted to the governor by a majority of the district public defenders providing
13 public defender services in each appellate district.

14 (c) The chief justice of the Supreme Court of Louisiana shall appoint four
15 members, one member shall be a juvenile justice advocate; one member shall be a
16 retired judge with criminal law experience; and two members shall be at large.

17 (d) The president of the Senate and the speaker of the House of
18 Representatives shall each appoint one member.

19 (e) All appointments to the board shall be subject to confirmation by the
20 Senate.

21 (4) A vacancy on the board shall be filled in the same manner as the original
22 appointment.

23 (5) Members of the board shall serve staggered terms of four years.

24 C.(1) The board, by a vote of two-thirds of the members, may expel a
25 member who has accumulated three unexcused absences from board meetings during
26 a twelve-month period.

27 (2) If a member is expelled as provided by this Subsection, the board shall
28 send written notice to the member informing him of his expulsion and notify the
29 appropriate appointing authority of the vacancy on the board.

1 ~~D. The board shall notify the appropriate appointing authority of any board~~
2 ~~vacancy which occurs for any reason.~~

3 The governor shall appoint the state public defender who shall also be the
4 executive director for the Office of the State Public Defender and Justice Investment
5 and who shall serve at the pleasure of the governor. Each appointment by the
6 governor shall be submitted to the Senate for confirmation, and every appointment
7 confirmed by the Senate shall again be submitted by the governor to the Senate for
8 confirmation every four years after the initial confirmation.

9 §147. Powers, duties, responsibilities

10 A. Except for the inherent regulatory authority of the Louisiana Supreme
11 Court provided for in Article V, Section 5 of the Constitution of Louisiana regarding
12 the regulation of the practice of law, the ~~Louisiana Public Defender Board~~ office
13 shall have all regulatory authority, control, supervision, and jurisdiction, including
14 auditing and enforcement, and all power incidental or necessary to such regulatory
15 authority, control, supervision, and jurisdiction over all aspects of the delivery of
16 public defender services throughout the courts of the state of Louisiana.

17 B. In addition to the powers and duties provided for in Subsection A of this
18 Section, the ~~board~~ office shall:

19 (1) ~~Employ an executive staff as provided for in R.S. 15:150 and regularly~~
20 ~~evaluate the performance of the executive staff~~ necessary to carry out the duties of
21 the office at the discretion of the state public defender.

22 (2) Adopt all rules necessary to implement the provisions of this Part as
23 provided in R.S. 15:148 and in accordance with the Administrative Procedure Act.

24 (3) ~~Review and approve the~~ Develop a strategic plan and budget proposals
25 ~~submitted by the state public defender,~~ for implementing this Part and for
26 coordinating services provided by service programs, regional directors, where
27 applicable, and district public defenders on behalf of the districts. ~~The board shall~~
28 ~~consider variations in public defense practices, past practices and procedures, and~~

1 ~~conditions unique to each district in evaluating the strategic plan and budget~~
2 ~~proposals on the district level.~~

3 (4) Make an annual report to the legislature regarding the state of the ~~board's~~
4 office's operations and the status of public defender services it regulates. Such report
5 shall include at a minimum:

6 (a) Recommendations for all needed changes in the law regarding the ~~board~~
7 office or any regulated activity.

8 (b) A complete report on the receipt and expenditure of all funds received
9 by the ~~board~~ office and the regional offices, where applicable, including district level
10 data.

11 (c) Comprehensive workload data.

12 (5)(a) Establish, and modify as necessary, a plan of organization to conduct
13 the business of regulating and controlling the delivery of public defender services
14 under its jurisdiction efficiently and thoroughly.

15 (b) The plan of organization shall provide for the capacity to:

16 (i) Administer the granting of contracts.

17 (ii) Analyze and review investigative and audit reports and findings.

18 (iii) Provide for enforcement of ~~board~~ office rules as is necessary to the
19 efficient and thorough regulation and governance of public defender services under
20 its jurisdiction.

21 (6) Incur such expenses and obligations, within the fiscal limits available to
22 the ~~board~~ office, as are necessary to the efficient and thorough regulation and
23 governance of the delivery of public defender services under its jurisdiction and
24 establish and maintain an accounting system which complies with law.

25 (7) Approve, prior to its presentation to the legislature and again after
26 appropriation prior to allocation, the budget for the ~~board~~ office.

27 (8) Issue a written response to any formal request from the governor and the
28 legislature or any committee thereof.

1 (9) Appear before any committee of the legislature upon request of the
2 president of the Senate, the speaker of the House, or the chairman of any legislative
3 committee.

4 (10) Review any proposal to create permanent staff positions and approve
5 if deemed appropriate.

6 (11) Prepare and submit to the Joint Legislative Committee on the Budget
7 on or before March first of each year an annual financial report which outlines the
8 expenditures of local, state, and federal funds for the previous calendar year for
9 review by the Joint Legislative Committee on the Budget.

10 (12) Draft, administer, and furnish reporting forms to the district public
11 defender, which request detailed information of the district's workload, resources,
12 employees, and expenditures for the previous fiscal year based on the uniform
13 definition of a "case" as defined in R.S. 15:174(C).

14 (13) Collect, prepare, and submit an annual report to the legislative auditor.

15 (14) Administer the DNA Testing Post-Conviction Relief for Indigents Fund
16 as required under the provisions of Code of Criminal Procedure Article 926.1.

17 (15) ~~Arrange for locations, which have adequate space to accommodate the~~
18 ~~public, to conduct its meetings.~~ Allocate funding to the following:

19 (a) Public defenders, for services as more specifically provided by this Part.

20 (b)(i) Service programs, including but not limited to CASA, for services
21 provided for the assistance to and representation of persons in the criminal judicial
22 system.

23 (ii) The office shall submit for approval to the Joint Legislative Committee
24 on the Budget each service program that is to receive funding pursuant to this Part.

25 (16) Adopt rules for the establishment of salary ranges for attorneys and
26 support staff delivering public defender services, taking into consideration variations
27 in public defense practices and procedures in rural, urban, and suburban districts as
28 well as professional experience.

1 (17) Supervise the activities of staff and apply reasonable controls for the
2 supervision of spending, accounting, and discretionary grants. ~~The board shall seek~~
3 ~~the assistance of the legislative auditor or an internal auditor to ensure that staff~~
4 ~~discretion is subject to supervision consistent with the Louisiana Local Government~~
5 ~~Budget Act, R.S. 39:1301 et seq.~~ The ~~board's~~ office's supervision shall include
6 reviewing details regarding expert witness funds or other case-specific grants,
7 including the confidential work product of attorneys in litigation, compensation, and
8 records supporting fees of experts and others, and analysis of the efficiency and
9 effectiveness of programs. The attorney-client privilege and confidentiality that
10 applies to counsel in cases shall apply to the state public defender and all board
11 ~~members and staff~~ for the review of case details.

12 (18) Adopt reasonable procedures in compliance with the Louisiana Rules
13 of Professional Conduct for the review and preservation of confidentiality of
14 privileged materials during and after litigation, including impressions of counsel,
15 strategy of litigation, and results of expert work and opinion.

16 (19) Adopt procedures necessary to protect strategic choices and confidential
17 work product of the ~~board~~ office when the ~~board~~ office considers important matters
18 of spending. However, the amounts and general purposes shall remain public record
19 of the ~~board's~~ office's decisionmaking process.

20 (20) Develop a mechanism for the distribution of funds to the district public
21 defender offices and to the service programs approved by the Joint Legislative
22 Committee on the Budget.

23 C. The ~~board~~ office may:

24 (1) Enter into a contract or contracts, on such terms and conditions as it
25 deems advisable, with one or more attorneys licensed to practice law in this state, a
26 consortia of lawyers, or an independent public defender organization qualified with
27 the United States Internal Revenue Service for an exemption from federal income tax
28 under Section 501(c) of the Internal Revenue Code to provide counsel for indigent
29 defendants. The provisions of this Paragraph are subject to the intent of the

1 ~~Louisiana Public Defender Act~~ this Part that district public defender programs shall
2 continue operating within the method of delivery of services in effect prior to April
3 30, 2007, and the ~~board~~ office is prohibited from using its power to contract to
4 change the structure of a local program, delivery method, or to terminate personnel
5 without cause in violation of R.S. 15:165(C).

6 (2) Establish advisory councils from among Louisiana residents to provide
7 information and guidance regarding needs and concerns of particular localities. Such
8 councils may be established at such times, for such duration, and under such
9 circumstances, as the ~~board~~ office deems appropriate.

10 (3) Accept, receive, and use public or private grants, gifts, or donations,
11 provided that such gifts, grants, and donations are not otherwise prohibited by law
12 or rule.

13 (4) Employ secretarial, clerical, and other such personnel as may be
14 necessary in the operation of the business of the ~~board~~ office and fix their
15 compensation.

16 (5) Enter into contracts in accordance with law for the purpose of
17 maintaining and operating an office, or offices, and performing the functions
18 authorized by law. The provisions of this Paragraph are subject to the intent of the
19 Louisiana Public Defender Act that district public defender ~~programs~~ offices shall
20 continue operating within the method of delivery of services in effect prior to April
21 30, 2007, and the ~~board~~ office is prohibited from using its power to contract to
22 change the structure of a local program, delivery method, or to terminate personnel
23 without cause in violation of R.S. 15:165(C).

24 D.(1) Prior to entering into any contract as authorized by Subsection C of
25 this Section, the ~~board~~ office shall provide public notice that a contract is under
26 consideration by the ~~board~~ office and shall provide an opportunity for the public to
27 offer comment, regarding the contract, at a public hearing conducted for that
28 purpose.

1 (2) The notice shall include the name of the individual attorneys, a
2 consortium of lawyers, or an independent public defender organization qualified with
3 the United States Internal Revenue Service for an exemption from federal income tax
4 under Section 501(c) of the Internal Revenue Code to provide counsel for indigent
5 defendants, the amount of compensation to be paid, and the nature of the contracted
6 services.

7 (3) The ~~board~~ office shall conduct a public hearing regarding any contract
8 authorized by Subsection C of this Section and provide the public an opportunity to
9 offer comment on the contract.

10 ~~(4) The public hearing provided for by this Subsection may be conducted at~~
11 ~~a regular meeting of the board provided proper notice is provided to the public as~~
12 ~~required by this Subsection.~~

13 E. The ~~executive staff~~, regional directors; and secretarial, clerical, and other
14 personnel directly employed in the operations of the ~~board~~ office shall be state
15 employees. All other personnel employed or who serve under contract in a district
16 office shall not be state employees. ~~The Joint Legislative Committee on the Budget~~
17 ~~may approve other employees hired pursuant to the Louisiana Public Defender Act~~
18 ~~as state employees upon recommendation of the board.~~

19 §148. Rulemaking; considerations in developing rules

20 A. The ~~board~~ office shall adopt all rules necessary to implement the
21 provisions of this Part.

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

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

27 (a) Manageable public defender workloads that permit the rendering of
28 competent representation through an empirically based case weighting system that
29 does not count all cases of similar case type equally but rather denotes the actual

1 amount of attorney effort needed to bring a specific case to an appropriate
2 disposition. In determining an appropriate workload monitoring system, the ~~board~~
3 office shall take into consideration all of the following:

4 (i) The variations in public defense practices and procedures in rural, urban,
5 and suburban jurisdictions.

6 (ii) Factors such as prosecutorial and judicial processing practices, trial rates,
7 sentencing practices, attorney experience, extent and quality of supervision, and
8 availability of investigative, social worker, and support staff.

9 (iii) Client enhancers specific to each client such as the presence of mental
10 illness.

11 (b) ~~Continuity of representation.~~ The ~~board~~ office shall adopt standards and
12 guidelines which ensure that each district devises a plan to provide that, to the extent
13 feasible and practicable, the same attorney handles a case from appointment contact
14 through completion at the district level in all cases.

15 (c) ~~Documentation of communication.~~ The ~~board~~ office shall adopt
16 standards and guidelines to ensure that defense attorneys providing public defender
17 services provide documentation of communications with clients regarding the
18 frequency of attorney client communications as required by rules adopted by the
19 ~~board~~ office.

20 (d) ~~Performance supervision protocols.~~ The ~~board~~ office shall adopt
21 standards and guidelines to ensure that all defense attorneys providing public
22 defender services undergo periodic review of their work against the performance
23 standards and guidelines in a fair and consistent manner throughout the state,
24 including creating a uniform evaluation protocol.

25 (e) Performance of public defenders in all assigned public defense cases.
26 The ~~board~~ office shall adopt general standards and guidelines that alert defense
27 counsel to courses of action that may be necessary, advisable, or appropriate to a
28 competent defense including performance standards in the nature of job descriptions.

1 (f) ~~Consistency of standards.~~ The performance standards and guidelines
2 shall be based upon the performance standards originally adopted by the Louisiana
3 Indigent Defense Assistance Board (LIDAB) in 2006 and any subsequent
4 amendments to those standards adopted by the ~~board~~ office.

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

12 (a) The specific training programs that must be completed to qualify for each
13 type of case.

14 (b) The number of years the public defender has spent in the practice of law
15 in good standing with the Louisiana State Bar Association.

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

19 (4) Establishing procedures to handle complaints about public defender
20 performance and to ensure that public defenders, office personnel, and clients are
21 aware of avenues available for bringing a complaint and that office procedures do
22 not conflict with the supervisory jurisdiction of the Louisiana Supreme Court and
23 pursuant to the court's inherent authority provided for in Article V, Section 5 of the
24 Constitution of Louisiana.

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

27 (6) Establishing a policy of selecting a proportionate number of minority and
28 women lawyers in accordance with the makeup of the general population of the state,
29 to the extent that minority and women lawyers are available and otherwise eligible

1 for selection within each service region in accordance with law. Any citizen of
2 majority age shall have a cause of action to enjoin the activities of the ~~board~~ office
3 for failure to comply with this provision.

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

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

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

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

16 (11) Ensuring data, including workload, is collected and maintained in a
17 uniform and timely manner throughout the state to allow the ~~board~~ office sound data
18 to support resource needs.

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

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

26 (14) Establishing processes and procedures to ensure that ~~board~~ office and
27 contract personnel use information technology and workload management systems
28 so that detailed expenditure and workload data is accurately collected, recorded, and
29 reported.

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

7 C. All rules shall be adopted pursuant to the provisions of the Administrative
 8 Procedure Act and shall be subject to legislative oversight by the House Committee
 9 on the Administration of Criminal Justice and the Senate Committee on Judiciary C.

10 * * *

11 §149.1. Domicile of board; venue

12 A. The ~~board~~ office shall be domiciled in East Baton Rouge Parish.

13 B. Notwithstanding any other provision of law to the contrary, the venue for
 14 any civil proceeding by or against the ~~board~~ office or to which the ~~board~~ office is a
 15 party shall be East Baton Rouge Parish.

16 * * *

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

18 A. ~~The board shall employ a state public defender who shall meet the~~
 19 ~~following qualifications:~~

20 ~~(1) Meet the qualifications provided for in R.S. 15:150(B).~~

21 ~~(2) Be an attorney licensed to practice law in the United States with at least~~
 22 ~~seven years of experience as a criminal defense attorney. If licensed as an attorney~~
 23 ~~in a state other than Louisiana, become licensed as an attorney in this state within~~
 24 ~~one year of being employed by the board.~~

25 ~~B. The state public defender shall:~~

26 ~~(1) Recommend to the board how to establish and maintain, in a~~
 27 ~~cost-effective manner, the delivery of legal services to persons entitled to, and~~
 28 ~~financially eligible for, appointed counsel in criminal proceedings at state expense~~
 29 ~~under Louisiana law, the Constitution of Louisiana, and the United States~~

1 ~~Constitution and consistent with the standards of national justice and those~~
2 ~~established by the Louisiana Supreme Court.~~

3 ~~(2) Develop and present for the board's approval a strategic plan for the~~
4 ~~delivery of public defender services.~~

5 ~~(3) Implement and ensure compliance with contracts, policies, procedures,~~
6 ~~standards, and guidelines adopted pursuant to rule by the board or required by~~
7 ~~statute.~~

8 ~~(4) Prepare and submit to the board for its approval the budget of the board.~~

9 ~~(5) Negotiate contracts, as appropriate, for providing legal services to~~
10 ~~persons financially eligible for appointed counsel at state expense. No contract so~~
11 ~~negotiated is binding or enforceable until the contract has been reviewed and~~
12 ~~approved by the board at a public hearing as provided for in R.S. 15:147(D). The~~
13 ~~provisions of this Paragraph are subject to the intent of the Louisiana Public~~
14 ~~Defender Act that district public defender programs shall continue operating within~~
15 ~~the method of delivery of services in effect prior to April 30, 2007, and the board is~~
16 ~~prohibited from using its power to contract to change the structure of a local~~
17 ~~program, delivery method, or to terminate personnel without cause in violation of~~
18 ~~R.S. 15:165(C).~~

19 ~~(6) Employ personnel or contract for services as necessary to carry out the~~
20 ~~responsibilities of the board. The provisions of this Paragraph are subject to the~~
21 ~~intent of the Louisiana Public Defender Act that district public defender programs~~
22 ~~shall continue operating within the method of delivery of services in effect prior to~~
23 ~~April 30, 2007, and the board is prohibited from using its power to contract to~~
24 ~~change the structure of a local program, delivery method, or to terminate personnel~~
25 ~~without cause in violation of R.S. 15:165(C).~~

26 ~~(7) Supervise the personnel, operation, and activities of the board.~~

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

1 ~~(9) Appear before the Joint Legislative Committee on the Budget and report~~
2 ~~on the activities of the board.~~

3 ~~(10) Actively seek gifts, grants, and donations that may be available through~~
4 ~~the federal government or other sources to help fund the system, provided that such~~
5 ~~gifts, grants, and donations are not otherwise prohibited by law or rule.~~

6 ~~(11) Assist the board in the adoption of rules as provided for in R.S. 15:148~~
7 ~~and in accordance with the Administrative Procedure Act.~~

8 ~~(12) Provide services, facilities, and materials necessary for the performance~~
9 ~~of the duties, functions, and powers of the board.~~

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

13 ~~(14) Establish administrative management procedures for regional offices,~~
14 ~~where applicable.~~

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

20 ~~(16) Perform all other duties assigned by the board.~~

21 The state public defender, appointed pursuant to R.S. 15:146(B) and
22 functioning as the executive director of the office, shall have full jurisdiction,
23 authority, and discretion over all aspects of the office.

24 ~~C.B.~~ The state public defender shall receive annual compensation at least
25 equal in amount to an associate justice of the supreme court of this state.

26 * * *

27 §166. Disbursement of funds

28 A. The ~~board~~ office shall not disburse funds to a non-governmental entity
29 unless it establishes a benefit to the function of the ~~board~~ office pursuant to law; and

1 unless services are actually delivered. Under no circumstances shall the ~~board~~ office
2 disburse state funds for the purpose of savings, reserves, or other purposes related
3 primarily to the economic health of the non-governmental entity or its owners and
4 employees.

5 B. Any service which the ~~board~~ office seeks, ~~other than the Louisiana~~
6 ~~Appellate Project or the Capital Appeals Project, which are statewide programs,~~ shall
7 be subject to an application process by which the ~~board~~ office provides objective
8 deliverables and allows the district defenders to make application upon the same
9 terms as a non-governmental entity to provide services in that district or a regional
10 area for services as provided by law.

11 C. No provision of Louisiana law authorizing the return or rollback of funds
12 from governmental programs to the division of administration shall apply to the
13 ~~board~~ office account during an emergency shortfall in funding as certified by the
14 ~~board~~ office with the approval of the chief justice of the Louisiana Supreme Court.

15 §167. ~~Louisiana Public Defender~~ Justice Investment Fund

16 A. "The ~~Louisiana Public Defender~~ Justice Investment Fund", hereinafter
17 referred to as the "~~LPD Fund~~" "fund", is hereby created in the state treasury. Interest
18 earned on the investment of monies in the fund shall be deposited in and credited to
19 the fund. Unexpended and unencumbered monies in the fund at the close of each
20 fiscal year shall remain in the fund. Monies in the fund shall be appropriated,
21 administered, and used solely and exclusively for purposes of the Louisiana Public
22 Defender Act and program, and other service programs, including CASA, and as
23 further provided in this Section.

24 B. The fund shall be comprised of all monies appropriated, donated, or
25 otherwise made available to provide funding for the provisions of the Louisiana
26 Public Defender Act and other service programs, including CASA. All of such
27 monies required to be deposited in the state treasury in accordance with Article VII,
28 Section 9(A) of the Constitution of Louisiana shall be deposited in the fund after first

1 meeting the requirements of Article VII, Section 9(B) of the Constitution of
2 Louisiana relative to the Bond Security and Redemption Fund.

3 C. Monies in the fund shall be appropriated and used solely and exclusively
4 to provide for the implementation of ~~the Louisiana Public Defender Act and this Part,~~
5 the program, and other service programs, including CASA.

6 D. The ~~LPD Fund~~ fund shall be administered by the ~~board~~ office as
7 authorized by the provisions of ~~the Louisiana Public Defender Act~~ this Part. The
8 ~~board~~ office is hereby authorized to establish such accounts or sub-accounts within
9 the ~~LPD Fund~~ fund as deemed necessary to comply with the provisions of the
10 ~~Louisiana Public Defender Act~~ this Part and the program. ~~The board shall not~~
11 ~~commingle the monies in the LPD Fund established in this Section with any other~~
12 ~~monies or funds of the board for any reason.~~

13 E. The ~~board~~ office shall dedicate and disburse at least sixty-five percent of
14 the entirety of its annual budget and its funds in the ~~Louisiana Public Defender Fund~~
15 fund ~~as defined in Subsection A of this Section~~ each fiscal year to the district
16 defender offices and their indigent defender funds as defined in R.S. 15:168(A) in
17 the various judicial districts throughout the state. Any funds disbursed to any district
18 defender office shall be paid in addition to the minimum mandatory sixty-five
19 percent of dedicated and disbursed funds required in this Subsection. The provisions
20 of this Subsection shall not apply to statutorily dedicated funds or funds received
21 through the awarding of grants.

22 §168. Judicial district indigent defender fund

23 A. There is hereby created within each judicial district an indigent defender
24 fund which shall be administered by the district public defender and composed of
25 funds provided for by this Section and such funds as may be appropriated or
26 otherwise made available to it.

27 ~~B.(1)(a)~~ Every court of original criminal jurisdiction, except in the town of
28 Jonesville, in the city of Plaquemine, and in mayors' courts in municipalities having
29 a population of less than five thousand, shall remit the following special costs to the

1 ~~district indigent defender fund~~ state treasurer for deposit into the Justice Investment
 2 Fund for the following violations, under state statute as well as under parish or
 3 municipal ordinance, except a parking violation. ~~Except as provided in~~
 4 ~~Subparagraph (b) of this Paragraph, the~~ The sum of forty-five dollars shall be
 5 assessed in cases in which a defendant is convicted after a trial, ~~a plea of~~ pleads
 6 guilty or nolo contendere, or ~~after forfeiting~~ forfeits bond and shall be in addition to
 7 all other fines, costs, or forfeitures imposed.

8 (b) ~~In the parish of Orleans, in addition to all other fines, costs, or forfeitures~~
 9 ~~imposed, the sum of forty-five dollars may be assessed in cases in which a defendant~~
 10 ~~is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond.~~

11 (2)(a) Such amounts shall be remitted by the respective recipients thereof to
 12 the ~~judicial district indigent defender fund~~ state treasurer for deposit into the Justice
 13 Investment Fund monthly by the tenth day of the succeeding month.

14 (b) Such amounts remitted in the parish of Orleans shall include all of the
 15 following data for each case in which the costs required for in this Subsection are
 16 assessed:

- 17 ~~(1)~~(i) Name and case number of each defendant.
- 18 ~~(2)~~(ii) Date of order assessing such costs.
- 19 ~~(3)~~(iii) Date by which the defendant is ordered to pay such costs.
- 20 ~~(4)~~(iv) Date of collection of such costs.
- 21 ~~(5)~~(v) Actual amount collected.

22 (c) The office for the district public defender for the parish of Orleans shall
 23 notify the office of the inspector general, city of New Orleans, in writing, if such
 24 amounts and data required in Subparagraphs (a) and (b) of this Paragraph have not
 25 been remitted by the fifteenth day of the month.

26 ~~E.B.(1) Except as otherwise provided by the Louisiana Public Defender Act,~~
 27 ~~the funds provided for in this Section, and this Part, any other~~ self-generated revenue
 28 and all interest or other income earned from the investment of such funds and self-

1 generated revenue shall be retained in the district and shall be used and administered
2 by the district public defender.

3 (2) Funds received pursuant to this Section shall be distributed to the district
4 public defender offices within ten days of receipt of such funds.

5 ~~D.C.~~ No defendant who has retained private counsel of record shall be
6 assessed any costs to be credited to the indigent defender fund, other than the special
7 costs established by Subsection B A of this Section, unless ~~the board~~ a public
8 defender has provided representation of record for that defendant at some point in
9 that criminal proceeding.

10 E. ~~Any surplus monies in the judicial district indigent defender fund on~~
11 ~~August 15, 2007, shall be retained in that judicial district and remain in the judicial~~
12 ~~district indigent defender fund.~~ Any unexpended and unencumbered monies in the
13 judicial district indigent defender fund at the close of each fiscal year shall remain
14 in the judicial district indigent defender fund. Monies in the fund shall be
15 administered and used solely and exclusively for purposes of delivering indigent
16 defender services in that judicial district.

17 * * *

18 Section 2. R.S. 36:4(D) is hereby amended and reenacted to read as follows:

19 §4. Structure of executive branch of state government

20 * * *

21 D. ~~The Louisiana Public Defender Board~~ Office of the State Public Defender
22 and Justice Investment, as more specifically provided for in the Louisiana Public
23 Defender Act (R.S. 15:141 et seq.), shall be placed within the office of the governor
24 as an independent agency and shall exercise its powers, duties, functions, and
25 responsibilities in the manner provided for agencies transferred in accordance with
26 the provisions of R.S. 36:801.1.

27 Section 3. R.S. 15:149.2 through 151 and 153 through 158 are hereby repealed in
28 their entirety.

1 Section 4.(A) The governor shall appoint the state public defender for the Office of
2 the State Public Defender and Justice Investment not later than December 1, 2021.

3 (B) Effective January 1, 2022, all of the following shall occur:

4 (1) The Office of the State Public Defender and Justice Investment shall be the
5 successor to and shall assume control of the affairs of the Louisiana Public Defender Board.

6 (2) All powers, duties, functions, and responsibilities of the Louisiana Public
7 Defender Board are transferred to and shall be performed and exercised by the office. In
8 addition, all of the obligations of the Louisiana Public Defender Board are transferred to the
9 office. Upon the transfer of the powers, duties, functions, and responsibilities accomplished
10 by this Section, any pending or unfinished business of the Louisiana Public Defender Board
11 shall become the business of and be completed by the office with the same power and
12 authority as the entity from which the functions are transferred.

13 (3) All administrative functions performed by the Louisiana Public Defender Board
14 relative to any component of the Louisiana Public Defender Act prior to the effective date
15 of this Act shall be transferred to the Office of the State Public Defender and Justice
16 Investment.

17 (4) Except for the inherent regulatory authority of the Louisiana Supreme Court
18 provided for in Article V, Section 5 of the Constitution of Louisiana regarding the regulation
19 of the practice of law, the office shall undertake and have all regulatory authority, control,
20 supervision, and jurisdiction, including auditing and enforcement, and all power incidental
21 or necessary to such regulatory authority, control, supervision, and jurisdiction over all
22 aspects of the delivery of public defender services throughout the courts of the state of
23 Louisiana.

24 (5) All funds dedicated and appropriated to the Louisiana Public Defender Board
25 shall be transferred to the office.

26 (6) All funds dedicated and appropriated for service programs, including CASA,
27 shall be administered by the office.

28 (7) All books, papers, records, money, rights of action, and other property of every
29 kind, movable and immovable, real and personal, heretofore possessed, controlled, or used

1 by the Louisiana Public Defender Board shall be transferred to the office, except as
2 otherwise specifically provided by this Act.

3 (8) Any assets, funds, facilities, property, equipment, books, documents, records,
4 obligations, programs, and functions relative to the Louisiana Public Defender Board shall
5 be transferred to the office.

6 (C) All rules, regulations, and policies adopted by or applicable to the Louisiana
7 Public Defender Board prior to the effective date of this Act shall continue in full force and
8 effect unless amended or repealed by the Office of the State Public Defender and Justice
9 Investment.

10 (D) Any reference in rules, laws, and documents to or any designation by any law
11 or contract or other document of the Louisiana Public Defender Board shall be deemed to
12 refer to the office provided that, to the extent necessary to prevent the impairment of the
13 contractual obligations of any entity heretofore existing or of the state, the existence,
14 organization, and functions of any such entity shall be excluded from the provisions of this
15 Section. Any legal proceeding to which the Louisiana Public Defender Board is a party and
16 which is filed, initiated, or pending before any court on January 1, 2022, and all documents
17 involved in or affected by said legal proceeding, shall retain their effectiveness and shall be
18 continued in the name of the office. All further legal proceedings and documents in the
19 continuation, disposition, and enforcement of said legal proceeding shall be in the name of
20 the office, and the office shall be substituted for the Louisiana Public Defender Board
21 without the necessity for amendment of any document. All obligations of the Louisiana
22 Public Defender Board shall be the obligations of the office. The office shall be the
23 successor in every way to the Louisiana Public Defender Board, including all of the
24 obligations and debts of the Louisiana Public Defender Board. The provisions of R.S.
25 15:141 through 184 shall not be construed or applied in any way which will prevent full
26 compliance by the state, or any department, office, or agency thereof, with the requirements
27 of any act of Congress of the United States or any regulation made thereunder by which
28 federal aid or other federal assistance has been or hereafter is made available.

1 (E) The office shall, to the extent possible and at the discretion of the state public
2 defender, provide for employees of the Louisiana Public Defender Board, not including the
3 appointed board members, to continue to perform the duties they performed prior to the
4 effective date of this Act without loss of status, salary, and related benefits.

5 (F) Prior to January 1, 2022, the Louisiana Public Defender Board shall not:

6 (1) Sell, transfer, or otherwise remove any asset or thing of value, movable or
7 immovable, corporeal or incorporeal, attributable to or owned by the Louisiana Public
8 Defender Board.

9 (2) Incur, transfer, or assign any debt or other responsibility or obligation to the
10 district that is not properly attributable to the Louisiana Public Defender Board.

11 (3) Reduce or reallocate the level of funding, staffing, or support that would
12 otherwise be allocated to the Louisiana Public Defender Board.

13 (4) Impose any budget reductions or changes in funding without the prior approval
14 of the Joint Legislative Committee on the Budget.

15 (5) Take any personnel action with regard to any employee without the approval of
16 the governor.

17 Section 5. The Louisiana State Law Institute is hereby directed to make technical
18 changes to statutory laws as necessary to change the terminology in order to reflect the name
19 changes provided by this Act, specifically R.S. 15:141 through 186.6, as necessary to change
20 the term "board" to the term "office".

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 586 Original

2021 Regular Session

Magee

Abstract: Creates the Office of the State Public Defender and Justice Investment and repeals the La. Public Defender Board.

Present law provides for the La. Public Defender Act which was enacted in order to ensure the right to counsel is delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state and to ensure that adequate public funding is provided and managed in a cost-effective and fiscally responsible manner.

Proposed law retains present law.

Present law created and established the La. Public Defender Bd. (the board) as a state agency within the office of the governor.

Proposed law eliminates the board and creates the Office of the State Public Defender and Justice Investment (the office) as a state agency within the office of the governor.

Proposed law repeals the present law definition of "board" and other definitions related to the board, adds a definition of "office", and makes technical changes in terminology to reflect the elimination of the board and the creation of the office.

Proposed law defines "service program" as a non-governmental entity that provides assistance to or representation of defendants or other persons in the criminal justice system and that is qualified with the U.S. Internal Revenue Service for an exemption from federal income tax under Section 501(c) of the Internal Revenue Code.

Proposed law repeals all provisions of present law related to the establishment and membership, and voting requirements of the board.

Proposed law provides for the appointment of the state public defender by the governor, subject to Senate confirmation.

Present law provides for the powers, duties, responsibilities, and meeting requirements of the board.

Proposed law provides additional duties of the office to implement and coordinate services provided by service programs, allocate funding to public defenders and service programs, and develop a mechanism for the distribution of such funds, but otherwise retains similar duties of the board as provided by present law.

Present law authorizes the Joint Legislative Committee on the Budget (JLCB) to approve employees hired by the board as state employees.

Proposed law repeals present law and requires the office to submit for approval to the JLCB each service program that is to receive funding from the office.

Present law provides for the employment by the board of a state public defender and provides for the qualifications and duties of the state public defender.

Proposed law retains the state public defender but provides for his appointment by the governor and specifies his authority to function as the executive director of the office.

Present law provides for the La. Public Defender Fund and provides that the monies in the fund shall be appropriated, administered, and used solely and exclusively for the purposes of the La. Public Defender Act and program.

Proposed law retains present law but changes the name of the fund to the Justice Investment Fund and also authorizes the use of monies for service programs.

Present law provides for the creation of judicial district indigent defender funds for each judicial district and requires the courts, except in the parish of Orleans, to remit special costs to the fund. Present law provides for a \$45 fee to be assessed in cases in which a defendant is convicted after a trial, pleads guilty or nolo contendere, or forfeits bond.

Proposed law retains present law but requires the costs to be remitted to the state treasurer for deposit into the Justice Investment Fund, and also removes the exception for the parish of Orleans.

Proposed law requires that the funds received pursuant to proposed law shall be distributed the district public defender offices within 10 days of receipt of such funds.

Proposed law repeals a reference to surplus funds in the judicial district indigent defender fund on Aug. 5, 2007.

Present law provides for the board with respect to the structure of the executive branch of state government as an agency within the governor's office.

Proposed law repeals present law and provides for the office as an agency within the governor's office.

Present law provides for board offices and meeting and quorum requirements.

Proposed law repeals present law.

Present law requires employment of board executive staff, a deputy public defender-director of training, a deputy public defender-director of juvenile defender services, a budget officer, an information technology and management officer, a trial-level compliance officer, and a juvenile justice compliance officer.

Proposed law repeals present law.

Proposed law provides that the office shall be the successor to the board and provides for transitional provisions to take effect on Jan. 1, 2022.

Proposed law directs the La. State Law Institute to make technical changes as necessary to change the terminology in order to reflect the name changes as provided by proposed law.

(Amends R.S. 15:142(C) and (F), 143, 146, 147, 148, 149.1, 152, 166, 167, and 168, and R.S. 36:4(D); Adds R.S. 15:142(G); Repeals R.S. 15:149.2-151 and 153-158)