

1 removal of the responsibility of providing indigent defender services in capital cases
2 from the Louisiana Public Defender Board; to provide relative to the transfer of all
3 powers, duties, functions, and responsibilities of the Louisiana Public Defender
4 Board with regard to capital cases; to provide for effective dates; and to provide for
5 related matters.

6 Be it enacted by the Legislature of Louisiana:

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

9 PART I-A. INDIGENT REPRESENTATION IN CAPITAL CASES

10 §184. Short title

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

13 * * *

14 §184.2. Definitions

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

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

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

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

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

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

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

6 §184.3. Committee for the Provision of Indigent Defender Services in Capital
7 Cases; membership; meetings; per diem

8 A. There is hereby created and established within the Criminal Code
9 Committee of the Louisiana State Law Institute, the Committee for the Provision of
10 Indigent Defender Services in Capital Cases. The committee shall study, develop,
11 and issue a report to the Louisiana Legislature with recommendations for a master
12 plan to establish a statewide system of providing indigent defender services in capital
13 cases in all courts in this state.

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

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

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

22 (c) One retired prosecutor, appointed by the Louisiana District Attorneys
23 Association, who is a member of the District Attorneys' Retirement System and who
24 has experience prosecuting capital cases.

25 (2) If at any time it appears that a member of the committee lacks any
26 qualification required by this Section, the member may be removed from the
27 committee by a unanimous vote of the other members of the committee. Upon
28 removal of a member, the committee shall notify the entity that appointed the
29 member that the member was removed. The entity that appointed the removed

1 member shall, within thirty days after receiving notice of the removal, appoint
2 another person who meets the qualifications set forth in this Section to replace the
3 committee member who was removed.

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

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

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

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

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

22 §184.4. Powers, duties, and responsibilities of the committee; presentation of master
23 plan

24 A. The committee shall study and develop a master plan for the
25 establishment of a statewide system for providing indigent defender services in
26 capital cases in all courts in this state. The master plan shall be provided to the
27 Louisiana Legislature and shall generally include a recommendation for the
28 establishment, implementation, administration, and oversight of the statewide system
29 for providing indigent defender services in capital cases in all courts of this state.

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

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

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

10 (3) Procedures for maintaining constitutionally appropriate workloads that
11 permit the rendering of competent representation.

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

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

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

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

21 (8) Salary ranges for compensation of attorneys delivering capital public
22 defender services throughout the state which are based on objective factors,
23 including years of service, nature of the work and workload, variations of public
24 defense practices and procedures in rural, urban, and suburban districts, prosecutorial
25 and judicial processing practices, trial rates, sentencing practices, and experience.

26 (9) Minimum salary and compensation standards for attorneys, investigators,
27 paraprofessionals, and any and all other staff, employees, or contractors necessary
28 for the adequate provision of capital indigent defender services, which are
29 comparable to similar positions throughout the state.

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

3 C. The committee may:

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

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

10 §184.5. Presentation of master plan; transfer of capital defense services

11 All powers, duties, functions, and responsibilities of the Louisiana Public
12 Defender Board relative to capital cases shall be transferred and shall be performed
13 pursuant to the provisions of this Act when both of the following occur: (1) The
14 Louisiana Legislature enacts legislation that establishes and implements the
15 statewide system for providing indigent defender services in capital cases as set forth
16 in the master plan pursuant to the provisions of this Act.

17 (2) The Louisiana Legislature appropriates money for the purpose of
18 administering the statewide system of providing capital public defender services to
19 all judicial districts in the state pursuant to the provisions of the Act that originated
20 as House Bill No. 605 of the 2015 Regular Session of the Louisiana Legislature.

21 §184.6. Right of action not created

22 A. It is not the intent of the legislature to create any new right, right of
23 action, or cause of action or to eliminate any right, right of action, or cause of action
24 existing under any provision of law. Nothing in the provisions of this Part shall
25 create, expressly or by implication, any right, claim, or cause of action in favor of
26 anyone in connection with the delivery of capital indigent defender services.

27 B. In addition to the provisions of Subsection A of this Section, nothing in
28 this Part, nor any standards, guidelines, or rules adopted pursuant to this Part, shall
29 be construed to provide any criminal defendant the basis of any claim that the

1 attorney or attorneys appointed to represent him pursuant to this statute performed
 2 in an ineffective manner. It shall be presumptive evidence that any attorney
 3 performing capital public defender services pursuant to the auspices of this Part is
 4 currently certified to have met the standards and guidelines set forth pursuant to the
 5 provisions of this Part relative to providing criminal defense services in an effective
 6 manner. Nothing in this Part shall be construed to overrule, expand, or extend,
 7 whether directly or by analogy, the decision reached by the Supreme Court of the
 8 United States in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d
 9 674 (1984) nor its progeny as adopted by the Louisiana Supreme Court.

10 Section 2. R.S. 15:142(B)(introductory paragraph), (C), and (D), 146(A)(1), 147(A)
 11 and (C)(1), 148(B)(1)(introductory paragraph), (2)(introductory paragraph), (3), (4), (5), (7),
 12 (8), (9), (10), (11), (12), (13), and (15), 152(B)(1), (2), (5), (8), (13), and (15), 153(B)(1), (2),
 13 (3), (4), and (6), 155(B)(4) and (8), 157(B)(1) and (2) and (C), 159(D), 160(B)(1), (2), (5),
 14 and (7), 161(A) and (E)(1), (6), (7), (8), (9), and (13), 164(B), (C), and (F)(1), and 165(A),
 15 (B)(introductory paragraph) and (3), and (E) are hereby amended and reenacted and R.S.
 16 15:184.1 is hereby enacted to read as follows:

17 §142. Legislative findings

18 * * *

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

22 * * *

23 C. The legislature recognizes that the uniform application of statewide
 24 standards and guidelines to be established by the Louisiana Public Defender Board
 25 in noncapital cases is an important means of achieving a more consistent delivery of
 26 quality representation throughout the state. To that end, it is the express intention
 27 of the legislature that the Louisiana Public Defender Act of 2007 is designed, to the
 28 extent practicable and feasible, to provide for the delivery of public defender services
 29 which meet the requirements established by *Strickland v. Washington*, 466 U.S. 668,

1 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) and its progeny as adopted by the Louisiana
2 Supreme Court.

3 D. The legislature recognizes that the Louisiana Supreme Court in *State v.*
4 *Citizen*, 2004-KA-1841 (La. 2005), 898 ~~So. 2nd~~ So.2d 325 (~~La. 2005~~) authorized
5 trial judges to halt prosecutions in capital cases, upon motion of defense counsel,
6 until adequate funding is provided to ensure an adequate defense, and it is the
7 express intention of the legislature to ensure adequate resources, consistent with the
8 *Citizen* opinion, which allow prosecutions in such cases to continue to conclusion
9 resulting in verdicts that are fair, correct, swift, and final.

10 * * *

11 §146. Louisiana Public Defender Board

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

18 * * *

19 §147. Powers, duties, responsibilities

20 A. Except for the inherent regulatory authority of the Louisiana Supreme
21 Court provided for in Article V, Section 5 of the Constitution of Louisiana regarding
22 the regulation of the practice of law, the Louisiana Public Defender Board shall have
23 all regulatory authority, control, supervision, and jurisdiction, including auditing and
24 enforcement, and all power incidental or necessary to such regulatory authority,
25 control, supervision, and jurisdiction over all aspects of the delivery of noncapital
26 public defender services throughout the courts of the state of Louisiana.

27 * * *

28 C. The board may:

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

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

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

14 * * *

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

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

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

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

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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.

(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

* * *

B. The budget officer shall:

* * *

(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

1 cases throughout the state with the view of pointing out unnecessary programs,
2 projects, and functions, calling attention to inefficient and uneconomical practices,
3 monitoring, reviewing, and analyzing the performance of the districts and service
4 regions, where applicable, making recommendations for improvement, and carrying
5 out other similar functions.

6 * * *

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

10 * * *

11 §157. Trial-level compliance officer

12 * * *

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

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

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

19 * * *

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

23 * * *

24 §159. Public defender service regions

25 * * *

26 D. The service region shall provide, as authorized by the board, such
27 additional services as the board finds necessary to providing competent counsel in
28 the judicial districts within the region, including but not limited to ~~capital defense~~
29 ~~services~~, expert witness resources, and conflict counsel. Such additional services as

1 the board deems necessary or advisable may be provided to clients through the
2 regional offices.

3 * * *

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

5 * * *

6 B. Each regional director shall:

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

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

13 * * *

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

17 * * *

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

28 * * *

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

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

6 * * *

7 E. Each district public defender shall:

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

10 * * *

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

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

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

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

22 * * *

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

27 * * *

28 §164. Regional defense service centers

29 * * *

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

2 (1) A regional appellate resource center.

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

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

5 C.(1) A regional defense service center may be granted authority to contract
6 with counsel for defense at trial in the district court ~~for defendants charged with~~
7 ~~capital offenses~~, for appeals in noncapital cases and in capital cases in which a
8 sentence of life imprisonment was imposed, and for representation of juveniles in
9 juvenile courts and in all other courts with juvenile jurisdiction. The center may also
10 contract for other specific functions other than appeals and post-conviction
11 representation in capital cases in which the death penalty was imposed, and for the
12 operation of an office, library, and other reasonably necessary services and authority
13 as the contracting boards deem appropriate.

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

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

22 * * *

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

27 * * *

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

