

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2086

Session of
1987

INTRODUCED BY DeWEESE, DECEMBER 15, 1987

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 15, 1987

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for the Public
3 Defender Commission and Commonwealth Appellate Public
4 Defender.

5 The General Assembly demands equal justice under law in
6 criminal proceedings regardless of an individual's ability to
7 pay for legal representation. Due process of law, public
8 confidence in the accuracy, validity and finality of guilt
9 determination actions and penalties for criminal conduct demand
10 quality legal representation on behalf of the Commonwealth and
11 defendant alike. Therefore, in order to improve the
12 Commonwealth's criminal justice system, the General Assembly
13 hereby establishes a Public Defender Commission and Appellate
14 Public Defender.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 Section 1. Chapter 25 of Title 42 of the Pennsylvania
18 Consolidated Statutes is amended by adding a subchapter to read:

SUBCHAPTER C

PUBLIC DEFENDER

Sec.

2541. Definitions.

2542. Public Defender Commission.

2543. Powers and duties.

2544. Appellate Public Defender.

2545. Powers and duties.

2546. Special division.

2547. Funding.

§ 2541. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Commission." The Public Defender Commission.

"Defender." The Appellate Public Defender.

§ 2542. Public Defender Commission.

(a) Establishment.--There is hereby established the Public Defender Commission.

(b) Appointment.--The commission shall consist of 11 members appointed as follows:

(1) One member appointed by the President pro tempore of the Senate.

(2) One member appointed by the Minority Leader of the Senate.

(3) One member appointed by the Speaker of the House.

(4) One member appointed by the Minority Leader of the House.

(5) Three attorneys who are members of the bar of this Commonwealth appointed by the Supreme Court of Pennsylvania.

1 (6) Four members appointed by the Governor, two of whom
2 are nonlawyers and two of whom who are licensed to practice
3 law in Pennsylvania who have substantial experience in the
4 representation of persons accused of crime. These
5 appointments shall be made from a list submitted by the Board
6 of Governors of the Pennsylvania Bar Association and shall
7 include individuals who are affiliated with Pennsylvania law
8 schools.

9 (c) Terms of office.--The members of the commission shall
10 serve for terms of three years and until a successor has been
11 selected and qualified. A vacancy on the commission shall be
12 filled for the balance of the term by the original appointing
13 authority. An individual may serve for no more than two terms as
14 a member.

15 (d) Chairman and secretary.--The commission shall select a
16 chairman and secretary from among its members, and who shall
17 serve as such for the remainder of their terms on the
18 commission.

19 (e) Compensation.--Members shall be reimbursed for all
20 reasonable and necessary expenses and shall receive per diem
21 compensation as the Executive Board shall direct.

22 (f) Meetings and quorum.--The commission shall meet at least
23 quarterly. A majority of the appointed members shall constitute
24 a quorum.

25 (g) Executive director and staff.--The commission shall
26 appoint an executive director who may appoint such staff as
27 necessary to carry on the day-to-day functions of the
28 commission.

29 § 2543. Powers and duties.

30 (a) Powers and duties enumerated.--The commission shall:

1 (1) Develop standards of indigency and recommend uniform
2 standards and procedures for use by the courts of the
3 Commonwealth regarding whether a person is indigent and is
4 unable to obtain counsel or whether the indigent person has
5 the ability to pay a reduced fee for the appointment of
6 counsel.

7 (2) Establish standards for indigent defense systems
8 which shall include, but not be limited to:

9 (i) Vertical or continuous representation at the
10 pretrial and trial stages by the attorney either assigned
11 or appointed.

12 (ii) Required participation by each indigent defense
13 attorney in an approved course of training in the
14 fundamentals of criminal trial practice unless the
15 attorney has a level of ability which makes such
16 participation unnecessary.

17 (iii) Specified caseload limitation levels.

18 (iv) Procedures for matters of conflict of interest
19 cases.

20 (v) Methods for the provision of social services or
21 social service referrals.

22 (vi) Systems to insure the use and availability of
23 expert witnesses and investigative services for each
24 office.

25 (vii) Guidelines for clerical assistance, office
26 facilities and supervision provided by experienced
27 attorneys who shall be available to less experienced
28 attorneys.

29 (3) Monitor and evaluate compliance with the standards
30 and the performance of indigent defense services and

1 establish a system for the receipt and evaluation of client
2 complaints.

3 (4) Conduct a study of Public Defender Offices
4 throughout this Commonwealth, including a review of their
5 budgets and needs as compared with District Attorneys'
6 budgets, which determines whether there is a need for a
7 Criminal Law Research Center which would serve as a
8 clearinghouse to provide information, training and technical
9 assistance in indigent defense criminal cases, research,
10 analysis and which would also serve as a central repository
11 for indigent representation information.

12 (5) Review and evaluate the relation between annual
13 operating budgets in compliance with standards.

14 (6) Submit recommendations to the Governor for the
15 appointment of Appellate Public Defender.

16 (b) Gifts, grants or contributions.--The commission may
17 accept gifts, grants or contributions from any source, whether
18 public or private, and may enter into contracts to provide or
19 receive services with any Federal, State, county or municipal
20 entity, with any group or individual, whether profit or
21 nonprofit or with any nonprofit or voluntary charitable group,
22 corporation, association or organization, including any bar
23 association or bar advocate group.

24 (c) Additional powers and duties.--The commission shall have
25 such other powers and shall perform such other functions as may
26 be necessary and appropriate to carry out this section.

27 (d) Annual reports.--The commission shall make an annual
28 report, to the Judiciary, the Governor and the General Assembly,
29 which presents the evaluation of indigent defense systems,
30 developments concerning the evaluative standards and

1 recommendations for statutory, regulatory or court rule changes
2 relevant to the commission's duties.

3 (e) Limitations.--The commission may not interfere with a
4 public defender nor make any decisions regarding the handling of
5 a particular case or interfere with staff members in the line of
6 professional duties.

7 § 2544. Appellate Public Defender.

8 (a) Establishment.--There is hereby established the Office
9 of Appellate Public Defender.

10 (b) Appointment and term.--The defender shall be appointed
11 by the Governor upon recommendation of the commission and shall
12 serve for a term of five years. The defender may be appointed to
13 one additional term.

14 (c) Qualifications.--The defender shall have a minimum of
15 five years of experience in appellate cases and have been
16 admitted to the bar of this Commonwealth at least one year prior
17 to appointment.

18 § 2545. Powers and duties.

19 (a) General rule.--The defender shall, pursuant to
20 agreements with trial level public defenders, act as legal
21 counsel for any defendant involved in a postconviction matter at
22 an appellate court level, where that defendant, for lack of
23 sufficient funds, is unable to obtain private legal counsel.

24 (b) Staff.--

25 (1) The defender may employ those assistant attorneys,
26 investigators and clerical support personnel as he deems
27 necessary.

28 (2) Assistant attorneys appointed by the defender shall
29 have a minimum of two years experience in criminal law and
30 appellate practice and shall satisfy the standards of

1 indigent defense established by the commission.

2 (3) The defender and all assistants appointed by him
3 shall serve on a full-time basis and are prohibited from
4 engaging in the private practice of law.

5 (c) Consultation with other agencies, etc.--The defender may
6 consult and cooperate with other public agencies, professional
7 groups and individuals who are concerned with the administration
8 and operation of the appellate courts and related issues.

9 (d) Reports.--The defender shall keep and maintain financial
10 reports of all cases handled and develop records for use in
11 calculation of direct and indirect costs in the operation of the
12 office and report periodically, not less than semiannually, to
13 the commission all relevant data on the operations of the
14 office, costs, projected needs and recommendations for
15 legislation or amendments to court rules.

16 (e) Additional powers and duties.--The Office of Appellate
17 Public Defender shall have such other powers and shall perform
18 such other functions as may be necessary and appropriate to
19 carry out its responsibilities under this subsection.

20 § 2546. Special division.

21 (a) Establishment.--The defender shall establish within the
22 Office of Appellate Public Defender a special division for the
23 representation of any person who has been sentenced to death,
24 and who, for the lack of sufficient funds, is unable to obtain
25 legal counsel. Attorneys assigned to this division shall have
26 extensive experience in appellate capital cases and shall
27 satisfy all standards of indigent defense established by the
28 commission. When representation of any person would be a
29 conflict of representation or interest, private attorneys who
30 are not assistant appellate public defenders and who satisfy

1 standards of indigent defense established by the commission may
2 be appointed. When private attorneys are appointed, compensation
3 shall include funds sufficient to pay for fees and expenses
4 equivalent to those available to assistant appellate public
5 defenders.

6 § 2547. Funding.

7 (a) Establishment of funds.--There are hereby established
8 separate accounts in the State Treasury to be known as the
9 Public Defender Commission Fund and the Appellate Public
10 Defender Fund. All moneys in these funds are hereby appropriated
11 to the Public Defender Commission and the Office of Appellate
12 Public Defender, respectively, on a continuing basis.

13 (b) Surcharge.--A surcharge of \$10 shall be assessed against
14 each defendant and shall be collected by the county collecting
15 criminal court costs therefrom. This surcharge shall be
16 forwarded to the Department of Revenue for equal distribution to
17 the funds described in subsection (a).

18 Section 2. This act shall take effect in 60 days.