
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 42

Session of
2007

INTRODUCED BY BROWNE, BOSCOLA, FONTANA, ERICKSON, FERLO, EARLL,
COSTA AND O'PAKE, MARCH 5, 2007

REFERRED TO JUDICIARY, MARCH 5, 2007

A RESOLUTION

1 Establishing a task force to study the current system for
2 providing services to indigent criminal defendants, to review
3 how other states provide these services and to make
4 recommendations to the Senate.

5 WHEREAS, In 1963 the United States Supreme Court decided the
6 landmark case of Gideon v. Wainwright, holding, as a matter of
7 constitutional law, that states must provide attorneys to
8 persons who are accused of felony crimes and cannot afford to
9 hire their own counsel; and

10 WHEREAS, The United States Supreme Court, in its opinion in
11 Gideon v. Wainwright, said that: "[R]eason and reflection
12 require us to recognize that in our adversary system of criminal
13 justice, any person haled into court, who is too poor to hire a
14 lawyer, cannot be assured a fair trial unless counsel is
15 provided for him"; and

16 WHEREAS, In 1972 the United States Supreme Court further
17 held, in the case of Argersinger v. Hamlin, that indigent
18 criminal defendants are entitled to counsel for any criminal

1 charge which could result in a term of imprisonment, whether the
2 charge is a felony or misdemeanor; and

3 WHEREAS, The Constitution of Pennsylvania guarantees to an
4 accused in all criminal prosecutions the "right to be heard by
5 himself and his counsel," a constitutional provision which has
6 been interpreted to provide an independent State constitutional
7 right to counsel for indigent criminal defendants; and

8 WHEREAS, In Pennsylvania, funding for indigent criminal
9 defense is provided exclusively at the county level; and

10 WHEREAS, The Pennsylvania Supreme Court Committee in 2003
11 published its Final Report on Racial and Gender Bias in the
12 Justice System, devoting an entire chapter to the issue of
13 indigent defense in Pennsylvania; and

14 WHEREAS, The Pennsylvania Supreme Court Committee found that
15 Pennsylvania was one of only three states that provide no State
16 funds to ensure adequate defense services for indigent criminal
17 defendants and that Pennsylvania does not provide any Statewide
18 oversight of the systems for providing services to indigent
19 criminal defendants; and

20 WHEREAS, The Pennsylvania Supreme Court Committee on Racial
21 and Gender Bias in the Justice System relied on a study
22 completed by the Spangenberg Group, a nationally recognized
23 research and consulting organization with experience and
24 expertise in evaluating indigent criminal defense services,
25 which study found serious deficiencies in the indigent criminal
26 defense system in many Pennsylvania counties; and

27 WHEREAS, Attorneys who represent indigent criminal defendants
28 face extraordinarily large caseloads, leaving them little time
29 to provide individualized investigation and representation of
30 their clients; and

1 WHEREAS, The study completed by the Spangenberg Group found
2 that staggering caseloads create poor attorney-client contact,
3 inadequate preparation by attorneys and late assignment or
4 appointment of counsel; and

5 WHEREAS, Attorneys who represent indigent criminal defendants
6 are unable to reasonably and effectively use investigators,
7 social workers and expert witnesses due to inadequate funding;
8 and

9 WHEREAS, Many counties in Pennsylvania are facing significant
10 budgetary problems due to increasing costs related to the
11 operation of the courts, including the costs related to indigent
12 criminal defense services; and

13 WHEREAS, Litigation against Allegheny County was instituted
14 challenging the adequacy of the services provided to indigent
15 criminal defendants, and other counties are also facing
16 litigation over this issue; and

17 WHEREAS, The American Bar Association recommends that in
18 order to comply with the spirit of Gideon and to maintain a
19 system that provides for effective, ethical and conflict-free
20 legal representation to criminal defendants who are unable to
21 hire an attorney, states must meet the following Ten Principles
22 of a Public Defense Delivery System:

23 (1) The public defense function, including the
24 selection, funding and payment of defense counsel, is
25 independent.

26 (2) Where the caseload is sufficiently high, the public
27 defense delivery system consists of both a defender office
28 and the active participation of the private bar.

29 (3) Clients are screened for eligibility, and defense
30 counsel is assigned and notified of appointment as soon as

1 feasible after clients' arrest, detention or request for
2 counsel.

3 (4) Defense counsel is provided sufficient time and a
4 confidential space within which to meet with the client.

5 (5) Defense counsel's workload is controlled to permit
6 the rendering of quality representation.

7 (6) Defense counsel's ability, training and experience
8 match the complexity of the case.

9 (7) The same attorney continuously represents the client
10 until completion of the case.

11 (8) There is parity between defense counsel and the
12 prosecution with respect to resources, and defense counsel is
13 included as an equal partner in the justice system.

14 (9) Defense counsel is provided with and required to
15 attend continuing legal education.
16 (10) Defense counsel is supervised and systematically
17 reviewed for quality and efficiency according to nationally
18 and locally adopted standards;

19 and

20 WHEREAS, The states of Georgia, North Carolina, Oregon,
21 Vermont and Virginia have recently reviewed their indigent
22 criminal defense systems to ensure that adequate representation
23 is being provided to all indigent defendants; and

24 WHEREAS, The interests of all Pennsylvanians are served when
25 Pennsylvania's indigent criminal defense system operates in an
26 effective, ethical and cost-efficient manner; and

27 WHEREAS, If counsel for the indigent cannot effectively
28 represent their clients, there is an increased possibility for
29 the wrongful conviction and incarceration of innocent persons as
30 well as the continuing risk posed by the failure to convict the

1 actual perpetrators; and

2 WHEREAS, Incompetent representation of indigent criminal
3 defendants further results in an increased number of claims of
4 ineffective assistance of counsel and new trials being granted
5 on account of ineffective assistance of counsel; and

6 WHEREAS, The criminal judicial process functions most
7 effectively and fairly when both the Commonwealth and each
8 individual defendant are competently represented; and

9 WHEREAS, The Senate should be knowledgeable about the
10 provision of indigent criminal defense services in this
11 Commonwealth; therefore be it

12 RESOLVED, That the Senate direct the Joint State Government
13 Commission to establish a bipartisan task force consisting of
14 two members appointed by the President pro tempore of the Senate
15 and two members appointed by the Minority Leader of the Senate;
16 and be it further

17 RESOLVED, That the task force create an advisory committee
18 composed of representatives of the Administrative Office of
19 Pennsylvania Courts, the Secretary of Budget and Administration,
20 the Attorney General, the Auditor General, the County
21 Commissions Association of Pennsylvania, the Pennsylvania Public
22 Defenders Association, the Pennsylvania District Attorneys
23 Association, attorneys with significant experience in the
24 defense of criminal cases, individuals with expertise in the
25 area of quality representation of indigent criminal defendants
26 and additional members as the task force deems appropriate; and
27 be it further

28 RESOLVED, That the task force study the existing system for
29 providing services to indigent criminal defendants, review how
30 other states provide such services and make recommendations to

1 the Senate regarding the funding of such services and the
2 creation of an entity to guarantee compliance with the
3 Constitution of the United States and the Constitution of
4 Pennsylvania in the delivery of such services.