Right to Counsel Legislation Updates

May 31, 2019

Federal

**US SB 1377**
This bill, introduced by Senator Kamala Harris (CA-D), seeks to increase access to justice and to assist with the tracking of public defense data, protect due process rights, and to ensure that public defender compensation reflects the importance of their work. The bill includes a grant program that will require data collection, workload limits, implementation of a pay equity program with the corresponding prosecutor’s office, funding for public defense training, a student loan repayment program, and a requirement to report defendants who are either pro se litigants or being represented by public defense providers if states are using Byrne JAG funding for this. The bill has been read twice in the Senate as of 5/08/2019.

State

**IL SB 1966**
This bill, sponsored by Senator Julie Morrison (D), seeks to amend the State Appellate Defender Act. It creates the Public Defender Bail Reform Grant Program to assist county public defenders to implement a provision of the [Code of Criminal Procedure of 1963](https://www.illinois.gov/attorneygeneraldocuments/justice/docs/publication/docs/criminalprocedure1963.pdf) which requires counsel at bail hearings. It also provides that the Public Defender Bail Reform Grant Program is to be administered by the State Appellate Defender, under the direction of the State Appellate Defender Commission. The bill has been referred to the Judiciary Committee as of 5/29/19.

**IL HB 2935 (Update)**
This bill, sponsored by Representatives Bob Morgan (D) and Andre Thapedi (D), amends the [Juvenile Court Act](https://www.illinois.gov/attorneygeneraldocuments/justice/docs/publication/docs/juvenilecourt1970.pdf) and states that counsel appointed for the minor and any indigent party shall appear at all stages of the trial court proceeding, and the appointment shall continue through the permanency hearings and termination of parental rights proceedings subject to withdrawal, vacating of appointment, or substitution. The bill has passed both houses as of 5/21/19 and is awaiting the governor’s signature.

**IN SB 488 (Update)**
This bill, sponsored by Senators Michael Young (R), Eric Koch (R), Greg Taylor (D), Lonnie Randolph (D), John Young (R), Gregory Steuerwald (R), and Ryan Dvorak (D), establishes a public defender commission to create guidelines for a multi-county public defender’s office. The bill: (1) creates a multicounty public defender’s office; and (2) states that the multi-county public defender’s office will provide legal services to indigent persons located in the areas subject to the interlocal agreement. It requires interlocal agreements concerning indigent criminal defense to be administered by a joint board and prohibits certain persons from acting as a member of a joint board. The bill was signed into law on 4/24/2109.

**ME LD 1684**
This bill, sponsored by Representative Victoria Morales (D), seeks to improve due process for juveniles. The bill prevents anyone under the age of 12 from being prosecuted for a juvenile crime. It also states that juveniles have a right to counsel a first appearance, that the court may appoint a public defender if they feel the interests of the juvenile need to be protected, and that counsel will stay with the juvenile through all proceedings. The bill also creates a review process for the incarceration or commitment of a
juvenile to allow for the pursuit of alternatives to incarceration if possible. The bill has been tabled as of 5/28/19.

**MO HB 42 (Update)**
This bill, sponsored by Representative Ingrid Burnett (D), states that if a child waives his or her right to counsel, such waiver shall be made in open court and be recorded and in writing. In determining whether a child has knowingly, intelligently, and voluntarily waived his or her right to counsel, the court shall look to the totality of the circumstances, as specified in the bill. If a child waives his or her right to counsel, the waiver shall only apply to that particular proceeding. The bill also specifies certain proceedings in which a child’s right to counsel shall not be waived. The bill was passed by the House on 4/11/19.

**MT SB 315 (Update)**
This bill, sponsored by Sen. Scott Sales (R), requires a local government to provide counsel to a defendant charged solely with a violation of an ordinance adopted by the local government if the ordinance includes the possibility of incarceration upon conviction for the violation. It also prohibits the Office of the State Public Defender from providing assistance of counsel to a defendant charged with a violation of a local ordinance. The bill died in process as of 4/25/2019.

**NV AB 81 (Update)**
This bill, introduced by the Assembly Committee on the Judiciary, creating the Office of Indigent Defense Services within the Office of the Governor to oversee criminal defense services provided to indigent persons in this State, the Board on Indigent Defense Services consisting of various appointed persons to oversee the Executive Director of the Office, and requiring the Board on Indigent Defense Services to establish the maximum amount a county may be required to pay for the provision of indigent defense services; authorizing the Board to adopt regulations governing indigent defense services. The bill also provides for the transfer of responsibility for the provision of indigent defense services from a county to the State Public Defender in certain circumstances. The bill was sent to the Senate and referred to the Committee on the Judiciary as of 5/27/2019.

**NY SB 1343**
This bill, introduced by Senator Brian Benjamin (D), aims to reform the community supervision program in New York State. A section of the bill would require that people who were having their community supervision revoked have the right to counsel during all hearing involved in that process. The bill was amended and recommitted to the committee of Crime Victims, Crime, and Correction as of 4/24/2019.

**OR HB 3145**
The bill, sponsored by the House Committee on the Judiciary, would make several changes to the Public Defense Services Commission. The bill moves the Public Defense Services Commission from judicial to the executive branch; expands the membership of commission from seven to eleven members; modifies appointing authorities and qualifications of members; modifies the manner in which member may be removed; directs commission to establish Office of Public Defense Services with trial division in addition to appellate division; requires commission to adopt caseload standards and statewide workload plan; prohibits commission from approving contract authorizing flat fee compensation structure; directs the executive director to develop certain policies and standards for provision of public defense services including performance metrics, quality assurance standards and training requirements; establishes requirements for contracts for provision of public defense services; specifies contents of report by the executive director to the commission and the Legislative Assembly; directs task force to submit report
with recommendations to interim committees of Legislative Assembly related to judiciary no later than September 15, 2021. The bill has been referred to Ways and Means as of 4/22/19.

**PA SB 658**
This bill, sponsored by Senator Brown (R), seeks to establish the Center for Effective Indigent Defense Legal Representation, providing for duties and responsibilities of the board of directors, and making an appropriation for the creation of the Center. The bill has been referred to the Judiciary Committee as of 5/17/19.

**TX HB 1323 and TX SB 628 (Update)**
These bills, authored by Representative Andrew Murr (R) and Senator John Whitmire (D), would use clear and convincing evidence as to the standard for denying bail, and would allow mandating the use of a risk assessment tool when deciding the usage of bail, and does not require the usage of monetary bail. The House bill has had a report on it sent to Calendars as of 4/29/2019, and the Senate bill has added Senator John Whitmire (D) and Senator Nathan Johns (D) to the bill as co-authors while in the Judiciary Committee.

**WV SB 103**
This bill, sponsored by Senator Charles Trump (R), makes several changes to the state Public Defender Services. Included in the changes are requiring Public Defender Services to establish and operate a division within the agency for the purpose of prosecuting writs of habeas corpus on behalf of eligible clients in the circuit courts of the state and before the Supreme Court of Appeals upon appointment by a court; transferring initial authority to review, approve, modify, or refuse panel attorney vouchers from circuit courts to Public Defender Services; providing for resubmission or reconsideration of vouchers previously modified or refused; authorizing the Executive Director of Public Defender Services, with approval of the Indigent Defense Commission, to contract for noncriminal legal services; providing for payment of contracts; authorizing agency to reduce or reject vouchers or requests for payment; requiring panel attorneys to maintain time-keeping records to enable the attorney to determine time expended on a daily basis; setting record-keeping standards; and requiring prompt processing and payment of vouchers; and increasing the rates of compensation for panel attorneys. The bill was signed into law as of 4/16/19.