

Regular Session, 2004

SENATE CONCURRENT RESOLUTION NO. 136

BY SENATOR JACKSON

A CONCURRENT RESOLUTION

To continue and provide for the Louisiana Task Force on Indigent Defense Services.

WHEREAS, 2003 marked the 40th anniversary of the supreme court's decision in *Gideon v. Wainwright*, mandating that states provide counsel to persons who are accused of felony crimes and who cannot afford to hire their own lawyers; and

WHEREAS, the supreme court stated in *Gideon* the "obvious truth" that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him"; and

WHEREAS, the supreme court has consistently extended the right to counsel in critical states of criminal proceedings and any case that may result in the potential loss of liberty, including: direct appeals - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogations - *Miranda v. Arizona*, 384, U.S. 436 (1966); juvenile proceedings resulting in confinement - *In Re Gault*, 387 U.S. 1(1967); preliminary hearings - *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and, most recently, misdemeanors involving suspended sentences - *Shelton v. Alabama*, 535 U.S. 654 (2002); and

WHEREAS, the Louisiana Constitution Article I states that one of the ends of government is to "secure justice for all"; and

WHEREAS, reflecting the right to counsel mandated by the Sixth Amendment to the United States Constitution, Louisiana Constitution Article I, Section 13, entitles an accused person to the assistance of counsel "appointed by the court if he is indigent and charged with an offense punishable by imprisonment," and states, "The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents"; and

WHEREAS, Louisiana is the last state in the nation that attempts to fund the majority of its constitutional obligations to provide qualified counsel through court costs collected on criminal offenses, including traffic tickets; and

WHEREAS, there exists no correlation between a court's ability to assess and collect court costs and the resource levels needed to ensure adequate, constitutionally guaranteed right to counsel, producing a nonuniform system in which a district's funding is wholly unrelated to need, is unpredictable, and leaves the local boards without the ability to effectively budget from year to year; and

WHEREAS, the Louisiana Indigent Defense Assistance Board (LIDAB) was created to supplement local funding and to increase uniformity among districts through the use of standards, but lacks the resources and authority to make compliance with its standards mandatory or to raise the indigent defense system to its constitutionally mandated level; and

WHEREAS, Louisiana's current system lacks the ability to collect and verify statistical data on indigent defense caseloads and costs and to monitor performance to ensure the efficient and effective use of taxpayer resources; and

WHEREAS, the American Bar Association (ABA) recommends that in order to comply with the spirit of *Gideon* and to design a system that provides effective, efficient, high quality, ethical, and conflict-free legal representation to criminal defendants who are unable to afford an attorney, states must meet the following Ten Principles of a Public Defense Delivery System:

(1) The public defense function, including the selection, funding, and payment of defense counsel, is independent;

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

(3) Clients are screened for eligibility and defense counsel is assigned and notified of appointment as soon as feasible after client's arrest, detention, or request for counsel;

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

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

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

(7) The same attorney continuously represents the client until completion of the case;

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

(9) Defense counsel is provided with and required to attend continuing legal education;

(10) Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards; and

WHEREAS, Louisiana values a fair and reliable criminal justice system; and

WHEREAS, on June 12, 2003, the House of Delegates of the Louisiana State Bar Association adopted a resolution urging all three branches of state government to cooperate to establish a Blue Ribbon Commission to develop a strategic plan for indigent defense system reform and set a timetable for implementation of that plan; and

WHEREAS, Senate Resolution No. 112 and House Resolution No. 151 of the 2003 Regular Session of the Legislature, as well as this Resolution, reflect the substantive provisions of, and has been adopted in furtherance of, the resolution adopted by the House of Delegates of the Louisiana State Bar Association on June 12, 2003; and

WHEREAS, Senate Resolution No. 112 and House Resolution No. 151 of the 2003 Regular Session of the Legislature, created the Louisiana Task Force on Indigent Defense Services, effective January 12, 2004, to make an initial report no later than March 1, 2004.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana hereby continues and further provides for the Louisiana Task Force on Indigent Defense Services.

BE IT FURTHER RESOLVED that the Louisiana Task Force on Indigent Defense Services shall be composed of the following persons, or their respective designees:

(1) The chief justice of the Louisiana Supreme Court.

(2) The governor of Louisiana.

(3) The attorney general of Louisiana.

(4) The president of the Louisiana Senate.

(5) The speaker of the Louisiana House of Representatives.

(6) The chairmen of the Senate Committee on Finance and the House Committee on Appropriations.

(7) The chairmen of the Senate Committee on Judiciary C and the House Committee on Administration of Criminal Justice.

(8) The chairman of the Legislative Black Caucus of the Louisiana Legislature.

(9) The chairman of the Juvenile Reform Act Implementation Commission.

(10) The Louisiana commissioner of administration.

(11) The secretary of the Louisiana Department of Social Services.

(12) The chairman of the Louisiana Commission on Law Enforcement and Administration of Criminal Justice.

(13) The director of the Louisiana Indigent Defense Assistance Board.

(14) The director of the Louisiana State Law Institute.

(15) The chairman of the Louisiana State Law Institute's Children's Code Committee.

(16) The president of the Conference of Court of Appeal Judges.

(17) The president of the Louisiana District Judges Association.

(18) The president of the Louisiana Council of Juvenile and Family Court Judges.

(19) The president of the Louisiana City Court Judges Association.

(20) The president of the Louisiana Judicial Council of the National Bar Association.

(21) The deans of the four law centers in Louisiana.

(22) The president of the Council for a Better Louisiana.

(23) The executive director of the Louisiana Interchurch Conference.

(24) The president of the Louisiana AFL-CIO.

(25) The president of the Louisiana Association of Business and Industry.

(26) The president of the Louisiana Public Defenders Association.

(27) The president of the Louisiana Association of Criminal Defense Lawyers.

(28) The president of the Louisiana Chapter of the NAACP.

(29) The president of the Louisiana State Bar Association.

(30) The president of the Louisiana Legal Service Corporation.

(31) The president of the Louisiana Chapter of the Louis A. Martinet Society.

(32) The president of the Louisiana Association of Women Attorneys.

- (33) The president of the Louisiana District Attorneys Association.
- (34) The president of the Police Jury Association of Louisiana.
- (35) The president of the Louisiana Municipal Association.
- (36) The president of the Louisiana Association of Consumer Advocates.
- (37) The president of the Louisiana Bar Foundation.
- (38) The director of the Juvenile Justice Project of Louisiana.

BE IT FURTHER RESOLVED that the chairman of the Senate Committee on Judiciary C, or his designee, shall serve as chairman of the task force and his duties shall be established by the task force.

BE IF FURTHER RESOLVED that the task force shall fix a time and place for its regular meeting.

BE IT FURTHER RESOLVED that a majority of the membership shall constitute a quorum and a majority vote of the membership present shall be necessary to take action.

BE IT FURTHER RESOLVED that the Louisiana Task Force on Indigent Defense Services shall study the system in Louisiana of providing legal representation to indigent persons who are charged with violations of criminal laws and shall make a report of its findings, together with any recommendations for changes in legislation, to the Legislature of Louisiana no later than April 1, 2005.

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PRESIDENT OF THE SENATE

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SPEAKER OF THE HOUSE OF REPRESENTATIVES