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HOUSE BILL DRH10493-SAz-19 (04/04)

Short Title: Indigent Defense Services Amendments. (Public)

Sponsors: Representative Daughtry.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE APPOINTMENT OF THE COMMISSION ON INDIGENT DEFENSE SERVICES AND TO MAKE VARIOUS CHANGES TO INDIGENT DEFENSE SERVICES, AS RECOMMENDED BY THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON JUSTICE AND PUBLIC SAFETY.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 7A-498.4 reads as rewritten:

"§ 7A-498.4. Establishment of Commission on Indigent Defense Services.

(a) The Commission on Indigent Defense Services is created within the Office of Indigent Defense Services and shall consist of 13 members. To create an effective working group, assure continuity, and achieve staggered terms, the Commission shall be appointed as provided in this section.

(b) The members of the Commission shall be appointed as follows:

(1) The Chief Justice of the North Carolina Supreme Court shall appoint one member, who shall be an active or former ~~member of the North Carolina judiciary~~ superior court judge; one member, who shall be an active or former ~~district court judge~~; and shall additionally appoint the Director of the Administrative Office of the Courts as a member of the Commission. The ~~Director of the Administrative Office of the Courts may designate an employee of the Administrative Office of the Courts to serve as his or her designee on the Commission.~~

(2) The Governor shall appoint ~~one member, who~~ two members, at least one of whom shall be a nonattorney.

(3) The General Assembly shall appoint ~~one member,~~ three members, who shall be ~~an attorney,~~ attorneys, upon the recommendation of the President Pro Tempore of the Senate. In addition, one of the three members shall be appointed based upon the recommendation of the North Carolina Public Defenders Association.

(4) The General Assembly shall appoint ~~one member,~~ three members, who shall be ~~an attorney,~~ attorneys, upon the recommendation of the Speaker of the House of Representatives. In addition, one of the three members shall be appointed based upon the recommendation of the North Carolina Advocates for Justice.

~~(5) The North Carolina Public Defenders Association shall appoint member, who shall be an attorney.~~

~~(6)~~(5) The North Carolina State Bar shall appoint one member, who shall be an attorney.



- 1 ~~(7)(6)~~ The North Carolina Bar Association shall appoint one member, who shall be an
2 attorney.
- 3 ~~(8)~~ ~~The North Carolina Academy of Trial Lawyers shall appoint one member, who~~
4 ~~shall be an attorney.~~
- 5 ~~(9)~~ ~~The North Carolina Association of Black Lawyers shall appoint one member,~~
6 ~~who shall be an attorney.~~
- 7 ~~(10)~~ ~~The North Carolina Association of Women Lawyers shall appoint one member,~~
8 ~~who shall be an attorney.~~
- 9 ~~(11)~~ ~~The Commission shall appoint three members, who shall reside in different~~
10 ~~judicial districts from one another. One appointee shall be a nonattorney, and~~
11 ~~one appointee may be an active member of the North Carolina judiciary. One~~
12 ~~appointee shall be Native American. The initial three members satisfying this~~
13 ~~subdivision shall be appointed as provided in subsection (k) of this section.~~
- 14 (c) The terms of members appointed pursuant to subsection (b) of this section shall be as
15 follows:
- 16 ~~(1)~~ ~~The initial appointments by the Chief Justice, the Governor, and the General Assembly~~
17 ~~shall be for four years.~~
- 18 ~~(2)~~ ~~The initial appointments by the Public Defenders Association and State Bar, and one~~
19 ~~appointment by the Commission, shall be for three years.~~
- 20 ~~(3)~~ ~~The initial appointments by the Bar Association and Trial Academy, and one~~
21 ~~appointment by the Commission, shall be for two years.~~
- 22 ~~(4)~~ ~~The initial appointments by the Black Lawyers Association and Women Lawyers~~
23 ~~Association, and one appointment by the Commission, shall be for one year.~~
- 24 At the expiration of these initial terms, appointments shall be for four years and shall be made
25 by the appointing authorities designated in subsection (b) of this section. No person other than the
26 Director of the Administrative Office of the Courts shall serve more than two consecutive
27 four-year terms plus any initial term of less than four years.
- 28 (d) Persons appointed to the Commission shall have significant experience in the defense
29 of criminal or other cases subject to this Article or shall have demonstrated a strong commitment
30 to quality representation in indigent defense matters. No active prosecutors or law enforcement
31 officials, or active employees of such persons, may be appointed to or serve on the Commission.
32 No active judicial officials, or active employees of such persons, may be appointed to or serve on
33 the Commission, except as provided in subsection (b) of this section. No active public defenders,
34 active employees of public defenders, or other active employees of the Office of Indigent Defense
35 Services may be appointed to or serve on the Commission, except that notwithstanding this
36 subsection, G.S. 14-234, or any other provision of law, Commission members may include
37 part-time public defenders employed by the Office of Indigent Defense Services and may include
38 persons, or employees of persons or organizations, who provide legal services subject to this
39 Article as contractors or appointed attorneys.
- 40 (e) All members of the Commission are entitled to vote on any matters coming before the
41 Commission unless otherwise provided by rules adopted by the Commission concerning voting on
42 matters in which a member has, or appears to have, a financial or other personal interest.
- 43 (f) Each member of the Commission shall serve until a successor in office has been
44 appointed. Vacancies shall be filled by appointment by the appointing authority for the unexpired
45 term. Removal of Commission members shall be in accordance with policies and procedures
46 adopted by the Commission.
- 47 (g) A quorum for purposes of conducting Commission business shall be a majority of the
48 members of the Commission.
- 49 (h) The Commission shall elect a Commission chair from the members of the Commission
50 for a term of two years.

1 (i) The Director of Indigent Defense Services shall attend all Commission meetings except
2 those relating to removal or reappointment of the Director or allegations of misconduct by the
3 Director. The Director shall not vote on any matter decided by the Commission.

4 (j) Commission members shall not receive compensation but are entitled to be paid
5 necessary subsistence and travel expenses in accordance with G.S. 138-5 and G.S. 138-6 as
6 applicable.

7 (k) The Commission shall hold its first meeting no later than September 15, 2000. All
8 appointments to the Commission specified in subdivisions (1) through (10) of subsection (b) of
9 this section shall be made by the appointing authorities by September 1, 2000. The appointee of
10 the Chief Justice shall convene the first meeting. No later than 30 days after its first meeting, the
11 Commission shall make the appointments specified in subdivision (11) of subsection (b) of this
12 section and shall elect its chair."

13 **SECTION 1.(b)** Persons who are members of the Commission on Indigent Defense
14 Services on the effective date of this act shall continue to serve as members until the completion of
15 the term for which they have been appointed. Upon the expiration of a term, or a vacancy
16 occurring prior to the completion of a term, in an appointment made by an authority no longer
17 authorized to make appointment, the appointment shall be made as follows:

- 18 (1) For the member appointed by the North Carolina Association of Black Lawyers
19 whose term expires in 2017, the appointment shall be made by the General
20 Assembly upon the recommendation of the Speaker of the House of
21 Representatives.
- 22 (2) For the member appointed by the North Carolina Association of Women
23 Attorneys whose term expires in 2017, the appointment shall be made by the
24 General Assembly upon the recommendation of the President Pro Tempore of
25 the Senate.
- 26 (3) For the member appointed by the Indigent Defense Commission whose term
27 expires in 2017, the appointment shall be made by the Chief Justice of the
28 North Carolina Supreme Court and shall be the appointment of the
29 Administrative Director of the Courts.
- 30 (4) For the member appointed by the North Carolina Advocates for Justice,
31 formerly known as the North Carolina Academy of Trial Lawyers, whose term
32 expires in 2018, the appointment shall be made by the General Assembly upon
33 the recommendation of the Speaker of the House of Representatives.
- 34 (5) For the member appointed by the Indigent Defense Commission whose term
35 expires in 2018, the appointment shall be made by the Chief Justice of the
36 North Carolina Supreme Court.
- 37 (6) For the member appointed by the North Carolina Public Defenders Association
38 whose term expires in 2019, the appointment shall be made by the General
39 Assembly upon the recommendation of the President Pro Tempore of the
40 Senate.
- 41 (7) For the member appointed by the Indigent Defense Commission whose term
42 expires in 2019, the appointment shall be made by the Governor.

43 **SECTION 2.** G.S. 7A-498.2(e) reads as rewritten:

44 "(e) The Director of the Administrative Office of the Courts may modify the budget of the
45 Office of Indigent Defense Services and may use funds appropriated to the Office ~~without the~~
46 ~~approval of the Commission or the Office of Indigent Defense Services.~~ only after direct
47 consultation with a quorum of the Commission."

48 **SECTION 3.** G.S. 7A-498.9 reads as rewritten:

49 "**§ 7A-498.9. Annual report on Office of Indigent Defense Services.**

50 The Office of Indigent Defense Services shall report to the Chairs of the Joint Legislative
51 Oversight Committee on Justice and Public Safety and to the Chairs of the House of

1 Representatives and Senate Committees on Justice and Public Safety by March 15 of each year on
2 all of the following:

- 3 (1) The volume and cost of cases handled in each district by assigned counsel or
4 public ~~defenders;~~defenders. This shall include specific data on the total final
5 costs, in addition to fee application information, of capital and potentially
6 capital cases.
- 7 (2) Actions taken by the Office to improve the cost-effectiveness and quality of
8 indigent defense services, including the capital case ~~program;~~program.
- 9 (3) Plans for changes in rules, standards, or regulations in the upcoming ~~year;~~
10 ~~and~~year.
- 11 (4) Any recommended changes in law or funding procedures that would assist the
12 Office in improving the management of funds expended for indigent defense
13 services, including any recommendations concerning the feasibility and
14 desirability of establishing regional public defender offices.
- 15 (5) Data regarding the determination to create any new satellite offices for capital
16 defenders, including the counties to be served by the offices, the number of
17 attorney appointments made in the counties served in capital or potentially
18 capital cases in the past three fiscal years, and the current number of eligible
19 private counsel and local public defenders who are available in those counties."

20 **SECTION 4.** The Office of Indigent Defense Services shall evaluate the following
21 matters:

- 22 (1) Assess the need for new satellite offices to handle potentially capital cases at
23 the trial level. These offices are to be staffed by full-time assistant capital
24 defenders and appropriate support staff in areas in which the use of salaried
25 attorneys will ensure that effective representation is provided in a cost-effective
26 manner. The Office should specifically consider the addition of capital
27 defenders to existing public defender offices before the creation of separate
28 satellite capital defender offices.
- 29 (2) In consultation with the Conference of District Attorneys, determine changes
30 that can be made to the current system of identifying, from the pool of cases in
31 which a defendant is charged with first-degree or undesignated murder, those
32 that merit the cost of a capital prosecution and defense and what steps can be
33 taken to facilitate the appointment of local counsel in most cases.
- 34 (3) Consider the establishment of regional public defenders offices to assist in
35 alleviating scheduling conflicts resulting from appointed attorneys being
36 appointed to cases in multiple jurisdictions.

37 The Office of Indigent Defense Services shall report on the results of these evaluations
38 and any legislation needed to implement recommended action to the Joint Legislative Oversight
39 Committee on Justice and Public Safety and the cochairs of the Joint Appropriations
40 Subcommittee on Justice and Public Safety no later than March 15, 2017.

41 **SECTION 5.** Section 1 of this act becomes effective January 1, 2017. Section 2 of this
42 act becomes effective July 1, 2016. The remainder of this act is effective when it becomes law.