

P R O G R E S R E P O R T
COURT STUDY JOINT SUBCOMMITTEE
OF THE
SENATE STANDING COMMITTEE ON JUDICIARY
AND THE
HOUSE STANDING COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT

January, 1980

The Court Study Joint Subcommittee, created by Senate Joint Resolution 13 to study with the Supreme Court of Iowa the need for reform of the organization, administration, supervision and funding of the judicial department of Iowa, was authorized four meetings during the 1979 interim and four meetings were held.

The members of the Subcommittee are:

Senator Lucas J. DeKoster, Chairperson
Representative Nancy J. Shimanek, Vice Chairperson
Senator C. Joseph Coleman
Senator Willard R. Hansen
Senator A. R. Bud Kudart
Senator John Scott
Representative Walter Conlon
Representative Norman G. Jesse
Representative Jim Johnson
Representative John Patchett

At its first meeting the Subcommittee discussed the numerous subject areas which would need to be addressed in a unification of the Iowa judicial system as proposed by Chief Justice Reynoldson in his 1979 message to the General Assembly on the state of the judiciary. The consensus of the Subcommittee members was that the unification could not be accomplished in a single year nor could it be undertaken without extensive study of the financing, management and personnel of the present court system and a projection of state costs and revenues in the event the state does assume financial and management responsibility of the court system.

Representatives of the Supreme Court informed the Subcommittee that federal Law Enforcement Assistance Administration (LEAA) funds were available to finance a reorganization study through the National Center for State Courts (Center). The Subcommittee agreed that the Legislative Council should be requested to contract with the Center for funds to finance a reorganization study and to engage an independent contractor to undertake the study. The Council approved both requests at its September 5 meeting.

At its second meeting the Subcommittee discussed the positive and negative aspects of various public defender systems. The first draft of a Request for Proposal (RFP) to be sent to prospective

contractors describing the study and soliciting bids was discussed. Although the Center had not seen the RFP in order to avoid precluding its regional office from bidding on the project, representatives of the Center had expressed concern that the costs of gathering all the information the Subcommittee wished would exceed the amount of the grant and that some of the tasks might be beyond the scope of the intended use of the grant money. The Subcommittee considered dividing the RFP into tasks supported by LEAA funds and those that might be funded with state money. The Subcommittee wished to avoid seeking the Center's help in revising the RFP so as not to preclude a bid by its regional center.

Subsequent to the second meeting it was learned through contacts with the LEAA that the LEAA did not wish the Center to be a bidder on projects such as the Iowa project but to act as an adviser to the states, including help in preparation of the RFP. The Center was then sent a copy of the draft RFP for its review.

At the third meeting of the Subcommittee, Robert Tobin of the Center appeared to discuss changes he felt could be made in the RFP to obtain competent bids from contractors within the grant amount of \$57,260. Also at this meeting, the Subcommittee heard a report by former Chief Justice C. Edwin Moore on the Cost of Litigation Study Committee appointed by the Supreme Court and a presentation by the director of the National Legal Aid and Defender Association.

Subsequent to the third meeting the RFP was redrafted incorporating the suggestions of Mr. Tobin and was approved by the Legislative Council at its November 7 meeting. Copies of the RFP were sent out the same day to prospective contractors and proposals were required to be submitted by December 6. Five proposals were received in response to the RFP and an evaluation of the bids was made by staff of the Legislative Service Bureau and Supreme Court.

At its fourth meeting the Subcommittee reviewed the bids and the staff evaluations and voted to recommend Resource Planning Corporation to the Legislative Council as the contractor for the court study. The Subcommittee also heard testimony on behalf of the Supreme Court, the Iowa Crime Commission, the Iowa State Bar Association, the Polk County Offender Advocate office and the Association of Trial Lawyers of Iowa regarding their views concerning statewide public defender or appellate defender systems. The majority of the speakers felt a statewide public defender system was not needed but did favor an appellate defender system. The Subcommittee voted to defer at this time any legislation regarding a statewide public defender system.

The Subcommittee made the following recommendations:

1. That the attached bill establishing an appellate defender system be recommended to the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement.

2. That the Subcommittee endorses the recommendation of the Supreme Court's Cost of Litigation Study Committee to provide for the recovery from indigent defendants a portion of their court appointed attorney fees under appropriate circumstances and requests the Legislative Service Bureau to prepare a study bill to this end for consideration by the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement.

3. That the Legislative Service Bureau research possible remedies to the problem of extraordinary criminal cases creating a financial burden upon counties and present this research to the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement.

At the Legislative Council meeting on December 12 Subcommittee Co-chairpersons DeKoster and Shimanek requested the Legislative Council to accept the proposal by Resource Planning Corporation to authorize Speaker Millen to sign the contract with Resource Planning Corporation, to authorize the Subcommittee to meet during the legislative session and to authorize the submission of a proposal to the National Legal Aid and Defender Association for Law Enforcement Assistance Administration funds to establish a state appellate defender system. Each request was approved.

PROPOSED SENATE/HOUSE FILE _____

By (PROPOSED COMMITTEE ON JUDICIARY
BILL BY THE COURT STUDY SUBCOMMITTEE)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act establishing the office of state appellate defender.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Section 1. NEW SECTION. DEFINITIONS. As used in this
2 chapter unless the context otherwise requires:

3 1. "Appellate defender" means the state appellate defender.

4 2. "Commission" means the state appellate defender
5 commission.

6 3. "Indigent" means a person found by the trial court
7 to be unable to retain legal counsel without prejudicing the
8 person's financial ability to provide economic necessities
9 for the person and the person's dependents.

10 Sec. 2. NEW SECTION. CREATION OF OFFICE. The office
11 of state appellate defender is established as an agency of
12 the state.

13 Sec. 3. NEW SECTION. COMMISSION ESTABLISHED.

14 1. A commission of six members to be known as the state
15 appellate defender commission is established. Members of
16 the commission shall be appointed by the governor as follows:

17 a. Two members of the general public.

18 b. Two attorneys in private practice experienced in
19 criminal defense, from a panel of six attorneys nominated
20 by the state bar association.

21 c. Two attorneys employed as public defenders, from a panel
22 of six nominated by the state public defenders association.

23 2. Members of the commission shall serve for a term of
24 three years. For the initial commission one member of each
25 of the three categories shall be appointed on or before October
26 1, 1980, to serve for two years and one for three years.

27 A vacancy on the commission shall be filled for the unexpired
28 term in the same manner as the original appointment.

29 Sec. 4. NEW SECTION. DUTIES OF COMMISSION. The commission
30 shall:

31 1. Meet on the call of the chairperson or a majority of
32 the members.

33 2. Elect a chairperson from among its membership.

34 3. Appoint the appellate defender for a three-year term
35 and until a successor is appointed or to fill a vacancy.

1 The first appointment shall be made on or before January 1,
2 1981. A vacancy shall be filled for the balance of the
3 unexpired term.

4 4. Advise and recommend policies to the appellate defender
5 for the operation of the office.

6 5. Recommend statutory changes in this chapter to the
7 general assembly.

8 Sec. 5. NEW SECTION. EXPENSES OF COMMISSION. Members
9 of the commission shall serve without compensation but shall
10 receive actual and necessary expenses, including travel at
11 the state rate set forth in section eighteen point one hundred
12 seventeen (18.117) of the Code.

13 Sec. 6. NEW SECTION. QUALIFICATIONS OF APPELLATE DEFENDER.
14 Only persons admitted to practice law in this state shall
15 be appointed appellate defender or assistant appellate
16 defender.

17 Sec. 7. NEW SECTION. DUTIES OF APPELLATE DEFENDER. The
18 appellate defender shall represent indigents on appeal in
19 criminal cases and in proceedings to obtain postconviction
20 relief when appointed to do so by the district court in which
21 the judgment or order was issued and shall not engage in the
22 private practice of law.

23 Sec. 8. NEW SECTION. OTHER ATTORNEY APPOINTED. The
24 appellate defender shall be the primary criminal appellate
25 defender of indigents appointed by the trial court. However,
26 the court may for cause, upon the application of the indigent
27 or the appellate defender or on its own motion, appoint an
28 attorney other than the appellate defender pursuant to rule
29 of criminal procedure twenty-six (26), section three hundred
30 thirty-six A point three (336A.3) of the Code and section
31 eight hundred fifteen point seven (815.7) of the Code, to
32 represent the indigent on appeal.

33 Sec. 9. NEW SECTION. STAFF. The appellate defender may
34 appoint assistant appellate defenders who, subject to the
35 direction of the appellate defender, shall have the same

1 duties of the appellate defender and shall not engage in the
2 private practice of law.

3 Sec. 10. NEW SECTION. SALARY--EXPENSES. The salary of
4 the appellate defender shall be fixed by the general assembly.
5 The salaries of the staff shall be fixed by the appellate
6 defender from funds appropriated by the general assembly.
7 The appellate defender and his or her staff shall receive
8 actual and necessary expenses, including travel at the state
9 rate set forth in section eighteen point one hundred seventeen
10 (18.117) of the Code.

11 Sec. 11. Section eighteen point ninety-seven (18.97),
12 subsection fifteen (15), Code 1979, is amended by adding the
13 following new paragraph:

14 NEW PARAGRAPH. Appellate defender.

15 Sec. 12. Section eighteen point ninety-eight (18.98),
16 subsection eleven (11), Code 1979, is amended to read as
17 follows:

18 11. To the office of each county auditor, public defender,
19 appellate defender and county attorney 1 copy

20 Sec. 13. Section eighty A point two (80A.2), Code 1979,
21 is amended to read as follows:

22 80A.2 PERSONS EXEMPT. The provisions of this chapter
23 shall do not apply to any detective or officer belonging to
24 and on the payroll of the police force of the United States,
25 or of any state, or of any county, city or village thereof,
26 appointed or elected by due authority of law; nor to any
27 person in the employ of the police force or police department
28 or law enforcement agency of any state, or of any county,
29 city or village thereof in the performance of ~~his~~ the person's
30 official duties; nor to any appellate defender; nor to any
31 public defender; nor to any county attorney; nor to any
32 attorneys-at-law in the regular practice of their profession;
33 nor to any person, firm or corporation whose business is
34 solely the making of investigations and adjustments for
35 insurance companies or the furnishing of information with

1 respect to the business and financial standing and credit
2 of persons, firms or corporations; nor to any person making
3 any investigation of any matter in which such person or the
4 person, firm or corporation by whom such person is solely
5 employed is interested or involved nor to any person making
6 any investigation for any person, firm or corporation engaged
7 in the business of transporting persons or property in
8 interstate commerce, nor to any person or persons, firm or
9 corporation while engaged in the collection, editing or
10 dissemination of news for or on behalf of any newspaper,
11 magazine, radio broadcasting station or press or wire news
12 services.

13 Sec. 14. Section three hundred thirty-six A point six
14 (336A.6), Code 1979, is amended to read as follows:

15 336A.6 DUTY OF DEFENDER. When representing an indigent
16 ~~person~~ in a criminal proceeding, the public defender shall
17 counsel and defend ~~him~~ the indigent, whether he the indigent
18 is held in custody without commitment or charged with a
19 criminal offense, at every stage of the proceedings against
20 ~~him~~, and the indigent. The public defender shall prosecute
21 any appeals or other remedies before or after conviction that
22 he the public defender considers to be in the interest of
23 justice and when appointed to do so by the trial court pursuant
24 to section eight (8) of this Act.

25 Sec. 15. The Code editor shall codify sections one (1)
26 through ten (10) of this Act as a new chapter of the Code.

27 EXPLANATION

28 The new state office of appellate defender is established
29 to represent indigents in criminal appeals. The governor
30 will appoint a commission of six members whose primary duty
31 will be to appoint the appellate defender. The bill takes
32 effect July 1, 1980. The governor is to appoint the commission
33 members on or before October 1, 1980, and the appellate
34 defender is to be appointed on or before January 1, 1981.

35