

AMENDED IN ASSEMBLY SEPTEMBER 11, 1997

AMENDED IN ASSEMBLY SEPTEMBER 10, 1997

AMENDED IN ASSEMBLY JULY 8, 1997

AMENDED IN ASSEMBLY JUNE 25, 1997

AMENDED IN SENATE MAY 15, 1997

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AMENDED IN SENATE MARCH 31, 1997

SENATE BILL

No. 513

Introduced by Senator Lockyer

(Principal coauthor: Assembly Member Pacheco)

(Coauthors: Assembly Members Hertzberg, Morrow, and
Wayne)

February 20, 1997

An act to amend Sections 15402 and 15421 of, and to add Chapter 2.1 (commencing with Section 68650) to Title 8 of, the Government Code, relating to appellate representation.

LEGISLATIVE COUNSEL'S DIGEST

SB 513, as amended, Lockyer. Appellate Representation: State Public Defender: California Habeas Resource Center.

Existing law establishes the Office of the State Public Defender, as specified, and specifies the powers and duties of that office. It also authorizes the Supreme Court to appoint and employ specified personnel, including phonographic reporters, assistants, secretaries, librarians, and bailiffs.

This bill would revise the existing authorization for representation by the State Public Defender to authorize the State Public Defender to represent any person financially unable to employ appellate counsel in capital cases, and in specified noncapital appeals; and to hire additional counsel and support staff, as specified. The bill would also create the California Habeas Resource Center in the judicial branch of state government, specify its powers and duties, and provide for an executive director and board of directors, appointed as specified. The bill would also require the Judicial Council and the Supreme Court to adopt rules of court setting competency standards for appointed counsel in death penalty appeals and habeas corpus proceedings; and authorize the Supreme Court to compensate appointed counsel in death penalty appeals and postconviction proceedings at a rate of at least \$125 per hour, as specified, and to raise the limit on investigative and other expenses for such counsel, as specified, to \$25,000 without an order to show cause.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15402 of the Government Code
2 is amended to read:
3 15402. The State Public Defender may employ
4 deputies and other employees, and establish and operate
5 offices, as he or she may need for the proper performance
6 of his or her duties. The State Public Defender may
7 contract with county public defenders, private attorneys,
8 and nonprofit corporations organized to furnish legal
9 services to persons who are not financially able to employ
10 counsel and pay a reasonable sum for those services
11 pursuant to the contracts. He or she may provide for
12 participation by those attorneys and organizations in his
13 or her representation of eligible persons. The attorneys
14 and organizations shall serve under the supervision and
15 control of the State Public Defender and shall be
16 compensated for their services either under those



1 contracts or in the manner provided in Section 1241 of the
2 Penal Code.

3 The State Public Defender may also enter into
4 reciprocal or mutual assistance agreements with the
5 board of supervisors of one or more counties to provide
6 for exchange of personnel for the purposes set forth in
7 Section 27707.1.

8 The Office of the State Public Defender may hire 15
9 additional staff attorneys and the support staff necessary
10 for proper implementation of Section 15421.

11 SEC. 2. Section 15421 of the Government Code is
12 amended to read:

13 15421. Upon appointment by the court or upon the
14 request of the person involved the State Public Defender
15 is authorized to represent any person who is not
16 financially able to employ counsel in the following
17 matters:

18 (a) An automatic appeal to the Supreme Court under
19 Section 11 of Article VI of the California Constitution and
20 subdivision (b) of Section 1239 of the Penal Code.

21 (b) A petition for a writ of certiorari to the United
22 States Supreme Court with respect to a judgment on the
23 automatic appeal to the Supreme Court under Section 11
24 of Article VI of the California Constitution and
25 subdivision (b) of Section 1239 of the Penal Code.

26 (c) An appeal in a noncapital, criminal case as long as
27 the State Public Defender is fulfilling the responsibilities
28 to provide representation imposed pursuant to
29 subdivisions (a) and (b), or the State Public Defender
30 determines that taking a limited number of those cases is
31 necessary for staff training.

32 SEC. 3. Chapter 2.1 (commencing with Section
33 68650) is added to Title 8 of the Government Code, to
34 read:

35

36 CHAPTER 2.1. CALIFORNIA HABEAS RESOURCE CENTER

37

38 68650. As used in this chapter, “center” means the
39 California Habeas Resource Center, and “board” means
40 the board of directors of the center.



1 68651. There is hereby created in the judicial branch
2 of state government the California Habeas Resource
3 Center, which shall have all of the following general
4 powers and duties:

5 (a) To employ up to 30 attorneys who may be
6 appointed by the Supreme Court to represent any person
7 convicted and sentenced to death in this state, who is
8 without counsel and who is determined by a court of
9 competent jurisdiction to be indigent, for the purpose of
10 instituting and prosecuting postconviction actions in the
11 state and federal courts, challenging the legality of the
12 judgment or sentence imposed against that person, and
13 preparing petitions for executive clemency. Any such
14 appointment ~~shall~~ *may* be concurrent with the
15 appointment of the State Public Defender or other
16 counsel for purposes of direct appeal under Section 11 of
17 Article VI of the California Constitution.

18 (b) To file motions seeking compensation for
19 representation and reimbursement for expenses
20 pursuant to Section 3006A of Title 18 of the United States
21 Code when providing representation to indigent persons
22 in the federal courts, and transmit those payments to the
23 treasurer for deposit in a special account in the General
24 Fund which, upon appropriation, shall be available for
25 the purposes of the center.

26 (c) To work with the Supreme Court in recruiting
27 members of the private bar to accept death penalty
28 habeas case appointments.

29 (d) To establish and periodically update a roster of
30 attorneys qualified as counsel in postconviction
31 proceedings in capital cases.

32 (e) To establish and periodically update a roster of
33 experienced investigators and experts who are qualified
34 to assist counsel in postconviction proceedings in capital
35 cases.

36 (f) To employ investigators and experts as staff to
37 provide services to appointed counsel upon request of
38 counsel, provided that where the provision of those
39 services is to private counsel under appointment by the



1 Supreme Court, those services shall be pursuant to
2 contract between appointed counsel and the center.

3 (g) To provide legal or other advice or, to the extent
4 not otherwise available, any other assistance to appointed
5 counsel in postconviction proceedings as is appropriate
6 where not prohibited by law.

7 (h) To develop a brief bank of pleadings and related
8 materials on significant, recurring issues which arise in
9 postconviction proceedings in capital cases and to make
10 those briefs available to appointed counsel.

11 (i) To evaluate cases and recommend assignment by
12 the court of appropriate attorneys.

13 (j) To provide assistance and case progress monitoring
14 as needed.

15 (k) To timely review case billings and recommend
16 compensation of members of the private bar to the court.

17 (l) The center shall annually report to the Legislature,
18 the Governor, and the Supreme Court on the status of the
19 appointment of counsel for indigent prisoners in
20 postconviction capital cases, and on the operations of the
21 office. On or before January 1, 2000, the Office of the
22 Legislative Analyst shall evaluate the available reports.

23 68652. The Supreme Court shall offer to appoint
24 counsel to represent all state prisoners subject to a capital
25 sentence for purposes of state postconviction
26 proceedings, and shall enter an order containing one of
27 the following:

28 (a) The appointment of one or more counsel to
29 represent the prisoner in postconviction state
30 proceedings upon a finding that the person is indigent
31 and has accepted the offer to appoint counsel or is unable
32 to competently decide whether to accept or reject that
33 offer.

34 (b) A finding, after a hearing if necessary, that the
35 prisoner rejected the offer to appoint counsel and made
36 that decision with full understanding of the legal
37 consequences of the decision.

38 (c) The denial to appoint counsel upon a finding that
39 the person is not indigent.



1 68653. No counsel appointed to represent a state
2 prisoner under capital sentence in state postconviction
3 proceedings shall have previously represented the
4 prisoner at trial or on direct appeal in the case for which
5 the appointment is made, unless the prisoner *and counsel*
6 expressly requests continued representation.

7 68654. (a) The center shall be managed by an
8 executive director who shall be responsible for the
9 day-to-day operations of the center.

10 (b) The executive director shall be chosen by a
11 five-member board of directors and confirmed by the
12 Senate. Each ~~California~~ Appellate Project shall appoint
13 one board member, all of whom shall be attorneys.
14 However, no attorney who is employed as a judge,
15 prosecutor, or in a law enforcement capacity shall be
16 eligible to serve on the board. The executive director shall
17 serve at the will of the board.

18 (c) Each member of the board shall be appointed to
19 serve a four-year term, and vacancies shall be filled in the
20 same manner as the original appointment. Members of
21 the board shall receive no compensation, but shall be
22 reimbursed for all reasonable and necessary expenses
23 incidental to their duties. The first members of the board
24 shall be appointed no later than February 1, 1998.

25 (d) The executive director shall meet the
26 appointment qualifications of the State Public Defender
27 as specified in Section 15400.

28 (e) The executive director shall receive the salary that
29 shall be specified for the executive director in Chapter 6
30 (commencing with Section 11550) of Part 1 of Division 3
31 of Title 2.

32 68655. The Judicial Council and the Supreme Court
33 shall adopt, by rule of court, binding and mandatory
34 competency standards for the appointment of counsel in
35 death penalty direct appeals and habeas corpus
36 proceedings.

37 68656. (a) The Supreme Court may compensate
38 counsel representing indigent defendants in automatic
39 appeals arising out of a judgment of death or for state
40 postconviction proceedings in those cases, at a rate of at



1 least one hundred twenty-five dollars (\$125) per
2 allowable hour, as defined by the court's Payment
3 Guidelines for Appointed Counsel Representing Indigent
4 Criminal Appellants. However, nothing in this section is
5 intended to prohibit the hiring of counsel under a flat-fee
6 arrangement.

7 (b) The Supreme Court may raise the guideline
8 limitation on investigative and other expenses allowable
9 for counsel to adequately investigate and present
10 collateral claims to up to twenty-five thousand dollars
11 (\$25,000) without an order to show cause.

12 (c) It is the intent of the Legislature that payments to
13 appointed counsel be made within 60 days of submission
14 of a billing.

