

CRIMINAL LAW:
PUBLIC DEFENDER:

State public defenders are not prohibited by the provisions of House Bill No. 1314, 76th General Assembly, from employing additional assistants to be paid from federal grant funds for the purpose of defending indigents in juvenile and misdemeanor cases.

OPINION NO. 108

February 23, 1973

Honorable Lawrence J. Lee
Missouri Senate, 3rd District
Room 418 State Capitol Building
Jefferson City, Missouri 65101



Dear Senator Lee:

This opinion is in response to your question asking whether the state public defender of the circuit comprising the City of St. Louis is precluded under the provisions of House Bill No. 1314 of the 76th General Assembly from hiring additional employees funded by the Missouri Law Enforcement Assistance Council for the purpose of defending indigents accused of misdemeanors and indigent juveniles in juvenile cases.

Section 6 of the Bill provides in part:

"1. In any circuit located wholly within a city which is not within a county, the circuit public defender may appoint not more than fifteen assistant public defenders to assist him in his duties. In circuits containing all or a major part of a city having a population of four hundred and fifty thousand but not more than six hundred thousand persons, the circuit public defender may appoint not more than eleven assistant public defenders. In all other circuits having a population of five hundred thousand or more and which have no cities within the county with a population of more than four hundred thousand persons, the circuit public defender may appoint not more than eight assistant defenders. In all other circuits which have a circuit public defender, he may appoint not more than three assistant defenders.

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The public defender in any circuit which has a public defender office may employ special assistant public defenders for such periods or purposes as the defender may determine."

Under Section 8 of the Bill, state public defenders have the duty to represent indigent persons upon court order when such persons are charged or detained in connection with a felony or have filed petitions for habeas corpus or other post conviction motions alleging unlawful restraints by public authority, or upon request by such persons charged or detained in connection with a felony.

House Bill No. 1314 was the legislative response to the decision of the Missouri Supreme Court in State v. Green, 470 S.W.2d 571 (Mo. 1971). In Green, the court addressed itself to the demands placed upon the legal profession with respect to the representation of indigents pursuant to the opinion of the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963). The Missouri Supreme Court said that the "Court, after September 1, 1972, will not compel attorneys of Missouri to discharge alone 'a duty which constitutionally is the burden of the State.'"

The decision of the United States Supreme Court in In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967), which decided that juveniles are entitled to representation preceded the enactment of House Bill 1314. However, it was not until June 12, 1972, (or almost concurrently with the approval, June 23, 1972, of the Bill) that the United States Supreme Court decided Argersinger v. Hamlin, ___ U.S. ___, 92 S.Ct. ___, 32 L.Ed.2d 530 (1972). In Argersinger the court held ". . . that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial." (Id. 32 L.Ed.2d, at 538).

As a result of the Argersinger decision the ". . . judge can preserve the option of a jail sentence only by offering counsel to any defendant unable to retain counsel on his own . . ." (Id., concurring opinion, at 541). As a further result of decisions of the United States Supreme Court which are summarized in Hendrix v. Lark, 482 S.W.2d 427 (Mo. banc 1972), indigent defendants cannot be jailed for unwillful failure to pay fines and costs. Thus, the end result of these decisions is that if justice is to be meaningful and the interests of society preserved the poor cannot be permitted to escape a jail sentence for lack of counsel and avoid jail for lack of funds with which to pay fines and costs while a person of modest means must suffer exposure to both. However, we will not attempt to detail the numerous considerations involved many of which are obvious and most of which are expressed in the Argersinger case.

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It is clear that the same reasons which compelled the Supreme Court of Missouri to make its decision in State v. Green, above, are now expanded and brought to a forceful focus by Argersinger v. Hamlin. Likewise, the same underlying considerations have existed with respect to juveniles since In re Gault, above. We are thus compelled to conclude that the state legislature did not intend to create a state public defender system which lacks the capacity to deal fully with the interests of justice and of society.

Therefore in answer to your question, it is our view that, in the premises, the defender may employ additional assistants, exceeding fifteen if necessary, to be paid from federal grant funds for the defense of indigents in misdemeanor and juvenile cases.

Finally, we point out that the views expressed here are limited to the situation considered respecting public defenders.

CONCLUSION

It is the opinion of this office that state public defenders are not prohibited by the provisions of House Bill No. 1314, 76th General Assembly, from employing additional assistants to be paid from federal grant funds for the purpose of defending indigents in juvenile and misdemeanor cases.

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Very truly yours,



JOHN C. DANFORTH
Attorney General