[Similar Matter Filed During Past Session — See Senate No. 1638 of 1982]

SENATE . . . . . No. 1031

By Ms. McGovern, a petition (accompanied by bill, Senate, No. 1031) of Patricia McGovern for legislation to establish a committee for indigent defense services. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT TO ESTABLISH A COMMITTEE FOR INDIGENT DEFENSE SERVICES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 34D of Chapter 221 of the General Laws, as amended by chapter 369 of the acts of 1970 is hereby repealed, and chapter 221 of the General Laws is further amended by adding the following new Section 34D:—

(1) There shall be a Committee for Indigent Defense Services hereinafter referred to as the committee, consisting of fifteen persons to be appointed by the justices of the supreme judicial court. Five members shall be appointed for a term of one year, five for a term of two years, and five for a term of three years. Thereafter, each member shall be appointed for a term of three years. Each member of the committee shall be selected by the supreme judicial court, and shall serve until his successor in office has been appointed and qualified. Vacancies shall be filled by the justices of the supreme judicial court for an unexpired term. Members of the committee may be removed by the justices of the supreme judicial court. No member of the committee shall receive any compensation for his services, but each member shall be reimbursed for actual expenses incurred in attending the committee hearings.

(2) The committee may accept gifts, grants or contributions from any source, whether public or private, and may enter into contracts to provide or receive services with any federal, state, county or municipal entity, with any group or

24 individual, whether profit or non-profit, or with any non-profit
25 or voluntary charitable group, corporation, association or or-
26 ganization, including any bar association.

27 (3) The committee shall adopt such rules and regulations
28 as may be necessary for the conduct of its affairs and may
29 from time to time amend or revise the same. The committee
30 shall prepare an annual report which shall be a public docu-
31 ment. The committee shall establish guidelines for the qual-
32 ification and removal of private attorneys who accept assign-
33 ments and shall establish guidelines for the hiring and removal
34 of salaried public counsel.

35 (4) The committee shall establish, supervise and maintain
36 a system for the appointment or assignment of counsel at any
37 stage of a proceeding, either criminal in nature or commenced
38 under chapter one hundred nineteen in any court in the com-
39 monwealth, provided the laws of the commonwealth or the
40 rules of the supreme judicial court require that a person in
41 such proceeding be represented by counsel and provided fur-
42 ther that such person is unable to obtain counsel by reason
43 of his inability to pay. The committee may also establish a
44 system for the provision of counsel in any pre-arraignment
45 procedure. A justice or associate justice shall assign a case
46 to the committee, as hereafter provided, after receiving from
47 the probation officer a written report containing the proba-
48 tion officer's opinion as to the defendant's ability to pay for
49 counsel.

50 (5) In carrying out its duties as prescribed in section four,
51 the committee shall: —

52 (a) Utilize its staff of attorneys, which shall be known here-
53 after as the "public defender division". Said division shall be
54 assigned to represent indigent defendants in all criminal cases,
55 except that: —

56 (1) Such division shall not be assigned to represent more
57 than one defendant in any matter before any court on the
58 same case or arising out of the same incident;

59 (2) Such division shall not be assigned to represent a de-
60 fendant in any case in which there is a conflict of interest with
61 any of its clients;

62 (3) Such division shall not be assigned to represent individ-

63 uals in cases classified as "children in need of services," under
64 chapter one hundred and nineteen, section thirty-nine E, or in
65 cases classified as "care and protection", under chapter one
66 hundred and nineteen, section twenty-four;

67 (4) Such division shall not be assigned to those cases where
68 an individual is before the probate and family court depart-
69 ment or the housing court department for criminal contempt;

70 (5) Such division shall not be assigned to represent any
71 child alleged to be delinquent, except in cases as may result in
72 transfer hearings under section sixty-one of chapter one hun-
73 dred and nineteen and except in the juvenile court depart-
74 ments of Boston, Bristol, Roxbury, Springfield and Worcester;

75 (6) Such division shall not be assigned to represent any per-
76 son charged with a misdemeanor unless said misdemeanor is
77 in conjunction with a felony charge for which such division
78 has been assigned.

79 (b) Establish, supervise, and maintain a system for the ap-
80 pointment of private counsel, hereafter called the "private
81 counsel division". The committee shall give preference to pro-
82 viding such counsel by entering into contractual agreements
83 with any state, county or local bar association or voluntary
84 charitable group, corporation or association, including bar ad-
85 vocate groups; the committee may also contract with such
86 other organized groups of attorneys as may be formed to af-
87 ford representations to indigent defendants. Neither individ-
88 uals nor members nor participants in any group, corporation
89 or association with whom the committee may contract under
90 this section or under section twelve shall be considered to be
91 or have any rights as state employees.

92 (1) Such division shall be assigned for all persons accused
93 of crimes entitled to counsel who, through their inability to
94 pay for counsel, must have counsel appointed to them, but who,
95 pursuant to the provisions of paragraph (a) are not to be rep-
96 resented by the public defender division.

97 (2) Such division shall be assigned to represent any person
98 entitled to counsel in any proceeding arising out of a petition
99 brought under section thirty-four of section thirty-nine E of
100 chapter one hundred and nineteen.

101 (3) Said division shall be assigned to represent a person

102 who is before the probate and family court department or the
103 housing court department in a criminal contempt proceeding.
104 (4) Said division shall also be assigned to represent persons
105 in such other cases as the chief counsel shall determine to be
106 necessary.
107 (6) Said division shall be assigned to represent persons
108 charged in the district court department with concurrent fel-
109 onies under section twenty-six of chapter two hundred and
110 eighteen as further defined by the committee.
111 (7) The committee shall, through the chief counsel or his
112 designee, upon a determination by a court that a person ac-
113 cused of murder in the first or second degree is indigent, and
114 upon a request by a justice of the superior court department
115 that the chief counsel or his designee, assign counsel from
116 either the public defender division or the private counsel di-
117 vision, and the assignment of said counsel shall be subject to
118 the approval of the said justice.
119 (8) The committee shall establish standards for the public
120 defender division and the private counsel division which shall
121 include but not be limited to: —
122 (a) vertical or continuous representation at the pre-trial
123 and trial stages by the attorney either assigned or appointed,
124 whenever possible;
125 (b) required participation by each attorney in an approved
126 course of training in the fundamentals of criminal trial prac-
127 tice, unless the attorney has a level of ability which makes
128 such participation unnecessary;
129 (c) specified caseload limitation levels;
130 (d) investigative servcies;
131 (e) a method for the provision of social services or social
132 service referrals;
133 (f) availability of expert witnesses to participating counsel;
134 (g) clerical assistance, interview facilities, and the avail-
135 ability of a law library and model forms to participating coun-
136 sel;
137 (h) adequate supervision provided by experienced attorneys
138 who shall be readily available to less experienced attorneys;
139 (i) ultimate responsibility for training, education, and qual-
140 ification of counsel representing indigent clients resting with

141 the justices of the supreme judicial court.

142 (9) The committee shall monitor and evaluate compliance
143 with the standards and the performance of counsel in its di-
144 visions in order to insure competent representation of de-
145 fendants in all courts of the commonwealth and shall estab-
146 lish a procedure for the review and disposition of client com-
147 plaints.

148 (10) The committee shall establish rates of compensation
149 payable to the private counsel division and those attorneys
150 appointed pursuant to section twelve, subject to appropriation,
151 that shall be paid to all counsel who are appointed or assigned
152 to represent indigents in accordance with the provisions of
153 sections five through seven. Such rates of compensation shall
154 be reviewed periodically at public hearings held by the com-
155 mittee at appropriate locations throughout the state, and notice
156 shall be given to all state, county and local bar associations
157 and other interested groups of such hearings by letter and
158 publication in advance of such hearings. Such periodic review
159 shall take place not less than once every two years.

160 (11) All invoices regarding the services of counsel from the
161 private counsel division, when counsel is to be compensated at
162 an hourly rate of payment, shall be duly certified by the justice
163 hearing a particular matter. The board shall establish policies
164 and procedures to provide fair compensation to private coun-
165 sel, which shall include a remedy for any private attorney
166 aggrieved by the amount of payment certified by any justice.
167 All invoices shall be processed for payment within thirty days
168 of receipt by the chief counsel. The board may further pre-
169 scribe such policies and procedures for payment as it deems
170 appropriate.

171 (12) The committee shall appoint a chief counsel, whose
172 responsibilities and duties shall be defined by the committee
173 and shall include, but not be limited to the overall supervision
174 of the workings of the various divisions of the committee. The
175 committee shall further appoint two deputy chief counsel, with
176 duties defined by the committee, one of whom shall supervise
177 the public defender division, and the other shall supervise the
178 private counsel division. The committee shall also prescribe the
179 procedures for the appointment of all legal and non-legal staff

180 of the public defender division and for the procurement of
181 suitable accommodations as may be required. The chief coun-
182 sel shall authorize the certification of all payments under sec-
183 tion twenty-seven G of chapter two hundred and sixty-one.
184 All legal and non-legal staff of the public defender division
185 shall be full-time. The chief counsel and deputy chief counsel
186 shall likewise devote full time to their duties. The chief coun-
187 sel shall be paid at a rate commensurate with the several dis-
188 trict attorneys throughout the state. The salaries of the deputy
189 chief counsel shall be established by the committee. All other
190 legal staff of the public defender division shall be paid at a
191 rate commensurate with assistant district attorneys through-
192 out the state. The counsel and other employees appointed by
193 the committee shall not be subject to the provisions of chapter
194 thirty-one.

195 (13) The public defender division except in cases of conflict
196 of interest, shall represent indigent defendants in all appeals
197 and related post-conviction remedies. In the case of a conflict
198 of interest, the assignment shall be to the private counsel
199 division.

200 (14) The Committee for Indigent Defense shall file with the
201 supreme judicial court, on or before December 1, 1984, and
202 with the clerks of the house of representatives and the senate,
203 a report on uniform standards for the determination of in-
204 digency by the courts of the commonwealth for the purpose
205 of making assignments of counsel under the provisions of this
206 act. Said report shall be accompanied by recommendations,
207 which may include legislation, to implement said uniform
208 standards.