

Sub-Chapter 3: Office Of Defender General

§ 5251. Creation of office

The office of defender general is established. The office shall consist of the defender general who shall be the head of the office, a deputy defender general, if one is appointed in accordance with subsection 5253(e) of this title, and such public defenders and deputy public defenders selected by the defender general and within the limits of funds and staffing authorized by the general assembly. (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note; amended 1973, No. 266 (Adj. Sess.), § 2; 1981, No. 146 (Adj. Sess.), § 2, eff. April 8, 1982; 1987, No. 183 (Adj. Sess.), § 23.)

§ 5252. Appointment; compensation

(a) The defender general shall be appointed by the governor subject to the advice and consent of the senate.

(b) There shall be included in the qualifications for appointment that the defender general shall be an attorney-at-law who has been engaged in the practice of law or as a judge in the state of Vermont for a period of at least five out of the 10 years preceding his or her appointment. Further, he or she shall be an attorney or judge who has spent a substantial part of his or her last five years in the practice of criminal law or presiding over the adjudication of criminal cases.

(c) The defender general shall be appointed for a term of four years and until his or her successor is appointed and qualified.

(d) [Repealed.] (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note; amended 1973, No. 266 (Adj. Sess.), § 3; 1975, No. 227 (Adj. Sess.), § 5, eff. April 7, 1976; 1977, No. 109, § 33(g).)

§ 5253. Powers and duties

(a) The defender general has the primary responsibility for providing needy persons with legal services under this chapter. He or she shall have also the duty of providing legal services to those persons in the custody of the commissioner of corrections. He or she may provide these services personally, through public defenders employed under subsection 5254(a) of this title, or through attorneys-at-law as provided by subsection (b) of this section. No other official or agency of the state may supervise the defender general or assign him duties in addition to those prescribed by this chapter. He or she may not practice law other than in the performance of his or her duties under this chapter or engage in any other occupation, except as provided in section 5203 of this title.

(b) When necessary or appropriate, the defender general may contract for the services of investigators or additional attorneys-at-law to provide services to needy persons covered by this chapter or to carry out any other function of the office of defender general provided that:

(1) The services performed shall meet the professional standards that this chapter prescribes for services performed by the office of the defender general;

(2) The services are subject to the supervision and control of the defender general, except as otherwise provided in section 5205 involving contracts providing for representation in cases involving conflict of interest; and

(3) The services contracted under this subsection shall be approved by the secretary of administration.

(c) The defender general shall supervise the training of all public defenders, and for this purpose he or she may establish a training course.

(d) The defender general shall consult and cooperate with interested professional groups with respect to the causes of crime, the development of effective means for discouraging crime, the rehabilitation of convicted criminals, the administration of criminal justice, and the administration of the office of the defender general.

(e) The defender general may appoint a deputy defender general with the approval of the governor, remove the deputy at his or her pleasure, and shall be responsible for the deputy's acts. The deputy shall

perform such duties as the defender general shall direct, and in the absence or disability of the defender general perform the duties of the defender general. In case a vacancy occurs in the office of the defender general, the deputy shall assume and discharge the duties of such office until the vacancy is filled. (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note; amended 1973, No. 77, § 42; 1973, No. 266 (Adj. Sess.), § 4; 1981, No. 146 (Adj. Sess.), § 3, eff. April 8, 1982; 1987, No. 183 (Adj. Sess.), § 24.)

§ 5254. Personnel designation and expenditures

(a) The defender general, deputy defender general, public defenders and deputy public defenders shall be exempt from the classified state service.

(b) Clerical and office staff in the office of the defender general and in all local offices shall be hired by the defender general. Clerical and office staff shall be state employees paid by the state, and shall receive those benefits and compensation available to classified state employees who are similarly situated, unless otherwise covered by the provisions of a collective bargaining agreement setting forth the terms and conditions of employment, negotiated pursuant to the provisions of chapter 27 of Title 3. Clerical and office staff employed by the office of the defender general shall not be part of the classified service as set forth in chapter 13 of Title 3.

(c) The deputy defender general shall be entitled to compensation at an annual rate that does not exceed an amount \$500.00 less than the salary of the defender general. The public defenders and deputy public defenders shall be entitled to compensation at annual rates not to exceed an amount \$1,000.00 less than the salary of the defender general.

(d) The defender general is responsible for assuming expenses for his or her office and all local offices. The entirety of expenditures shall not exceed those set in the annual budget of the office of the defender general and such expenditures shall be subject to the provisions of section 702 of Title 32. (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note; amended 1973, No. 77, § 41; 1973, No. 266 (Adj. Sess.), § 5; 1977, No. 109, § 14; 1983, No. 88, § 15; 1987, No. 183 (Adj. Sess.), § 25; 1997, No. 92 (Adj. Sess.), §§ 6a, 8.)

§ 5255. Recovery from defendant

(a) The defender general or commissioner of taxes, on behalf of the state, may recover reimbursement from each person who has received legal assistance or other benefit under this chapter:

(1) To which the person was not entitled;

(2) With respect to which the person was not a needy person when the person received it; or

(3) With respect to which the person has failed to make the certification required by section 5236(b) of this title;

and for which the person refuses to reimburse. Suit must be brought within six years after the date on which the aid was received.

(b) The defender general or the commissioner of taxes, on behalf of the state, may recover reimbursement from each person, other than a person covered by subsection (a) of this section, who has received legal assistance under this chapter and who, on the date on which suit is brought, is financially able to reimburse the state for it according to the standards of ability to pay applicable under subdivision 5201(3), section 5231, and subsection 5238(b) of this title, but refuses to do so. Suit must be brought within three years after the date on which the benefit was received. The amount of recovery shall be equal to the average cost per case for representation supported by the budget of the defender general for the calendar year in which legal assistance was completed as determined by the defender general, less any reimbursement or co-payment actually paid for representation.

(c) Amounts recovered under this section shall be paid into the public defender special fund. (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note; 1991, No. 231 (Adj. Sess.), § 5, eff. May 28, 1992.)

§ 5256. Reports

The Defender General shall submit an annual report of his or her activities to the House and Senate

Committees on Judiciary showing the number of persons represented under this chapter, the crimes involved, the outcome of each case, and the expenditures totaled by kind made in carrying out the responsibilities imposed by this chapter. (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note; amended 2011, No. 139 (Adj. Sess.), § 13, eff. May 14, 2012.)

§ 5257. Expenses

The defender general shall be reimbursed for all reasonable expenses, including mileage and other travel expense, lodging, and subsistence, incurred in carrying out his or her responsibilities under this chapter. (Added 1971, No. 161 (Adj. Sess.), § 6, eff. date, see note.)

§ 5258. Audit

(a) In the 1995 audit and thereafter as appropriate, the auditor of accounts shall conduct an audit of the assignment of counsel to needy persons under section 5231 of this title, determination of financial need under section 5236 of this title, co-payment and reimbursement orders under section 5238 of this title and collection of reimbursements under section 5240 of this title.

(b) The audit shall evaluate compliance with statutory and legal requirements and internal controls. If noncompliance is found, the auditor shall recommend that proper corrections be made. The auditor shall recommend uniform practice by the responsible agencies and the courts throughout the state. The auditor shall report his or her findings in accordance with subdivision 163(5) of Title 32.

(c) The 1995 audit required by this section shall be funded in the amount of \$5,000.00 from the special fund created under section 5239 of this title. (Added 1995, No. 21, § 5.)

§ 5259. Duty to investigate

(a) The Defender General shall investigate issues related to the health, safety, and welfare of inmates in correctional facilities and shall receive the cooperation of all State agencies in carrying out this duty. Issues that require an investigation by the Defender General shall, at a minimum, include:

- (1) the death of an inmate;
- (2) a suicide attempt that requires more than 24 hours of emergency hospitalization; and
- (3) a critical incident that results in injury to an inmate from an assault, use of force, or accident in a correctional facility that requires more than 24 hours of emergency hospitalization.

(b)(1) When an incident enumerated in subdivisions (a)(1)-(3) of this section occurs, the Department of Corrections shall notify the Defender General as soon as reasonably practicable.

(2) The Commissioner shall report weekly to the Defender General regarding any critical incident that negatively impacts the health, safety, or welfare of an inmate, the conditions of confinement, or the adequacy of care provided to inmates.

(c) In carrying out the duties under this section, the Defender General:

(1) Shall be given reasonable unaccompanied access to the correctional facility and inmates and is authorized to speak with any relevant personnel from the Department of Corrections and other State agencies subject to the individual's constitutional rights and to legitimate law enforcement concerns regarding preservation of a criminal investigation, if any.

(2) Shall be given broad access to records concerning the incident and any inmates involved in the incident. In response to a request for records from the Defender General, the Commissioner of Corrections shall provide the records promptly and no subpoena or public records request shall be required. Records subject to this section include video or audio recordings.

(d) The Defender General is authorized to protect the confidentiality of sources in the course of an investigation pursuant to this section. Work product generated in the course of representation of a client that contains confidential communication between an inmate and the Defender General shall not be discoverable and records of communications between inmates and the Defender General may be redacted.

(e) Where appropriate, the Defender General shall report to the Department of Corrections and the

Joint Committee on Corrections Oversight identifying any concerns and suggested policy changes that arise from an incident that resulted in an investigation. (Added 2013, No. 110 (Adj. Sess.), § 1, eff. April 22, 2014.)