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S.237

Introduced by Senators Ingram, Balint, Lyons, and Pollina

Referred to Committee on

Date:

Subject: Crimes and criminal procedure; public defenders; representation of  
needy persons; immigration proceedings and matters

Statement of purpose of bill as introduced: This bill proposes to require that  
needy persons be provided with representation concerning immigration  
matters.

An act relating to providing representation to needy persons concerning  
immigration matters

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. § 5203 is amended to read:

§ 5203. FEDERAL COURTS

This chapter applies only to representation in or with respect to the courts of  
this ~~state~~ State. It does not prohibit the ~~defender general~~ Defender General, the  
~~deputy defender general~~ Deputy Defender General, or public defenders from  
representing a needy person in a federal court of the United States, if:

(1) ~~The~~ the matter arises out of or is related to an action pending or  
recently pending in a court of criminal jurisdiction of the ~~state~~ State; ~~or~~

1           (2) ~~Representation~~ representation is under a plan of the ~~United States~~  
2           U.S. District Court as required by the Criminal Justice Act of 1964 (18 U.S.C.  
3           § 3006A); or

4           (3) representation is in or with respect to a matter arising out of or  
5           relating to immigration status.

6           Sec. 2. 13 V.S.A. § 5231 is amended to read:

7           § 5231. RIGHT TO REPRESENTATION, SERVICES, AND FACILITIES

8           (a) A needy person who is being detained by a law enforcement officer  
9           without charge or judicial process, or who is charged with having committed or  
10          is being detained under a conviction of a serious crime, or who requires or  
11          would benefit from representation in or with respect to a matter arising out of  
12          or relating to immigration status is entitled:

13           (1) To be represented by an attorney to the same extent as a person  
14          having his or her own counsel; ~~and,~~

15           (2) To be provided with the necessary services and facilities of  
16          representation. Any such necessary services and facilities of representation  
17          that exceed \$1,500.00 per item must receive prior approval from the court after  
18          a hearing involving the parties. The court may conduct the hearing outside the  
19          presence of the ~~state~~ State, but only to the extent necessary to preserve  
20          privileged or confidential information. This obligation and requirement to  
21          obtain prior court approval shall also be imposed in like manner upon the

1 ~~attorney general~~ Attorney General or a ~~state's attorney~~ State's Attorney  
2 prosecuting a violation of the law.

3 (b) The attorney, services ~~and~~, facilities, and court costs shall be provided  
4 at public expense to the extent that the person, at the time the court determines  
5 need, is unable to provide for the person's payment without undue hardship.

6 Sec. 3. 13 V.S.A. § 5232 is amended to read:

7 § 5232. PARTICULAR PROCEEDINGS

8 Counsel shall be assigned under section 5231 of this title to represent needy  
9 persons in any of the following:

10 (1) ~~Extradition~~ extradition proceedings;

11 (2) ~~Habeas~~ habeas corpus and other proceedings ~~wherein~~ in which the  
12 person is confined in a penal or mental institution in this ~~state~~ State and seeks  
13 release ~~therefrom; or~~

14 (3) ~~Proceedings~~ proceedings arising out of a petition brought in a  
15 juvenile court when the court deems the interests of justice require  
16 representation of either the child or his or her parents or guardian, or both,  
17 including any subsequent proceedings arising from an order ~~therein; or~~

18 (4) a matter arising out of or relating to immigration status.

1 Sec. 4. 13 V.S.A. § 5234 is amended to read:

2 § 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

3 (a) If a person who is being detained by a law enforcement officer without  
4 charge or judicial process, or who is charged with having committed or is  
5 being detained under a conviction of a serious crime, or who requires or would  
6 benefit from representation in or with respect to a matter arising out of or  
7 relating to immigration status is not represented by an attorney under  
8 conditions in which a person having his or her own counsel would be entitled  
9 to be so represented, the law enforcement officer, magistrate, or court  
10 concerned shall:

11 (1) Clearly inform him or her of the right of a person to be represented  
12 by an attorney and of a needy person to be represented at public expense; ~~and,~~

13 (2) If the person ~~detained or charged~~ does not have an attorney and does  
14 not knowingly, voluntarily, and intelligently waive his or her right to have an  
15 attorney when detained ~~or~~, charged, or when the person appears on a matter,  
16 notify the appropriate public defender that he or she is not so represented. This  
17 shall be done upon commencement of detention, formal charge, ~~or~~ post-  
18 conviction proceeding, or other matter, as the case may be. As used in this  
19 subsection, the term “commencement of detention” includes the taking into  
20 custody of a probationer or parolee.

1 (b) Upon commencement of any later judicial proceeding relating to the  
2 same matter, the presiding officer shall clearly inform the person ~~so detained or~~  
3 ~~charged~~ of the right of a needy person to be represented by an attorney at  
4 public expense.

5 (c) Information given to a person by a law enforcement officer under this  
6 section is effective only if it is communicated to a person in a manner meeting  
7 standards under the ~~constitution of the United States~~ U.S. Constitution relating  
8 to admissibility in evidence against him or her of statements of a detained  
9 person.

10 (d) Information meeting the standards of subsection (c) of this section and  
11 given to a person by a law enforcement officer under this section gives rise to a  
12 rebuttable presumption that the information was effectively communicated if:

13 (1) ~~It~~ it is in writing or otherwise recorded;

14 (2) ~~The~~ the recipient records his or her acknowledgment of receipt and  
15 time of receipt of the information; and

16 (3) ~~The~~ the material so recorded under subdivisions (1) and (2) of this  
17 subsection is filed with the court next concerned.

18 Sec. 5. 13 V.S.A. § 5238 is amended to read:

19 § 5238. CO-PAYMENT AND REIMBURSEMENT ORDERS

20 (a) On or before June 1 of each year, the Defender General shall calculate  
21 an average direct cost per case of representation extended in the preceding

1 calendar year by category of case. The categories of cases for which  
2 calculations are made shall be: felonies; misdemeanors; postconviction and  
3 miscellaneous criminal-related proceedings, including violations of probation,  
4 extraditions, and habeas corpus; juvenile proceedings, not including juvenile  
5 delinquency proceedings; matters arising out of or relating to immigration  
6 status; and appeals. The calculations shall be based on all representation  
7 supported by the budget of the Defender General, whether provided by public  
8 defenders, contractors, or assigned counsel. The administrative costs of  
9 running the Office of Defender General shall not be included in the calculation.

10 \* \* \*

11 Sec. 6. EFFECTIVE DATE

12 This act shall take effect on July 1, 2018.