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S.237

Introduced by Senators Ingram, Balint, Lyons, and Pollina

Referred to Committee on Judiciary

Date: January 3, 2018

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.F. 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  
10 or 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  
18 after a hearing involving the parties. The court may conduct the hearing  
19 outside the presence of the state State, but only to the extent necessary to  
20 preserve privileged or confidential information. This obligation and  
21 requirement to obtain prior court approval shall also be imposed in like  
22 manner upon the attorney general Attorney General or a state's attorney State

1 ~~Attorney prosecuting a violation of the law.~~

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

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

6 § 5232. PARTICULAR PROCEEDINGS

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

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

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

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

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

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

19 § 5234. NOTICE OF RIGHTS; REPRESENTATION PROVIDED

20 (a) If a person who is being detained by a law enforcement officer without  
21 charge or judicial process, or who is charged with having committed or is  
22 ~~being detained under a conviction of a serious crime, or who requires or would~~

1 ~~benefit from representation in or with respect to a matter arising out of or~~  
2 relating to immigration status is not represented by an attorney under  
3 conditions in which a person having his or her own counsel would be entitled  
4 to be so represented, the law enforcement officer, magistrate, or court  
5 concerned shall

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

8 (2) If the person ~~detained or charged~~ does not have an attorney and does  
9 not knowingly, voluntarily, and intelligently waive his or her right to have an  
10 attorney when ~~detained or~~ charged, or when the person appears on a matter,  
11 notify the appropriate public defender that he or she is not so represented.

12 This shall be done upon commencement of detention, formal charge, ~~or~~ post-  
13 conviction proceeding, or other matter, as the case may be. As used in this  
14 subsection, the term "commencement of detention" includes the taking into  
15 custody of a probationer or parolee.

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

20 (c) Information given to a person by a law enforcement officer under this  
21 ~~section is effective only if it is communicated to a person in a manner meeting~~

1 ~~standards under the constitution of the United States U.S. Constitution relating~~  
2 to admissibility in evidence against him or her of statements of a detained  
3 person.

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

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

9 (2) ~~The~~ the recipient records his or her acknowledgment of receipt and  
10 time of receipt of the information, and

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

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

14 § 5238. CO-PAYMENT AND REIMBURSEMENT ORDERS

15 (a) On or before June 1 of each year, the Defender General shall calculate  
16 an average direct cost per case of representation extended in the preceding  
17 calendar year by category of case. The categories of cases for which  
18 calculations are made shall be: felonies; misdemeanors; postconviction and  
19 miscellaneous criminal-related proceedings, including violations of probation,  
20 extraditions, and habeas corpus; juvenile proceedings, not including juvenile  
21 ~~delinquency proceedings; matters arising out of or relating to immigration~~

1 ~~status, and appeals. The calculations shall be based on all representation~~  
2 supported by the budget of the Defender General, whether provided by public  
3 defenders, contractors, or assigned counsel. The administrative costs of  
4 running the Office of Defender General shall not be included in the  
5 calculation.

6 \* \* \*

7 Sec. 6. EFFECTIVE DATE

8 ~~This act shall take effect on July 1, 2018.~~

*Sec. 1. LEGISLATIVE INTENT*

*It is the intent of the General Assembly that the Defender General, the Deputy Defender General, and public defenders shall, pursuant to 13 V.S.A. § 5203(3), continue to meet professional representation obligations to clients through representation that may extend to federal immigration court.*

*Sec. 2. 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*

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

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

*Sec. 3. 13 V.S.A. § 5241 is amended to read:*

*§ 5241. INEFFECTIVE ASSISTANCE CLAIM*

\* \* \*

*(b) In the performance of duties pursuant to a contract with or providing ad hoc legal services to the Office of the Defender General, an attorney shall have the benefit of ~~sovereign~~ immunity to the same extent as an attorney employed by the Defender General.*

*Sec. 4. EFFECTIVE DATE*

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