

GEORGIA INDIGENT DEFENSE ACT OF 2003 (revised 2007, 2008)

CHAPTER 12

ARTICLE 1

17-12-1.

(a) This chapter shall be known and may be cited as the 'Georgia Indigent Defense Act of 2003.'

(b) The Georgia Public Defender Standards Council shall be an independent agency within the executive branch of state government. (*Effective July 1, 2007.*)

(c) The council shall be responsible for assuring that adequate and effective legal representation is provided, independently of political considerations or private interests, to indigent persons who are entitled to representation under this chapter.

17-12-2. (HB 1245 section 15)

As used in this chapter, the term:

(1) 'Assistant public defender' means an attorney who is employed by any circuit public defender

(2) 'Circuit public defender' means the head of a public defender office providing indigent defense representation within any given judicial circuit of this state.

(3) 'Circuit public defender office' means the office of any of the several circuit public defenders.

(4) 'Council' means the Georgia Public Defender Standards Council.

(5) 'Director' means the director of the Georgia Public Defender Standards Council

(6) 'Indigent person' or 'indigent defendant' means:

(A) A person charged with a misdemeanor, violation of probation, or a municipal, or county offense punishable by imprisonment who earns 100 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents; and

(B) A juvenile charged with a delinquent act or violation of probation punishable by detention whose parents earn less than 125 percent of the federal poverty guidelines unless there is evidence that the juvenile or his or her parents have other resources that might reasonable be used to employ a lawyer without undue hardship on the juvenile, his parents, or the parents' dependants; and

(C) A person charged with a felony who earns or, in the case of a juvenile, whose parents earn, less than 150 percent of the federal poverty guidelines unless there is evidence that the person has other resources that might reasonably be used to employ a lawyer without undue hardship on the person or his or her dependents, or, in the case of a juvenile, his or her parents or the parents' dependants.

In no case shall a person whose maximum income level exceeds 150 percent of the federal poverty level or, in the case of a juvenile, whose household income exceeds 150 percent of the federal poverty level be an indigent person or indigent defendant.

(7) 'Legislative oversight committee' means the Legislative Oversight Committee for the Georgia Public Defender Standards Council.

(8) 'Public defender' means an attorney who is employed in a circuit public defender office or who represents an indigent person pursuant to this chapter.

17-12-3. (HB 1245 Section 16)

(a) There is created the Georgia Public Defender Standards Council to be composed of 15 members.

(b) Ten members of the council shall be appointed as follows:

(1) Two members shall be appointed by the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court of Georgia, and the Chief Judge of the Georgia Court of Appeals as further set forth in paragraph (2) of this subsection. Except as provided in paragraph 3.1 of this subsection, the members of the council shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. The members shall serve terms of four years; provided, however, that the members appointed from the even-numbered judicial administration circuits shall serve initial terms of six years and thereafter shall serve terms of four years;

(2) The members appointed pursuant to paragraph (1) of this subsection shall be chosen so that each of the ten judicial administration districts in this state is represented and so that each appointing authority shall rotate the particular judicial administration district for which he or she is responsible for appointing. The appointments shall be as follows:

(A) For the initial appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8; except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10; except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments;

(B) For the first subsequent council appointments:

(i) The Governor shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;

(ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;

(iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;

(iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10; except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments; and

(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;

(C) For the second subsequent council appointments:

- (i) The Governor shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6;
- (ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;
- (iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;
- (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2, except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments;

and
(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4 except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments;

(D) For the third subsequent council appointments:

- (i) The Governor shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8;
- (ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;
- (iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;
- (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4; except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments;

and
(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6; except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments; and

(E) For the fourth subsequent council appointments:

- (i) The Governor shall appoint one person who resides in judicial administration district 9 and one person who resides in judicial administration district 10;
- (ii) The Lieutenant Governor shall appoint one person who resides in judicial administration district 1 and one person who resides in judicial administration district 2;
- (iii) The Speaker of the House of Representatives shall appoint one person who resides in judicial administration district 3 and one person who resides in judicial administration district 4;
- (iv) The Chief Justice of the Supreme Court of Georgia shall appoint one person who resides in judicial administration district 5 and one person who resides in judicial administration district 6; except that on and after July 1, 2008, the Lieutenant Governor shall make such appointments;

and
(v) The Chief Judge of the Georgia Court of Appeals shall appoint one person who resides in judicial administration district 7 and one person who resides in judicial administration district 8; except that on and after July 1, 2008, the Speaker of the House of Representatives shall make such appointments;

All subsequent appointments shall continue on, with the entire cycle starting over again as specified in subparagraph (A) of this paragraph;

(3) The eleventh member shall be one circuit public defender who shall serve on the council. After the initial appointments as set forth in paragraph (4) of this subsection, the circuit public defender to serve on the council shall be elected by a majority vote of all the circuit public defenders. The circuit public defender councilmember shall serve terms of two years;

(3.1) Four members of the council shall be county commissioners who have been elected and are serving as members of a county governing authority in this state. The county commissioner councilmembers shall be appointed by the Governor on or before July 1, 2008, and shall be from different geographic regions of this state. The Governor may solicit recommendations for such appointees from the Association [of] County Commissioners of Georgia. Each county commissioner councilmember shall serve terms of four years; provided, however, that the initial appointments shall be for one, two, three, and four years, respectively, as designated by the Governor for each appointment, and thereafter, such members shall serve terms of four years. A county commission[er] councilmember shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the council.;

(4) Except as provided in paragraph (3.1) of this subsection, all initial appointments shall be made to become members of the council on July 1, 2003, and their successors shall become members of the council on July 1 following their appointment. The initial appointees from the even-numbered judicial administration circuits shall serve until June 30, 2009. Notwithstanding the provisions of paragraph (3) of this subsection, the initial member representing the circuit public defenders shall be made by the Supreme Court of Georgia. The person representing the circuit defender position on the initial council shall be engaged on a full-time basis in the provision of criminal defense to the indigent;

(5) Any vacancy for a member appointed pursuant to paragraphs (1), (2) and (3.1) of this subsection shall be filled by the appointing authority, and such appointee shall serve the balance of the vacating member's unexpired term; and

(6) Any vacancy for a member appointed pursuant to paragraph (3) of this subsection shall be the successor to the circuit public defender as set forth in subsection (d) of Code Section 17-12-20.

(c) In making the appointments for ten members of the council as provided in paragraph (2) of subsection (b) of this Code section., the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience and shall solicit suggestions from the State Bar of Georgia, state and local bar associations, the Georgia Association of Criminal Defense Lawyers, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorney's Council of the State of Georgia, as well as from the public and other interested organizations and individuals within this state. The appointing authorities shall not appoint a prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorney's Council of the State of Georgia to serve on the council.

(d) This Code section shall become effective on July 1, 2003, for purposes of making the initial appointments to the council."

17-12-4. (HB 1245 Section 17)

(a) The council:

- (1) Shall be a legal entity;
- (2) Shall have perpetual existence;
- (3) May contract;
- (4) May own property;

(5) May accept funds, grants, and gifts from any public or private source, which shall be used to defray the expenses incident to implementing its purposes;

(6) May adopt and use an official seal;

(7) May establish a principal office;

(8) May hire such administrative and clerical personnel as may be necessary and appropriate to fulfill its purposes; and

(9) Shall have such other powers, privileges, and duties as may be reasonable and necessary for the proper fulfillment of its purposes.

(b) The council shall establish auditing procedures as may be required in connection with the handling of public funds. The state auditor shall be authorized and directed to make an annual audit of the transactions of the council and to make a complete report of the same to the General Assembly. The annual audit shall disclose all moneys received by the council and all expenditures made by the council, by revenue source, including all programs and special projects itemized in the General Appropriations Act. The annual audit shall include an itemization by revenue source of encumbered and reserved money. Revenue sources shall include each county governing authority's expenditures which are made pursuant to Code Sections 17-12-31 and 17-12-32 and city or county expenditures which are made pursuant to subsection (d) of Code Section 17-12-23. The state auditor shall also make an audit of the affairs of the council at any time when requested to do so by a majority of the council or by the Governor or General Assembly.

(c) The council may not provide compensation from its funds to any administrative or clerical personnel employed by the council if the personnel are then receiving retirement compensation from any retirement or pension fund created by Title 47 to provide compensation for past services as a judicial officer, prosecuting attorney, indigent defense attorney, court officer, or law enforcement officer except for county or municipal retirement funds.

17-12-5. (HB 1245 Section 18)

(a) To be eligible for appointment as the director, a candidate shall be a member in good standing of the State Bar of Georgia with at least seven years' experiences in the practice of law. The director shall be selected on the basis of training and experience and such other qualifications as the council deems appropriate. The director shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(b)(1) The director shall work with and provide support services and programs for circuit public defender offices and other attorneys representing indigent persons in criminal or juvenile cases in order to improve the quality and effectiveness of legal representation of such persons and otherwise fulfill the purposes of this chapter. Such services and programs shall include, but shall not be limited to, technical, research, and administrative assistance; educational and training programs for attorneys, investigators, and other staff; assistance with the representation of indigent defendants with mental disabilities; assistance with the representation of juveniles; assistance with death penalty cases and assistance with appellate advocacy.

(2) The director may establish divisions within the office to administer the services and programs as may be necessary to fulfill the purposes of this chapter. The director shall establish the mental health advocacy division and the Georgia capital defender division.

(3) The director may hire and supervise such staff employees and may contract with outside consultants on behalf of the office as may be necessary to provide the services contemplated by this chapter.

(c) The director shall have and may exercise the following power and authority:

(1) The power and authority to take or cause to be taken any or all action necessary to perform any indigent defense services or otherwise necessary to perform any duties, responsibilities or functions which the council is authorized by law to exercise;

(2) The power and authority to make, promulgate, enforce or otherwise require compliance with any and all rules, regulations, procedures, or directives necessary to perform any indigent defense services, to carry into effect the minimum standards and procedures promulgated by the council, or otherwise necessary to perform any duties , responsibilities, or functions which the council is authorized by law to perform or to exercise any power or authority which the council is authorized by law to exercise; and

(3) The power and authority to assist the council in performance of its duties, responsibilities, and functions and the exercise of its power and authority.

(d) The director shall:

(1) Prepare and submit to the council a proposed budget for the council. The director shall also prepare and submit an annual report containing pertinent data on the operations, costs, and needs of the council and such other information as the council may require;

(2) Develop such rules, policies, procedures, regulations, and standards as may be necessary to carry out the provisions of this chapter and comply with all applicable laws, standards, and regulations, and submit these to the council for approval;

(3) Administer and coordinate the operations of the council and supervise compliance with rules, policies, procedures, regulations, and standards adopted by the council;

(4) Maintain proper records of all financial transactions related to the operation of the council;

(5) At the director's discretion, solicit and accept on behalf of the council any funds that may become available from any source, including government, nonprofit, or private grants, gifts, or bequests;

(6) Coordinate the services of the council with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this chapter and consult with professional bodies concerning the implementation and improvement of programs for providing indigent services;

(7) Provide for the training of attorneys and other staff involved in the legal representation of persons subject to this chapter;

(8) Attend all council meetings, except those meetings or portions thereof that address the question of appointment or removal of the director;

(9) Ensure that the expenditures of the council are not greater than the amounts budgeted or available from other revenue sources; and

(10) Hire, with the pending approval of the council, a mental health advocate who shall serve as director of the division of the office of mental health advocacy;

(11) Hire, with the pending approval of the council, the capital defender who shall serve as the director of the division of the Georgia capital defender;

(12) Evaluate each circuit public defender's job performance and communicate his or her findings to the council; and

(13) Perform other duties as the council may assign.

17-12-6. (HB1245 Section 19)

(a) The council shall assist the public defenders throughout the state in their efforts to provide adequate legal defense to the indigent. Assistance may include:

(1) The preparation and distribution of a basic defense manual and other educational materials;

(2) The preparation and distribution of model forms and documents employed in indigent defense;

(3) The promotion of and assistance in the training of indigent defense attorneys;

(4) The provision of legal research assistance to public defenders; and

(5) The provision of such other assistance to public defenders as may be authorized by law.

(b) The council:

(1) Shall be the fiscal officer for the circuit public defender offices and shall account for all moneys received from each county governing authority; and

(2) Shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in Georgia.

17-12-7.

(a) All members of the council shall at all times act in the best interest of indigent defendants who are receiving legal representation under the provisions of this chapter.

(b) All members of the council shall be entitled to vote on any matter coming before the council unless otherwise provided by law or by rules adopted by the council concerning conflicts of interest.

(c) Each member of the council shall serve until a successor has been appointed. Removal of council members shall be for cause and shall be in accordance with policies and procedures adopted by the council.

(d) Unless otherwise provided in this article, a quorum shall be a majority of the members of the council who are then in office, and decisions of the council shall be by majority vote of the members present, except that a majority of the entire council must approve the appointment or removal of the chairperson or removal of a circuit public defender for cause pursuant to Code Section 17-12-20 and an alternative delivery system pursuant to Code Section 17-12-36 and other matters as set forth in Code Section 17-12-36.

(e) The council shall meet at least quarterly and at such other times and places as it deems necessary or convenient for the performance of its duties.

(f) The council shall elect a chairperson and such officers from the members of the council as it deems necessary and shall adopt such rules for the transaction of its business as it desires. The chairperson and officers shall serve for a term of two years and may be removed without cause by a vote of two-thirds of the members of the entire council and for cause by a majority vote of the entire council. The chairperson shall retain a vote on all matters except those in which the chairperson has a conflict of interest or the removal of the chairperson for cause. The council shall keep and maintain minutes of all council meetings.

(g) The members of the council shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties as members of the council. Any expenses incurred by the council shall be paid from the general operating budget of the council.

17-12-8. (HB 1245 Section 20)

- (a) The council shall approve the development and improvement of programs which provide legal representation to indigent persons and juveniles.
- (b) The council shall approve and implement programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this chapter and to comply with all applicable laws governing the rights of indigent persons accused of violations of criminal law.

17-12-9. (HB 1245 Section 21)

The council shall be authorized to conduct or approve for credit or reimbursement, or both, basic and continuing legal education courses or other appropriate training programs for the circuit public defenders or their staff members. The council, in accordance with such rules as it shall adopt, shall be authorized to provide reimbursement, in whole or in part, for the actual expenses incurred by any circuit public defender or their staff members in attending any approved course or training program from funds as may be appropriated or otherwise made available to the council. The circuit public defenders or their staff members shall be authorized to receive reimbursement for actual expenses incurred in attending approved courses or training programs. The council shall adopt rules governing the approval of courses and training programs for credit or reimbursement as may be necessary to administer this Code section properly.

17-12-10. (HB 1245 Section 22)

- (a) The council shall prepare annually a report of its activities in order to provide the General Assembly, the Governor, and the Supreme Court of Georgia with an accurate description and accounting of the preceding year's expenditures and revenue, including all moneys received from cities and county governing authorities. Such report shall include a three-year cost projection and anticipated revenues for all programs defined in the General Appropriations Act.
- (b) The council shall provide to the General Assembly, the Governor, and the Supreme Court of Georgia a detailed analysis of all grants and funds, whether public or private, applied for or granted, together with how and in what manner the same are to be utilized and expended.
- (c) The council shall prepare annually a report in order to provide the General Assembly and the Governor with information on the council's assessment of the delivery of indigent defense services, including, but not limited to, the costs involved in operating each program and each governing authority's indigent person verification system, methodology used, costs expended, and savings realized.

17-12-10.1. (HB 1245 Section 23)

- (a) There is created the Legislative Oversight Committee for the Georgia Public Defender Standards Council which shall be composed of eight persons: three members of the House of Representatives appointed by the Speaker of the House of Representatives, three members of the Senate appointed by the Senate Committee on Assignments or such person or entity as established by Senate rule, and one member of the House of Representatives and one member of the Senate appointed by the Governor. The members of such committee shall be selected within ten days after the convening of the General Assembly in each odd-numbered year and shall serve until their successors are appointed.
- (b) The Speaker of the House of Representatives shall appoint a member of such committee to

serve as chairperson and the Senate Committee on Assignments or such person or entity as established by Senate rule shall appoint one member of the committee to serve as vice chairperson during each even-numbered year. The Senate Committee on Assignments or such person or entity as established by Senate rule shall appoint a member of such committee to serve as chairperson and the Speaker of the House of Representatives shall appoint one member to serve as vice chairperson during each odd-numbered year. Such committee shall meet at least three times each year and, upon the call of the chairperson, at such additional times as deemed necessary by the chairperson.

(c) It shall be the duty of such committee to review and evaluate the following:

- (1) Information on new programs submitted by the council;
- (2) Information on rules, regulations, policies and standards proposed by the council;
- (3) The strategic plans for the council;
- (4) Program evaluation reports and budget recommendations of the council;
- (5) The fiscal impact of fees and fines on counties;
- (6) The reports submitted pursuant to Code Section 15-21A-7 in order to identify, among other things, opportunities to reduce or consolidate fees, fines, and surcharges; and
- (7) Such other information or reports as deemed necessary by such committee.

(d) The council and director shall cooperate with such committee and provide such information or reports as requested by the committee for the performance of its functions.

(e) ~~Notwithstanding subsection (c) of Code Section 45-12-78, the~~ The council shall submit its budget estimate to the director of the Office of Planning and Budget prior to submitting its budget estimate to the Judicial Council of Georgia. The council's budget estimate included in the Governor's budget report as provided in subsection (d) of Code Section 45-12-78 shall be as submitted by the Judicial Council of Georgia; provided, however, that the Governor shall be authorized to analyze the council's budget estimate and include such analysis as a part of the Governor's budget report in accordance with subsection (a) of Code Section 45-12-78. (Effective July 1, 2007.)

(f) The legislative oversight committee shall make an annual report of its activities and findings to the membership of the General Assembly and the Governor within one week of the convening of each regular session of the General Assembly. The chairperson of such committee shall deliver written executive summaries of such report to the members of the General Assembly prior to the adoption of the General Appropriations Act each year.

(g) The members of such committee shall receive the allowances authorized for legislative members of legislative committees. The funds necessary to pay such allowances shall come from funds appropriated to the House of Representatives and the Senate.

(h) The legislative oversight committee shall be authorized to request that a performance audit of the council be conducted.

17-12-10.2. (HB 1245 Section 24)

The members of the council as created by this article, the members of the circuit public defender supervisory panel created by Article 2 of this chapter, and other policy-making or administrative personnel acting in a policy-making or administrative capacity shall not be subject to civil liability resulting from any act or failure to act in the implementation and carrying out of the purposes of this chapter.

17-12-11. (HB 1245 Section 25)

(a) The mental health advocacy division shall represent in any court in this state indigent persons found not guilty by reason of insanity at the time of the crime or found mentally incompetent to stand trial and shall be the successor to the office of mental health advocacy created by Article 4 of this chapter as it existed on June 30, 2008. Any assets or resources of the office of mental health advocacy shall be transferred to the council. The mental health advocacy division office shall serve all counties of this state.

(b) Whenever any person has been found not guilty by reason of insanity at the time of the crime pursuant to Code Section 17-7-131 or found mentally incompetent to stand trial pursuant to Code Section 17-7-130 and has been determined to be an indigent person, the court in which such case is pending shall notify the mental health advocacy division, and the division may assume the defense and representation of such person in all matters pursuant to Code Sections 17-7-130 and 17-7-131, as applicable, if the resources, funding, and staffing of the division allow; provided, however, that the circuit public defender or other attorney who represented the indigent person at the time of the finding of not guilty by reason of insanity at the time of the crime or the finding of mentally incompetent to stand trial shall have the option to retain responsibility for the representation of any such person.

(c) Nothing in this Code section shall prevent the circuit public defender, the court, or the court appointed attorney from requesting the participation of the mental health advocacy division prior to a finding of not guilty by reason of insanity at the time of the crime or a finding of mentally incompetent to stand trial. The circuit public defender, the court, or the court appointed attorney may request that the mental health advocacy division assist in the case prior to a plea being entered and accepted by the court.

(d) If for any reason the mental health advocacy division is unable to represent any indigent person found not guilty by reason of insanity at the time of the crime or found mentally incompetent to stand trial, such representation shall be provided as otherwise provided by law.

(e) The director shall be responsible for management of the mental health advocacy division; provided, however, that the director may delegate day-to-day operations of the division to the mental health advocate.

17-12-12. (HB 1245 Section 26)

(a) The Georgia capital defender division shall represent all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state and shall be the successor to the Office of the Georgia Capital Defender created by Article 6 of this chapter as it existed on June 30, 2008. Any assets or resources of the Office of the Georgia Capital Defender shall be transferred to the council. The Georgia capital defender division shall serve all counties of this state.

(b) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be an indigent person who has requested the assistance of counsel, the court in which the charges are pending shall notify the Georgia capital defender division, and the division shall assume the defense of such person except as provided in Code Section 17-12-12.1.

(c) No person shall be assigned the primary responsibility of representing an indigent person accused of a capital offense for which the death penalty is sought unless such person is authorized to practice law in this state and is otherwise competent to counsel and defend a person charged with a capital felony.

(d) The Georgia capital defender division or appointed counsel's defense of a defendant in a case in which the death penalty is sought shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia. Neither the Georgia capital defender division nor appointed counsel shall assist with any petition for a writ of habeas corpus in federal court.

(e) The director shall be responsible for management of the Georgia capital defender division; provided, however, that the director may delegate day-to-day operations of the division to the capital defender.

17-12-12.1 (HB 1245 Section 27)

a) If there is a conflict of interest such that the Georgia capital defender division is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the director shall determine and appoint counsel to represent the defendant. The director shall establish the contractual agreement with the defendant's counsel for payment of representing the defendant, and, when feasible and prudent, a flat fee structure shall be utilized.

(b) A maximum of two attorneys shall be paid by the council pursuant to a contractual agreement or at an hourly rate established by the council with state funds appropriated to the council. State funds shall be appropriated to the council for use by the Georgia capital defender division for the first \$150,000.00 paid for each death penalty case. Funding for attorney's fees and expenses between \$150,000.01 and \$250,000.00 for each death penalty case shall be paid through state appropriations for 75 percent of such attorney's fees and expenses, and the county governing authority where the indictment was returned shall pay 25 percent of such attorney's fees and expenses. Funding for all attorney's fees and expenses in excess of \$250,000.00 for each death penalty case shall be paid through state appropriations for 50 percent of such attorney's fees and expenses, and the county governing authority where the indictment was returned shall pay 50 percent of such attorney's fees and expenses.

(c) The council, with the assistance of the Georgia capital defender division, shall establish guidelines for all expense requests for cases in which the death penalty is sought, including, but not limited to, attorney's fees, expert witness fees, investigative fees, travel and accommodation expenses, and copy and transcription costs.

(d) A county governing authority may provide supplemental compensation to counsel appointed pursuant to this Code section.

17-12-13.

This article shall become effective on December 31, 2003, except as specified in Code Section 17-12-3.

ARTICLE 2

17-12-20. (HB 1245 Section 28)

(a) On and after July 1, 2008, there is created in each judicial circuit in this state a circuit public defender supervisory panel to be composed of seven members. The Lieutenant Governor, the Speaker of the House of Representatives, and the chief judge of the superior court of the circuit shall each appoint one member. The Governor shall appoint four members, two of which shall be members of the governing authority of the counties within the judicial circuit for which such member is appointed to serve. A member of a governing authority shall be eligible to serve so long as he or she retains the office by virtue of which he or she is serving on the panel. Other than the county commissioner, members of the circuit public defender supervisory panel shall be individuals with significant experience working in the criminal justice system or who have demonstrated a strong commitment to the provision of adequate and effective representation of indigent defendants. A prosecuting attorney as defined in paragraph (6) of Code Section 19-13-51, any employee of a prosecuting attorney's office, or an employee of the Prosecuting Attorneys' Council of the State of Georgia shall not serve as a member of the circuit public defender supervisory panel after July 1, 2005. On and after July 1, 2008, no employees of the council shall serve as a member of the circuit public defender supervisory panel. Members of the circuit public defender supervisory panel shall reside in the judicial circuit in they serve. The circuit public defender supervisory panel members shall serve for a term of five years. Any vacancy for an appointed member shall be filled by the appointing authority.

(b)(1) By majority vote of its membership, the circuit public defender supervisory panel shall annually elect a chairperson and secretary and determine a quorum for the transaction of business. The chairperson shall conduct the meetings and deliberations of the panel and direct all activities. The secretary shall keep accurate records of all the meetings and deliberations and perform such other duties as the chairperson may direct.

(2) By majority vote of its membership, the circuit public defender supervisory panel shall appoint the circuit public defender in the circuit as provided in this article. The first such appointments shall be made to take office on January 1, 2005, for terms of up to four years. The initial appointments shall be for a term of up to four years. A circuit public defender may be appointed for successive terms but shall not be reappointed if he or she was removed pursuant to subsection (c) of this Code section.

(c) A circuit public defender may be removed for cause by a majority vote of the council and may be removed without cause by a vote of two-thirds of the members of the entire council.

(d) A circuit public defender supervisory panel may convene at any time during its circuit public defender's term of office and shall convene at least semiannually for purposes of reviewing the circuit public defender's job performance and the performance of the circuit public defender office. The council and circuit public defender shall be notified at least two weeks in advance of the convening of the circuit public defender supervisory panel. The circuit public defender shall be given the opportunity to appear before the circuit public defender supervisory panel and present evidence and testimony. The chairperson shall determine the agenda for the semiannual review process, but, at a minimum, such review shall include information collected pursuant to subsection (c) of Code Section 17-12-24, usage of state and local funding, expenditures, and budgeting matters. The chairperson shall make an annual report on or before the thirtieth day of September of each year concerning the circuit public defender supervisory panel's findings regarding the job performance of the circuit public defender and his or her office to the council

on a form provided to the panel by the council. If at any time the circuit public defender supervisory panel finds that the circuit public defender is performing in a less than satisfactory manner or finds information of specific misconduct, the circuit public defender supervisory panel may by majority vote of its members adopt a resolution seeking review of their findings and remonstrative action by the council. Such resolution shall specify the reason for such request. All evidence presented and the findings of the circuit public defender supervisory panel shall be forwarded to the council within 15 days of the adoption of the resolution. The council shall initiate action on the circuit public defender supervisory panel's resolution at its next regularly scheduled meeting and take final action within 60 days thereafter. The council shall notify the circuit public defender supervisory panel, in writing, of any actions taken pursuant to submission of a resolution under this subsection.

(e) If a vacancy occurs for the position of circuit public defender, the chief judge of the superior court of the circuit shall appoint an interim circuit public defender to serve until the circuit public defender supervisory panel has appointed a replacement. The circuit public defender supervisory panel shall appoint a replacement circuit public defender within three months of the occurring of the vacancy. The replacement circuit public defender shall not be any individual who has been removed by the council pursuant to subsection (c) of this Code section.

17-12-21.

To be eligible to fill the position of circuit public defender, a person must:

- (1) Have attained the age of 25 years;
- (2) Have been duly admitted and licensed to practice law in the superior courts for at least three years;
- (3) Be a member in good standing of the State Bar of Georgia; and
- (4) If previously disbarred from the practice of law, have been reinstated as provided by law.

17-12-22. (HB 1245 Section 29)

(a) The council shall establish a procedure for providing legal representation in cases where the circuit public defender office has a conflict of interest. Such procedure may include, but shall not be limited to, the appointment of individual counsel on a case-by-case basis or the utilization of another circuit public defender office when feasible. It is the intent of the General Assembly that the council consider the most efficient and effective system to provide legal representation where the circuit public defender office has a conflict of interest.

(b) The circuit public defender shall establish a method for identifying conflicts of interest at the earliest possible opportunity. If there is a conflict of interest such that the circuit public defender office cannot represent a defendant and an attorney who is not employed by the circuit public defender office is appointed, such attorney shall have a contractual relationship with the council to represent indigent persons in conflict of interest cases, and such relationship may include, but shall not be limited to, a flat fee structure.

(c) Attorneys who seek appointment in conflict cases shall have such experience or training in the defense of criminal cases as is necessary in light of the complexity of the case to which he or she is appointed and shall meet such qualifications, regulations, and standards for the representation of indigent defendants as are established by the council.

17-12-23. (HB 1245 Section 30).

(a) The circuit public defender shall provide representation in the following actions and proceedings:

(1) Any case prosecuted in a superior court under the laws of the State of Georgia in which there is a possibility that a sentence of imprisonment or probation or a suspended sentence of imprisonment may be adjudged;

(2) A hearing on a revocation of probation in a superior court;

(3) Any juvenile court case where the juvenile may face a disposition of confinement, commitment, or probation; and

(4) Any direct appeal of any of the proceedings enumerated in paragraphs (1) through (3) of this subsection.

(b) In each of the actions and proceedings enumerated in subsection (a) of this Code section, entitlement to the services of counsel begins not more than three business days after the indigent person is taken into custody or service is made upon him or her of the charge, petition, notice, or other initiating process and such person makes an application for counsel to be appointed.

(c) Each circuit public defender shall establish a juvenile division within the circuit public defender office to specialize in the defense of juveniles.

(d) A city or county may contract with the circuit public defender office for the provision of criminal defense for indigent persons accused of violating city or county ordinances or state laws. If a city or county does not contract with the circuit public defender office, the city or county shall be subject to all applicable rules, regulation, policies, and standards adopted by the council for representation of indigent persons in this state.

17-12-24. (HB 1245 Section 31).

(a) The circuit public defender, any other person or entity providing indigent defense services, or the system established pursuant to Code Section 17-12-80 shall determine if a person or juvenile arrested, detained, or charged in any manner is an indigent person entitled to representation under this chapter.

(b) The circuit public defenders shall administer and coordinate the day-to-day operations of their respective offices and shall supervise the assistant public defenders and other staff serving in the office.

(c) The circuit public defender shall keep and maintain appropriate records, which shall include the number of persons represented, including cases assigned to other counsel based on conflict of interest; the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this chapter; and any other information requested by the council.

17-12-25. (HB 1245 Section 32).

(a) Each circuit public defender shall receive an annual salary of \$87,593.58 and cost-of-living adjustments may be given by the General Assembly in the General Appropriations Act by a percentage not to exceed the average percentage of the general increase in salary as may from time to time be granted to employees of the executive, judicial, and legislative branches of government; provided, however, that any increase for such circuit public defender shall not include within-grade step increases for which classified employees of the state merit system are eligible. Any increase granted pursuant to this subsection shall become effective at the same time that funds are made available for the increase for such employees. The Office of Planning and Budget shall calculate the average percentage increase.

- (b) The county or counties comprising the judicial circuit may supplement the salary of the circuit public defender in an amount as is or may be authorized by local Act or in an amount as may be determined by the governing authority of the county or counties, whichever is greater.
- (c) No circuit public defender shall engage in the private practice of law for profit or serve concurrently in any judicial office..

17-12-26. (HB 1245 Section 33)

(a) The council shall prepare and submit to the director of the Office of Planning and Budget ~~Judicial Council of Georgia~~ its budget estimate necessary for fulfilling the purposes of this chapter in accordance with Code Section 45-12-78. The council shall be authorized to seek, solicit, apply for, and utilize funds from any public or private source to use in fulfilling the purposes of this article.

17-12-27.

(a) Subject to the provisions of this Code section, the circuit public defender in each judicial circuit is authorized to appoint:

(1) One assistant public defender for each superior court judge authorized for the circuit, excluding the chief judge and senior judges; and

(2) Subject to funds being appropriated by the General Assembly or otherwise available, additional assistant public defenders as may be authorized by the council. In authorizing additional assistant public defenders the council shall consider the caseload, present staff, and resources available to each circuit public defenders and shall make authorizations as will contribute to the efficiency of individual circuit public defenders and the effectiveness of providing adequate legal defense for indigent defendants.

(b) Each assistant public defender appointed pursuant to subsection (a) of this Code section shall be classified based on education, training, and experience. The jobs of assistant public defenders and the minimum qualifications required for appointment or promotion to each job shall be established by the council based on education, training, and experience and in accordance with the provisions of Code Sections 17-12-30 and 17-12-34.

(c) Each assistant public defender appointed pursuant to this Code section shall be compensated based on a salary range established in accordance with subsection (c) of Code Section 17-12-30. The salary range for each job established in accordance with subsection (b) of this Code section shall be as follows:

(1) Assistant public defender I. Not less than \$38,124.00 nor more than 65 percent of the compensation of the circuit public defender;

(2) Assistant public defender II. Not less than \$40,884.00 nor more than 70 percent of the compensation of the circuit public defender;

(3) Assistant public defender III. Not less than \$45,108.00 nor more than 80 percent of the compensation of the circuit public defender; and

(4) Assistant public defender IV. Not less than \$52,176.00 nor more than 90 percent of the compensation of the circuit public defender.

(d) All personnel actions involving attorneys appointed pursuant to this Code section shall be made by the circuit public defender in writing in accordance with the provisions of Code Section 17-12-30.

(e)(1) All salary advancements shall be based on quality of work, education, and performance.

(2) The salary of an assistant public defender appointed pursuant to this Code section may be increased at the first of the calendar month following the anniversary of his or her appointment.

(3) The salary of any assistant public defender who, subsequent to his or her appointment pursuant to this Code section, is awarded an LL.M. or S.J.D. degree by a law school recognized by the State Bar of Georgia from which a graduate of or student enrolled therein is permitted to take the bar examination or by a law school accredited by the American Bar Association or the Association of American Law Schools may be increased effective on the first day of the calendar month following the award of the degree, provided that such advancement does not exceed the maximum of the salary range applicable to the attorney's job classification.

(f) Any assistant public defender appointed pursuant to this Code section may be promoted to the next highest job at any time the attorney meets the minimum qualifications for such job, but in order to be eligible for promotion, the attorney shall have served not less than 12 months in the job from which the attorney is to be promoted. When an assistant public defender is promoted to the next highest job, the assistant public defender shall enter the higher job at an annual salary greater than; the annual salary the assistant public defender was receiving immediately prior to the promotion.

(g) All full-time state paid employees of the office of the circuit public defender shall be state employees in the unclassified service of the State Merit System of Personnel Administration with all benefits of such appointed state employees as provided by law. A circuit public defender, assistant public defender, or local public defender may be issued an employee identification card by his or her employing agency; provided, however, no employer of any such public defender shall issue nor shall any public defender display, wear, or carry any badge, shield, card, or other item that is similar to a law enforcement officer's badge or that could be reasonably construed to indicate that the public defender is a peace officer or law enforcement official.

(h) Notwithstanding the provisions of subsection (g) of this Code section, an employee of a local public defender office who was an employee of the office on June 30, 2004, and who becomes a circuit public defender or an employee of a circuit public defender office before July 1, 2005, may elect, with the consent of the former employer and the consent of the council, to remain an employee of the entity for which the employee worked as a local public defender; and such entity shall be his or her employer for all purposes, including, without limitation, compensation and employee benefits. The right to make an election pursuant to this subsection shall expire on July 1, 2005. The council shall reimburse the appropriate entity for compensation, benefits, and employer contributions under the federal Social Security Act, but the total payment from the council to the entity on behalf of the employee shall not exceed the amount otherwise payable to or for the employee under the circumstance where the employee had become a state employee.

17-12-28. (HB 1245 Section 34).

(a) Subject to the provisions of this Code section, the circuit public defender in each judicial circuit is authorized to appoint one investigator to assist the circuit public defender in the performance of his or her official duties in the preparation of cases for trial. Subject to funds being appropriated by the General Assembly or otherwise available, the circuit public defender in each judicial circuit may appoint additional investigators as may be authorized by the council. In authorizing additional investigators, the council shall consider the caseload, present staff, and resources available to each circuit public defenders and shall make authorizations as will contribute to the efficiency of individual circuit public defenders and the effectiveness of circuit public defenders throughout the state in providing adequate legal defense for indigent defendants.

(b) An investigator appointed pursuant to this Code section shall be not less than 21 years of age and shall serve at the pleasure of the circuit public defender.

(c) An investigator appointed pursuant to this Code section shall:

(1) Assist the attorneys within the office of the circuit public defender in the preparation of cases for preliminary hearings, pretrial hearings, and trial; and

(2) Perform other duties as are required by the circuit public defender.

(d) Each investigator appointed pursuant to this Code section shall be compensated based on a salary range established pursuant to Code Section 17-12-30. The salary range for the investigator appointed pursuant to this Code section shall be not less than \$30,828.00 nor more than 70 percent of the compensation of the circuit public defender from state funds.

(e)(1) Except as otherwise provided in this subsection, an investigator appointed pursuant to this Code section shall be appointed initially to the entry grade of the job on the state-wide pay ranges.

(2) Any person who is employed in a nonstate paid investigator's position within the office of the circuit public defender may be transferred to a state paid position. Such transfer shall be to the job and salary range commensurate with the education and experience of the employee.

(3) Any person who is employed as a peace officer by an agency of the executive branch of state government who is appointed as an investigator pursuant to this Code section without a break in service may be appointed to an annual salary at least equal to the annual salary the person received on the last day of employment immediately preceding said appointment.

(4) Any person who was a certified peace officer employed on a full-time basis by this state, the United States or any of the several states, or a political subdivision or authority thereof, may be appointed to the salary that gives the officer credit for experience as a full-time certified peace officer.

(f) Personnel appointed pursuant to this Code section shall be reimbursed for actual expenses incurred in the performance of their official duties.

17-12-29.

(a) Each circuit public defender is authorized to employ administrative, clerical, and paraprofessional personnel as may be authorized by the council based on funds appropriated by the General Assembly or otherwise available; provided, however, that each circuit public defender shall be authorized not less than two such personnel. In authorizing administrative, clerical, and paraprofessional personnel, the council shall consider the caseload, present staff, and resources available to each circuit public defenders and shall make authorizations as will contribute to the efficiency of individual circuit public defenders in providing effective criminal defense for indigent defendants.

(b) Personnel appointed pursuant to this Code section shall be compensated based on a salary range developed in accordance with Code Section 17-12-30.

(c) All personnel actions involving personnel appointed pursuant to this Code section shall be in accordance with the provisions of Code Section 17-12-30.

17-12-30.

(a) All state paid personnel employed by the circuit public defenders pursuant to this article shall be employees of the judicial executive branch of state government ~~in accordance with Article VI, Section VIII of the Constitution of Georgia~~ and shall be in the unclassified service of the State Merit System of Personnel Administration. *(Effective July 1, 2007.)*

(b) Personnel employed by the circuit public defenders pursuant to this article shall have the authority, duties, powers, and responsibilities as are authorized by law or as assigned by the

circuit public defender and shall serve at the pleasure of the circuit public defender.

(c)(1) The council shall establish salary ranges for each state paid position authorized by this article or any other provision of law. Salary ranges shall be similar to the state-wide and senior executive ranges adopted by the State Merit System of Personnel Administration and shall provide for a minimum, midpoint, and maximum salaries not to exceed the maximum allowable salary. In establishing the salary ranges, all amounts will be rounded off to the nearest whole dollar. The council may, from time to time, revise the salary ranges to include across-the-board increases which the General Assembly may from time to time authorize in the General Appropriations Act.

(2) The circuit public defender shall fix the compensation of each state paid employee appointed pursuant to this article in accordance with the job to which the person is appointed and the appropriate salary range.

(3) All salary advancements shall be based on quality of work, training, and performance. The salary of state paid personnel appointed pursuant to this article may be increased at the first of the calendar month following the annual anniversary of the person's appointment. No employee's salary shall be advanced beyond the maximum established in the applicable pay range.

(4) Any reduction in salary shall be made in accordance with the salary range for the position and the policies, rules, or regulations adopted by the council.

(5) The compensation of state paid personnel appointed pursuant to this article shall be paid in equal installments by the ~~Department of Administrative Services or the Administrative Office of the Courts, as determined by the council, as provided by this subsection from funds appropriated for such purpose.~~ The council may, ~~with the consent of the Department of Administrative Services or the Administrative Office of the Courts,~~ authorize employees compensated pursuant to this Code section to participate in voluntary salary deductions as provided by Article 3 of Chapter 7 of Title 45. *(Effective July 1, 2007.)*

(6) The governing authority of the county or counties comprising a judicial circuit may supplement the salary or fringe benefits of any state paid position appointed pursuant to this article.

(7) The governing authority of any municipality within the judicial circuit may, with the approval of the circuit public defender, supplement the salary or fringe benefits of any state paid position appointed pursuant to this article.

17-12-31. (Hb 1245 Section 35).

(a) The circuit public defender in each judicial circuit may employ additional assistant circuit public defenders, deputy circuit public defenders, or other attorneys, investigators, paraprofessionals, clerical assistants, and other employees or independent contractors if the employment of such additional personnel is provided for by local law or if the employment of such additional personnel is specifically authorized and funded by the governing authority of the county or counties comprising the judicial circuit. The circuit public defender shall define the duties and fix the title of any attorney or other employee of the office of the circuit public defender.

(b) Personnel employed by the circuit public defender pursuant to this Code section shall serve at the pleasure of the circuit public defender and shall be compensated by the county or counties comprising the judicial circuit in the manner and in an amount fixed either by local Act or by the circuit public defender with the specific approval of the county or counties comprising the

judicial circuit.

17-12-32.

The governing authority of any county or municipality within the judicial circuit which provides additional personnel for the office of circuit public defender may contract with the council to provide such additional personnel in the same manner as is provided for state paid personnel in this article. Any such personnel shall be considered state employees and shall be entitled to the same fringe benefits as other state paid personnel employed by the circuit public defender pursuant to this article. The governing authority of such county or municipality shall transfer to the council such funds as may be necessary to cover the compensation, benefits, travel, and other expenses for such personnel.

17-12-33. (HB 1245 Section 36).

(a) Any assistant public defender or other attorney at law employed full time by the circuit public defender who is compensated in whole or in part by state funds shall not engage in the private practice of law for profit or serve concurrently in any judicial office.

(b) Any assistant public defender or any other attorney at law employed by the circuit public defender shall be a member of the State Bar of Georgia and shall be admitted to practice before the appellate courts of this state. The assistant public defender shall serve at the pleasure of the circuit public defenders and shall have such authority, powers, and duties as may be assigned by the circuit public defender.

17-12-34.

The governing authority of the county shall provide, in conjunction and cooperation with the other counties in the judicial circuit and in a pro rata share according to the population of each county, appropriate offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner. The provisions of an office, utilities, telephone expenses, materials, and supplies shall be subject to the budget procedures required by Article 1 of Chapter 81 of Title 36.

17-12-35.

A circuit public defender office may contract with and may accept funds and grants from any public or private source.

17-12-36.

(a) The council may permit a judicial circuit composed of a single county to continue in effect an alternative delivery system to the one set forth in this article if:

(1) The delivery system;

(A) Has a full-time director and staff and had been fully operational for at least two years on July 1, 2003; or

(B) Is administered by the county administrative office of the courts or the office of the court administrator of the superior court and had been fully operational for at least two years on July 1, 2003;

(2) The council, by majority vote of the entire council, determines that the delivery system meets or exceeds its rules, regulations, policies and standards, including, without limitation, caseload standards, as the council adopts;

(3) The governing authority of the county comprising the judicial circuit enacts a resolution expressing its desire to continue its delivery system and transmits a copy of such resolution to the council not later than September 30, 2004; and

(4) The governing authority of the county comprising the judicial circuit enacts a resolution agreeing to fully fund its delivery system.

(b) A judicial circuit composed of a single county may request an alternative delivery system only one time; provided, however, that if such judicial circuit's request for an alternative delivery system was disapproved on or before December 31, 2004, such judicial circuit may make one further request on or before September 1, 2005. The council shall allow such judicial circuit to have a hearing on such judicial circuit's request.

(c) The council shall make a determination with regard to continuation of an alternative delivery system not later than December 1, 2005, and if the council determines that such judicial circuit's alternative delivery system does not meet the standards as established by the council, the council shall notify such judicial circuit of its deficiencies in writing and shall allow such judicial circuit an opportunity to cure such deficiencies. The council shall make a final determination with regard to continuation of an alternative delivery system on or before December 31, 2005. Initial and subsequent approvals of alternative delivery systems shall be by a majority vote of the entire council.

(d) Any circuit whose alternative delivery system is disapproved at any time shall be governed by the provisions of this article other than this Code section.

(e) In the event an alternative delivery system is approved, the council shall annually review the operation of such system and determine whether such system is meeting the standards as established by the council and is eligible to continue operating as an approved alternative delivery system. In the event the council determines that such system is not meeting the standards as established by the council, the council shall provide written notice to such system of the deficiencies and shall provide such system an opportunity to cure such deficiencies.

(f) In the event an alternative delivery system is approved, it shall keep and maintain appropriate records, which shall include the number of persons represented; the offenses charged; the outcome of each case; the expenditures made in providing services; and any other information requested by the council.

(g) In the event the council disapproves an alternative delivery system either in its initial application or annual review, such system may appeal such decision to the Supreme Court of Georgia under such rules and procedures as shall be prescribed by the Supreme Court.

17-12-37.

This article shall become effective on January 1, 2005; provided, however, that the council and the circuit public defender selection panels shall be authorized to take administrative actions as may be necessary or appropriate to prepare for and phase-in full implementation of this article on or after December 31, 2003.

ARTICLE 3

17-12-40.

As used in this article, the term:

- (1) 'Circuit public defender' means any circuit public defender of this state or assistants of such officer.
- (2) 'Criminal proceeding' means any investigation, trial, juvenile proceeding, adjudicatory hearing, or other legal proceeding by which a person's liability for a crime is investigated or determined, commencing with the investigation and including the final disposition of the case.
- (3) 'Law school' means a law school within or outside this state which is approved by the American Bar Association or which is authorized to operate under Code Section 20-3-250.8.
- (4) 'Staff instructor' means a full-time professional staff instructor of a law school in this state who has been admitted to the bar of another state but who has not yet been admitted to the bar of this state.
- (5) 'Third-year law student' means a student regularly enrolled and in good standing in a law school within or outside this state who has satisfactorily completed at least two-thirds of the requirements for the first professional degree in law (J.D. or its equivalent) in not less than four semesters or six quarters of residence.

17-12-41.

An authorized third-year law student or staff instructor, when under the supervision of a circuit public defender, may assist in criminal proceedings within this state as if admitted and licensed to practice law in this state except that all pleadings and other entries of record must be signed by a circuit public defender or by his or her duly appointed assistant and that, in the conduct of a trial or other criminal proceeding, a circuit public defender or his or her duly appointed assistant must be physically present.

17-12-42.

A third-year law student or staff instructor may be authorized to assist a circuit public defender in such form and manner as the judge of the court may prescribe, taking care that the requirements of this article and the good moral character of the third-year law student or staff instructor are properly certified by the dean of the law school.

17-12-43.

As to each third-year law student or staff instructor authorized to assist a circuit public defender, there shall be kept on file in the office of the clerk of the court in the county where such authority is to be exercised the dean's certificate, the student's and instructor's oaths, and the judge's order as contemplated under Code Section 17-12-42. The authority to assist a circuit public defender as allowed under this Code section shall extend for no longer than 18 months. If during this period any change occurs in the status of the student or instructor at the law school in which he or she was enrolled or employed, that is, if the student ceases his or her enrollment, is suspended, or is expelled or if the instructor ceases his or her employment or is released by the school, any such authority shall terminate and be revoked.

17-12-44.

Any third-year law student or staff instructor authorized to assist a circuit public defender under this Code section is not required to possess the qualifications for appointment to the office of

circuit public defender or appointment as an assistant circuit public defender as provided in Article 1 of this chapter.

17-12-45.

This article shall become effective on January 1, 2005.

ARTICLE 2A

17-12-50. (HB 1245 Section 39)

As used in this article, the term:

(1) 'Paid in part' means payment by a county or municipality for a part of the cost of the provision of indigent defense services pursuant to a contract with a circuit public defender office as set forth in subsection (d) of Code Section 17-12-23. The term shall not include payment by a county or municipality for office space and other supplies as set forth in Code Section 17-12-34.

(2) 'Public defender' means an attorney employed by a circuit public defender office or any other attorney who is paid from public funds to represent an indigent person in a criminal case.

17-12-51. (HB 1245 Section 40)

(a) When a defendant who is represented by a public defender, who is paid in part or in whole by a county, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted, the court may impose as a condition of probation repayment of all or a portion of the cost for providing legal representation and other expenses of the defense if the payment does not impose a financial hardship upon the defendant or the defendant's dependent or dependents. The defendant shall make the payment through the probation department to the county.

(b) When a defendant who is represented by a public defender, who is paid in part or in whole by a municipality, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted, the court may impose as a condition of probation repayment of all or a portion of the cost for providing legal representation and other expenses of the defense if the payment does not impose a financial hardship upon the defendant or the defendant's dependent or dependents. The defendant shall make the payment through the probation department to the municipality.

(c) If a defendant who is represented by a public defender, who is paid for entirely by the state, enters a plea of nolo contendere, first offender, or guilty or is otherwise convicted, the court may impose as a condition of probation repayment of all or a portion of the cost for providing legal representation and other costs of the defense if the payment does not impose a financial hardship upon such defendant or such defendant's dependent or dependents. Such defendant shall make such payment through the probation department to the Georgia Public Defender Standards Council for payment to the general fund of the state treasury.

(d) In determining whether or not a payment imposed under this Code section imposes a financial hardship upon a defendant or defendant's dependent or dependents and in determining the amount of the payment to impose, the court shall consider the factors set forth in Code Section 17-14-10. The public defender may provide the court with an estimate of the cost for providing to the defendant the legal representation and other expenses of the defense. If requested by the defendant, the court shall hold a hearing to determine the amount to be paid.

(e) This Code section shall not apply to a disposition involving a child pursuant to Chapter 11 of Title 15, relating to juvenile proceedings.

17-12-52.

(a) A county or municipality may recover payment or reimbursement from a person who has received legal assistance from a public defender paid in part or in whole by the county or municipality:

(1) If the person was not eligible to receive such legal assistance; or

(2) If the person has been ordered to pay for the legal representation and other expenses of the defense pursuant to Code Section 17-12-51 and has not paid for the legal services.

(b) An action shall be brought within four years after the date on which the legal services were received.

(c) In determining the amount of the payment imposed under this Code section, the court shall consider the factors set forth in Code Section 17-14-10. The public defender may provide the court with an estimate of the cost for providing to the defendant the legal representation and other expenses of the defense.

(d) This Code section shall not apply to proceedings involving a child pursuant to Chapter 11 of Title 15, relating to juvenile proceedings.

ARTICLE 4

17-12-80. (HB 1245 Section 41)..

(a) In order to retain funding as provided in Code Sections 15-21-74 and 15-21A-6, a governing authority shall verify that the applicant qualifies as an indigent person. The governing authority shall establish the methodology for verification and fund such process. The governing authority shall produce auditable information to the council to substantiate its verification process as requested by the council or its director.

(b) The council shall establish rules and regulations to determine approval of an indigent person verification system and shall annually provide written notification to the Georgia Superior Court Clerks' Cooperative Authority as to whether or not a governing authority has an approved indigent person verification system.

(c) The governing authority shall advise the circuit public defender, if applicable, or the administrator of the indigent defense system for the jurisdiction of the name of each person who has applied for legal services and provide identifying information for those persons who are financially eligible for services within one business day of such person's application for services.

This Act shall become effective on July 1, 2008; provided, however, that for purposes of the appointment of the councilmembers and circuit public defender supervisory panel members, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

All laws and parts of laws in conflict with this Act are repealed.