

HOUSE BILL 1245

As Passed House and Senate

Conference Committee Members

Representatives: David Ralston, Tom Knox and Kevin Levitas

Senators: Preston Smith, John Wiles and Mitch Seabaugh

Sections 1-3 Senior Judges and Capital Cases

Prohibits a senior judge from being assigned, designated or presiding in a capital case. There is an exception for senior judges who were assigned to the case as an elected superior court judge and therefore prior to attaining senior judge status.

Sections 4 – 11 Clerks & Sheriffs Fund; Fines and Fees

Relates to the Clerks & Sheriffs Fund, so as to provide that the Superior Court Clerk's Cooperative Authority shall now collect these funds instead of GPDSC. Funds shall be remitted to the Clerk's Authority by the last day of the month following the month in which the funds were received. Any interest earned shall be remitted to GPDSC.

Increases the bail and bond fees collected under the indigent defense fund not to exceed \$100 (currently \$50) or 10% of the original amount. If the local governing authority has approved a procedure for verifying an applicant's income, 50% of these funds shall be remitted to that authority and the other 50% to the state treasury.

Section 12 Payments to Opt-Outs

Simply moves current language regarding opt-out payments to a later section (38).

Section 14 Fees and Indigency Verification

Provides that the \$50 application fee shall not be imposed if waived by the court (current law says "may"). Adds that the court shall waive the fee if measurable hardship will result because of such payment. Requires the court to impose the fee prior to sentencing if it has not been paid or waived. Money collected shall be paid to the entity providing legal defense services. In order to collect the fee, the governing authority must have a procedure to verify an applicant's income. If there is not such a procedure, the money goes to the state treasury.

Section 15 Poverty Guidelines

Changes poverty guidelines to:

100% for adult misdemeanors and probation violations

125% for juvenile misdemeanors or probation violations

150% for adult and juvenile felonies

Removes "conflict defender" language from the definition of assistant public defender.

Section 16 Council Member Appointments

Increases the council to 15 members. The four additional members shall be county commissioners from different geographic regions of the state appointed by the Governor on or before July 1, 2008. Each term is four years with initial appointments being one, two, three and four years as designated by the Governor.

After July 1, 2008, appointments to the council made by the Chief Justice will now be made by the Lt. Governor (once the current terms end). Also after that date, any appointments previously made by the Chief Judge of the Court of Appeals will be made by the Speaker of the House.

Section 17 Annual Audit

Removes authority of the council to appoint the director.

Establishes annual audit procedures whereby the following must be reported: moneys received and expenditures made by revenue source (including all programs and projects in the General Appropriations Act); an itemization by revenue source of encumbered and reserved money; revenue sources shall include each city and county governing authority's expenditures made pursuant to §17-12-31 and §17-12-32.

Gives the state auditor authority to conduct an audit at any time when requested by the council, the Governor or General Assembly.

Section 18 Director

The director of GPDSC shall be appointed by and serve at the pleasure of the Governor. The director shall have at least seven years' experience in the practice of law (currently three). Allows the director to establish a mental health advocacy division and the Georgia capital defender division and hire respective directors.

Grants the director the power and authority to perform any duties, responsibilities or functions which the council is authorized to perform. Also, the power and authority to make, promulgate, enforce or require compliance with all rules, regulations, procedures or directives necessary to perform indigent defense services; to carry into effect the standards and procedures promulgated by the council. Gives the director the power and authority to assist the council in the performance of its duties, responsibilities and functions and the exercise of its power and authority.

Requires the director to evaluate the job performance of each circuit public defender and relay findings to the council.

Section 19 Council Obligations

The council shall account for all moneys received from each governing authority.

Section 20 Standards

Removes the requirement for the council to set Standards and the General Assembly ratify. Leaves the authority for the council to develop and implement rules, regulations and policies for the agency.

Section 21 Continuing Legal Education

Cleans up language for public defender training and CLE reimbursements.

Section 22 Annual Report

Amends annual report requirements to account for all revenue including monies received from cities and county governing authorities. The report shall include a three-year cost projection and anticipated revenues for all programs. It must also include the council's assessment of the delivery of indigent defense services and the costs associated in operating each program. The report must contain the methodology used in each governing authority's indigency verification system and the corresponding costs and savings.

Section 23 Legislative Oversight Committee

Decreases the number of LOC meetings per year from six to three. Provides the committee with the authority to review the rules, regulations and policies proposed by the council.

Section 24 Circuit Public Defender Supervisory Panel

Changes the circuit public defender selection panel name from "selection" to "supervisory."

Section 25 Mental Health Advocacy Division

Strikes old transition language from GIDC to GPDSC. Adds mental health advocacy division language with direct supervision by the council's director.

Section 26 Georgia Capital Defender Division

Strikes old transition language. Designates the council's director as responsible for the management of the capital defender division. Moves current capital defender language from a previous section to this one.

Section 27 Conflict Capital Cases

In capital conflict cases, the council's director shall determine and appoint counsel and establish a contractual agreement with such counsel. When feasible and prudent, a flat fee shall be utilized.

A maximum of two attorneys shall be paid by the council pursuant to a contractual agreement or at the council's hourly rate. The state will pay for the first \$150,000 worth of expenses. Costs between \$150,000.01 and \$250,000 will be split with the counties. 75% will be paid by the state and 25% by the county governing authority where the indictment was returned. Expenses exceeding \$250,000 will be split 50/50 between the county and state.

The council and the capital defender division must establish guidelines for all expense requests including: attorney and expert witness fees, investigative fees, travel and accommodation expenses, copy and transcription costs.

Language allowing the judge in a capital conflict case to appoint a 3rd attorney (paid by the county) was removed. However, the county may provide supplemental compensation.

Section 28 Circuit Public Defender Supervisory Panels

Increases the supervisory panels from five to seven members. The Chief Justice of the Supreme Court no longer makes an appointment. Appointments are made by the Speaker of the House, the Lt. Governor and the chief judge of the superior court of the circuit. The Governor appoints four members. Two of these must be members of a county governing authority within the judicial circuit. Stipulates that no council employees may serve on the supervisory panels.

The panel is required to select a chairperson, appoint a secretary to keep records of the meetings, and to call the panel into session at his/her discretion or at the request of the council. The panel must convene at least two times per year to review the job performance and budget of the circuit public defender. The council and circuit public defender must be notified two weeks in advance of the meeting. Findings must be submitted to the council by September 30th of each year on a form provided by the council.

If the circuit public defender's performance is less than satisfactory, the panel may adopt a resolution asking the council to review the findings and take action. Evidence of the findings shall be forwarded to the council within 15 days of the adoption of the resolution. In turn, the council has 60 days to review and take action. Any action must be provided in writing to the panel.

Section 29 Conflicts

In conflict of interest cases, the circuit public defender may utilize another circuit public defender office when feasible. The council must consider the most efficient and effective system to provide representation in conflict cases.

The circuit public defender shall establish a method of identifying conflicts at the earliest opportunity. In conflict cases where an outside attorney is appointed, the attorney shall have a contractual agreement with the council. That relationship may include, but is not limited to, a flat fee structure.

Section 30 Entitlement of Services- 3 business days

Revises "72- hour rule" language. Now, the entitlement to the services of a public defender begins not more than three business days after the person is taken into custody or service made upon of a charge, petition, notice or other initiation process. Furthermore, the indigent defendant must apply for appointed counsel in order to retain services.

Section 31 Determining Indigency

Offers the county governing authority the ability to determine indigency if they have created and funded a system to do so.

Section 32 Circuit Public Defender Salaries

Changes the code section to provide for cost-of -living adjustments to circuit public defenders as appropriated by the General Assembly. Also, this section prohibits circuit public defenders from serving in any judicial office.

Section 33 GPDSC Budget

This section removes the funding cap. GPDSC's budget request is no longer tied to the amount collected in the indigent defense fund.

Section 35 County Contracted Employees

Clarifies language to require that a circuit public defender may employ additional employees as long as they are specifically authorized and funded by the governing authorities or county(ies) in the judicial circuit.

Section 36 Assistant Public Defenders

No assistant public defender may serve concurrently in any judicial office.

Section 37 Review of Opt-Outs

Adds language that the council must determine if an opt-out system meets or exceeds its rules, regulations, and policies (in addition to standards).

Section 39 Definition of a Public Defender

Removes "an attorney who is a conflict defender" from the definition of a public defender.

Section 40 Indigent Defense Fund

Removes language stating that it is the intent of the General Assembly to make all funds collected available for indigent defense.

Section 41 Verification of Indigency

Reiterates previous language stating that in order for the county governing authority to retain funds collected from fines and fees, they must establish a methodology for verifying indigency and fund such a process. If requested by the council or its director, the governing authority must produce auditable information to the council to substantiate its verification process.

Requires the council to establish rules and regulations in determining approval for a verification system and notify the Clerk's Authority annually whether or not a governing authority has an approved verification system.

The governing authority must notify the circuit public defender (or indigent defense administrator) of the name of each person who has applied and qualified for services within one business day of such person's application.

Upon signature of the Governor, the appointment process for council members and supervisory panel members becomes effective immediately. All other changes become effective July 1, 2008.