Senate Bill 102

By: Senators Clay of the 37th, Meyer von Bremen of the 12th, Tanksley of the 32nd, Reed of the 35th, Harp of the 16th and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to the legal defense of indigents, so as to create the Georgia Indigent Defense Board; to provide for membership; to provide that on December 31, 2003, the board shall assume all powers, duties, and responsibilities of the Georgia Indigent Defense Council; to provide that on such date the Georgia Indigent Defense Council shall cease to exist; to change certain provisions relative to the distribution of funds to counties; to provide for rules and standards; to enact the "Georgia Indigent Defense Act of 2003"; to provide a short title; to provide a statement of purpose; to provide a statement of policy; to make certain findings; to define certain terms; to provide for responsibilities of the Georgia Indigent Defense Board; to provide for budget authority; to provide for the duties and responsibilities of the director of indigent defense; to provide for the appointment of a circuit public defender; to provide for the responsibilities of the circuit public defender; to provide for conflicts of interest; to provide for the scope of representation; to provide for the duties of the custodian of indigent detainees; to provide for an allocation of funding responsibilities; to provide for certain prohibitions and qualifications; to provide for the mental health advocacy division; to provide for its status; to provide for duties and responsibilities; to provide for a budget; to provide for the appointment of a mental health advocate; to provide for a staff; to provide for representation; to provide for the office of the multicounty capital defender; to define certain terms; to provide for a multicounty capital defender; to provide for responsibilities; to provide for a budget; to provide for appointment; to provide for the employment of a staff; to amend Title 15 of the Official Code of Georgia Annotated, relating to courts, so as to change references to the Georgia Indigent Defense Council; to amend Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, so as to change certain internal references; to amend Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to the establishment of municipal courts, punishments, and the selection, election, or appointment of the mayor pro tempore or recorder pro tempore, so as to provide for a notice of right to representation; to provide for representation in municipal court; to provide

for the provision of counsel; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

Article 2 of Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to state funded local indigent defense programs, is amended by inserting immediately following Code Section 17-12-31 a new Code section to read as follows:

"17-12-31.1.

(a) There is created the Georgia Indigent Defense Board, which shall be an independent agency within the judicial branch of state government. The board 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 article.

(b) The board shall consist of 15 members. The Governor shall appoint ten members, one from each of the state´s ten judicial districts. Of those ten appointed, seven shall be members in good standing of the State Bar of Georgia and shall include at least one superior court judge and one judge of a court other than a superior court. Three such appointments shall not be members of the State Bar of Georgia and shall include at least one county commissioner. The Speaker of the House of Representatives and the Senate Committee on Assignments shall each appoint one member. The Supreme Court of Georgia shall appoint three members. In making these appointments, the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience, and shall receive suggestions from the State Bar of Georgia, the Georgia Association of Criminal Defense Lawyers, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorneys´ Council of the State of Georgia, as well as from the public and other interested organizations and individuals within the state. Board members shall serve four-year terms with a limit of two consecutive full terms after any initial abbreviated or unexpired term. The initial terms for board members representing odd-numbered judicial districts and the initial term for the appointee of the Senate Committee on Assignments shall be for two years, while all other initial appointees shall serve four-year terms.

(c) All board members shall serve independently of the appointing authority and shall at all times act in the best interest of indigent defendants who are receiving legal representation under the provisions of this article.

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

(e) Each member of the board shall serve until a successor has been appointed. Vacancies shall be filled by appointment by the original appointing authority for any unexpired term. Removal of board members shall be in accordance with policies and procedures adopted by the board.

(f) Unless otherwise provided in this article, a quorum shall be a majority of the members of the board who are then in office, and decisions of the board shall be by majority vote of the members present, except that a majority of the entire board must approve the appointment or removal of the director and the use of an alternative system of providing indigent defense representation in judicial circuits.

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

(h) The board shall elect a chairperson and such officers from the members of the board 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 board and for cause by a majority vote of the entire board. The chairperson shall retain a vote on all matters except the removal of the chairperson for cause. The board shall keep and maintain minutes of all board meetings.

(i) The members of the board 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 board. Any expenses incurred by the board shall be paid from the general operating budget of the board.

(j) On December 31, 2003, the board shall assume all powers, duties, and obligations of the Georgia Indigent Defense Council, and all references in this Code to the Georgia Indigent Defense Council shall be deemed to be references to the board. Such powers shall include, without limitation, making grants and distributions to the counties. On such date, the employees, assets, and resources of the Georgia Indigent Defense Council shall be transferred to the board, and the board shall assume any executory contractual obligations of the Georgia Indigent Defense Council, provided that allocated funding resources for such obligations are also transferred.

(k) The board shall have the authority to prepare rules and standards in anticipation of legislation enacting the 'Georgia Indigent Defense Act of 2003'; provided, however, that such rules and standards shall not become effective until the effective date of such legislation.

(l) Employees of the Georgia Indigent Defense Council who are in good standing as of December 31, 2003, shall become employed in a similar capacity by the board without a break in service.

(m) The board shall appoint a director of indigent defense. To be eligible for appointment, a candidate must be a member in good standing of the State Bar of Georgia with at least three years´ experience in the practice of law. The director shall be selected on the basis of training and experience and such other qualifications as the board deems appropriate. The director shall serve at the pleasure of the board and may be removed by a majority vote of the entire board. The board shall establish the director´s salary.″

SECTION 1-2.

Said article is further amended by inserting at the end of Code Section 17-12-32, relating to the establishment of the Georgia Indigent Defense Council, composition, qualifications, appointment, and terms of office of members, vacancies, meetings, officers, compensation, legal status, and powers, a new subsection to read as follows:

″(g) Any other provision of this article to the contrary notwithstanding, the council shall cease to exist on December 31, 2003, and all powers, duties, obligations, and assets of the council shall be transferred to the Georgia Indigent Defense Board created by Code Section 17-12-31.1, and all references in this Code to the council shall be deemed to be references to the Georgia Indigent Defense Board.″

SECTION 1-3.

Said article is further amended by striking in its entirety subsection (b) of Code Section 17-12-36, relating to the Georgia Indigent Defense Council, preparation of an annual budget, solicitation of public and private funds, and the manner of distribution of funds to participating counties, and inserting in lieu thereof the following:

″(b) At least 90 percent of all state appropriated funds shall be distributed by the council to participating counties ~~on an equitable basis,~~ based on ~~judicial administrative district and judicial circuit population, indigent criminal caseloads, and~~ previous year expenditures for the provision of defense services at the local level.″

PART II.

SECTION 2-1.

Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to the legal defense of indigents, is amended by striking in its entirety Article 1, relating to local indigent defense programs generally, and Article 2, relating to state funded local indigent defense programs, and inserting in lieu thereof the following:

″ARTICLE 1

Part 1

17-12-1.

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

(b) The purpose of this article is to ensure that all indigent defendants who are entitled to legal representation under the Constitution and laws of the United States and the State of Georgia are provided uniformly effective representation in each of the judicial circuits of the State of Georgia. Toward that goal, this article establishes a state-wide, independent Georgia Indigent Defense Board.

(c) The General Assembly declares that the Georgia Indigent Defense Board shall at all times serve its clients independently of any political considerations or private interests and conduct the business of the board in accordance with all applicable standards of ethics, performance, and professionalism.

17-12-2.

As used in this article, the term:

(1) 'Assistant public defender' means an attorney who is employed by any circuit public defender and conflict defender offices and any approved alternative delivery systems for the purpose of providing legal representation to indigent persons who are entitled to representation under this article.

(2) 'Board' means the Georgia Indigent Defense Board.

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

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

(5) 'Conflict defender office' means an office established in one or more judicial circuits by the board for the purpose of providing legal representation to indigent defendants in cases in which the circuit public defender office is prevented from such representation because of an ethical or legal conflict.

(6) 'Director' means the director of indigent defense appointed by the board.

Part 2

17-12-20.

There is created the Georgia Indigent Defense Board, which shall be an independent agency within the judicial branch of state government. The board shall be a continuation of the Georgia Indigent Defense Board as such exists on March 1, 2005. The board 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 article.

17-12-21.

(a) The board shall consist of 15 members. The Governor shall appoint ten members, one from each of the state´s ten judicial districts. Of those ten appointed, seven shall be members in good standing of the State Bar of Georgia and shall include at least one superior court judge and one judge of a court other than a superior court. Three such appointments shall not be members of the State Bar of Georgia and shall include at least one county commissioner. The Speaker of the House of Representatives and the Senate Committee on Assignments shall each appoint one member. The Supreme Court of Georgia shall appoint three members. In making these appointments, the appointing authorities shall seek to identify and appoint persons who represent a diversity of backgrounds and experience, and shall receive suggestions from the State Bar of Georgia, the Georgia Association of Criminal Defense Lawyers, the councils representing the various categories of state court judges in Georgia, and the Prosecuting Attorneys´ Council of the State of Georgia, as well as from the public and other interested organizations and individuals within the state. Board members shall serve four-year terms with a limit of two consecutive full terms after any initial abbreviated or unexpired term. The initial terms for board members representing odd-numbered judicial districts and the initial term for the appointee of the Senate Committee on Assignments shall be for two years, while all other initial appointees shall serve four-year terms.

(b) All board members shall serve independently of the appointing authority and shall at all times act in the best interest of indigent defendants who are receiving legal representation under the provisions of this article.

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

(d) Each member of the board shall serve until a successor has been appointed. Vacancies shall be filled by appointment by the original appointing authority for any unexpired term. Removal of board members shall be in accordance with policies and procedures adopted by the board.

(e) Unless otherwise provided in this article, a quorum shall be a majority of the members of the board who are then in office, and decisions of the board shall be by majority vote of the members present, except that a majority of the entire board must approve the appointment or removal of the director and the use of an alternative system of providing indigent defense representation in judicial circuits.

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

(g) The board shall elect a chairperson and such officers from the members of the board 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 board and for cause by a majority vote of the entire board. The chairperson shall retain a vote on all matters except the removal of the chairperson for cause. The board shall keep and maintain minutes of all board meetings.

(h) The members of the board 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 board. Any expenses incurred by the board shall be paid from the general operating budget of the board.

17-12-22.

(a) The board shall approve the development and improvement of programs by which the office of the director provides legal representation to indigent persons and juveniles.

(b) The board shall approve and implement such programs, services, rules, policies, procedures, regulations, and standards as may be necessary to fulfill the purposes and provisions of this article and to comply with all applicable laws governing the rights of indigent persons accused of violations of criminal law. Such standards shall include, but shall not be limited to, the following:

(1) Standards for maintaining and operating circuit defender offices, including requirements regarding qualifications, training, and size of the legal and supporting staff of such offices;

(2) Standards prescribing minimum experience, training, and other qualifications for appointed counsel where a conflict of interest arises between the public defender and an indigent person;

(3) Standards for assistant public defender and appointed counsel caseloads;

(4) Standards for the performance of assistant public defenders and appointed counsel representing indigent persons;

(5) Standards and procedures for the appointment of independent, competent, and efficient counsel for representation in both the trial and appellate courts of indigent persons whose cases present conflicts of interest;

(6) Standards for providing and compensating experts, investigators, and other persons who provide services necessary for the effective representation of indigent persons;

(7) Standards for qualifications and performance of counsel representing indigent persons in capital cases;

(8) Standards for determining indigence and for assessing and collecting the costs of legal representation and related services; and

(9) Standards for compensation of attorneys appointed to represent indigent persons under this article.

(c) The board shall permit a judicial circuit to implement an alternative delivery system to the one set forth in this article if the board reasonably determines that the alternative system meets or exceeds the standards promulgated by the board for the operation of indigent defense systems at no greater cost to the state. In the event an alternative system is approved, the board and the director shall review the operation of such system as deemed necessary and determine whether such system is eligible to continue operating as an approved alternative system. Initial and subsequent approvals of alternative systems shall be by a majority vote of the entire board. Circuits having alternative systems which are not approved by the board shall have the right to appeal to the Supreme Court of Georgia. Circuits having an approved alternative system shall be eligible to receive state funds in the same manner as the offices of the circuit public defender and to supplement such state funds with funds from any other source, including, without limitation, local funds.

(d) The board shall be responsible for ensuring that all circuit public defenders, conflict defenders, and appointed lawyers comply with all applicable standards established under this article and shall have the authority to take any action the board deems appropriate to assure compliance with such standards.

(e) The board shall collect, maintain, review, and publish records and statistics for the purpose of evaluating the delivery of indigent defense representation in Georgia.

(f) The board shall perform such other duties as may be required to carry out the purposes of this article.

(g) The board shall have oversight responsibility for the office of the multicounty capital defender as provided in Article 2 of this chapter.

17-12-23.

(a) The board shall prepare and submit to the Judicial Council of Georgia an annual proposed budget necessary for fulfilling the purposes of this article. The board is also authorized to seek, solicit, apply for, and utilize funds from any public or private source to use in fulfilling the purposes of this article.

(b) The budget of the board shall include the budget of all circuit public defenders and other offices and entities, including conflict defender offices and appointed attorneys providing indigent defense representation under the authority of this article.

(c) The director of the Administrative Office of the Courts shall provide general administrative support, which shall include purchasing, payroll, and similar administrative services, to the board.

(d) The director of the Administrative Office of the Courts shall not reduce or modify the budget of the board and may not in any manner use funds appropriated to or otherwise designated for the board.

(e) The board may enter into contracts, own property, and accept funds, grants, and gifts from any public or private source for the implementation of its purposes under this article.

Part 3

17-12-40.

(a) The board shall appoint a director of indigent defense. To be eligible for appointment, a candidate must be a member in good standing of the State Bar of Georgia with at least three years´ experience in the practice of law. The director shall be selected on the basis of training and experience and such other qualifications as the board deems appropriate. The director shall serve at the pleasure of the board and may be removed by a majority vote of the entire board. The board shall establish the director´s salary.

(b) The director shall establish and maintain a circuit public defender office for each of the judicial circuits of the superior court, except for judicial circuits in which an approved alternative delivery system is in operation. Where the director deems it appropriate, a circuit public defender office may serve more than one judicial circuit. The circuit public

defender office shall represent all indigent persons within the judicial circuit it serves who are entitled to representation under this article, with the exception of cases in which such office would have a conflict of interest in providing representation. The director may establish such additional circuit public defender offices as may be necessary to assure the uniform and effective assistance of counsel for indigent persons who are entitled to representation under this article.

(c)(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 article. 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; and assistance with appellate advocacy.

(2) The director, with the consent of the board, may establish divisions within the office to administer the services and programs as may be necessary to fulfill the purposes of this article.

(3) The director may hire 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 article.

(d) The director shall:

(1) Prepare and submit to the board a proposed budget for the board, an annual report containing pertinent data on the operations, costs, and needs of the board, and such other information as the board may require;

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

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

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

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

(6) Coordinate the services of the board with any federal, county, or private programs established to provide assistance to indigent persons in cases subject to this article 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 article;

(8) Attend all board 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 board are not greater than the amounts budgeted or available from other revenue sources; and

(10) Perform other duties as the board may assign.

17-12-41.

(a) The director shall appoint the circuit public defender for each of the circuit offices. Nominations for the position of circuit public defender shall be made as follows:

(1) The governing authority of each county comprising the circuit shall separately nominate up to three candidates;

(2) The superior court judges of the circuit shall nominate up to three candidates; and

(3) The circuit bar association shall nominate up to three candidates.

The director shall consider, but not be limited to, such nominees; provided, however, that if the director appoints a person who is not one of the nominees, any nominating authority may petition the board to review the decision of the director. In that event, the board shall consider such information as any party presents to it and shall make a final determination as to the appointment.

(b) To be eligible for appointment as circuit public defender, a candidate must be a member in good standing of the State Bar of Georgia with at least three years´ experience in the practice of law. The board may establish such additional qualifications as it deems appropriate. The board shall establish the salaries of the circuit public defenders.

(c) The circuit public defender shall be appointed for a term of four years and may be removed during the term at the pleasure of the director with the consent of a majority of the entire board. Circuit public defenders may be reappointed to additional terms at the discretion of the director.

17-12-42.

(a) The circuit public defender shall hire such additional assistant public defenders as may be required to assure the uniform and effective assistance of counsel to indigent persons entitled to representation under this article and substantial compliance with the maximum caseload guidelines approved by the board. The circuit public defender shall also hire or contract with such additional support staff, including attorneys, investigators, social

workers, paraprofessionals, clerical assistants, secretaries, and other personnel, as the circuit public defender and director shall deem necessary to accomplish the purposes of this article.

(b) The circuit public defender office shall make an initial determination of the financial eligibility of any person or juvenile arrested, detained, or charged in any manner that would entitle him or her to representation under this article, according to the standards for indigence established by the board.

(c) Subject to the standards adopted by the board and consistent with the policies and procedures established by the director, the circuit public defenders shall administer and coordinate the day-to-day operations of their respective circuit public defender offices and shall supervise the assistant public defenders and other staff serving in the circuit public defender office to which the circuit public defender is appointed.

(d) The circuit public defender shall keep and maintain appropriate records and make periodic reports to the director. These records shall include the number of persons represented under this article, 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 article; and any other information requested by the director or the board.

17-12-43.

(a) The board shall establish a procedure for providing legal representation in cases where the circuit public defender office has a conflict of interest. This procedure may be by appointment of individual counsel on a case-by-case basis or by the establishment of a conflict defender office in those circuits where the volume of cases may warrant a separate conflict defender office.

(b) Lawyers who seek appointment in conflict cases shall be approved by the chief superior court judge in the circuit where the case is pending; must have such experience or training in the defense of criminal cases as is necessary in light of the complexity of the case to which they are appointed; and must meet such qualifications and standards for the representation of indigent defendants as are established by the board.

(c) The circuit public defender shall establish a method for identifying conflicts of interest at the earliest possible opportunity.

17-12-44.

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

(1) Any case prosecuted 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;

(3) Any case prosecuted in juvenile court 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 as soon as is feasible 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.

17-12-45.

The government authority having custody of a person at the time of arrest shall provide the person arrested with an effective means of immediately contacting the circuit public defender office to request representation.

17-12-46.

The governing authority of each county shall provide, in conjunction and cooperation with the other counties in the judicial circuit, and in pro rata share, according to the indigent caseload of each such county, appropriate facilities, including office space, furniture, equipment, books, postage, supplies, utilities, telephone expenses, materials, and interviewing facilities, in the jail and courthouse as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender serving the judicial circuit in which such county is located. The provision of any such facilities, furniture, equipment, books, postage, supplies, utilities, telephone expenses, materials, and interviewing facilities shall be subject to the budget procedures required by Article 1 of Chapter 81 of Title 36.

17-12-47.

The director and any attorney employed by the board or by any circuit public defender or conflict defender office operating under this article shall not engage in the private practice of law unless otherwise authorized by rules promulgated by the board. Notwithstanding any other restrictions as may be imposed in this article, attorneys with pending private legal

matters at the time of appointment with any such office shall have a reasonable length of time to conclude or transfer such cases, consistent with the applicable standards of professional and ethical conduct. This subsection shall not apply to private attorneys who accept appointments on a case-by-case basis.

17-12-48.

Nothing in this article shall be construed to limit the power of the court in which an action is brought to order the state to pay expenses for the legal representation of an indigent person in a criminal case as may be required by the Constitution or laws of the State of Georgia or of the United States in order to ensure the person is afforded the right to effective assistance of counsel and a fair trial.

Part 4

17-12-60.

There is created the mental health advocacy division of the Georgia Indigent Defense Board for the purpose of undertaking the representation of indigent persons found not guilty by reason of insanity at the time of the crime in any court in this state. The division shall serve all counties of this state.

17-12-61.

The mental health advocacy division shall be a legal entity; shall have perpetual existence; may contract; may own property; may accept funds, grants, and gifts from any public or private source, which funds shall be used to defray the expenses incident to implementing its purposes; and may establish a principal office.

17-12-62.

The Georgia Indigent Defense Board and the director of indigent defense shall be responsible for management of the division. Managerial duties shall include, but are not limited to, the following:

(1) Appointment of the mental health advocate;

(2) Establishing the salaries of the mental health advocate and the division´s staff;

(3) Approving the level of staffing and establishing policy consistent with the intent of this part; and

(4) Preparing an annual budget for the division, administering the funds made available to the division, and overseeing the expenditure of such funds.

17-12-63.

The board and the director shall prepare an annual budget showing all anticipated expenses of the division for the following fiscal year, which shall be the same as the fiscal year of this state. Such budget may be submitted by the mental health advocate.

17-12-64.

The mental health advocate shall be appointed by and shall serve at the pleasure of the board. The mental health advocate must be a member in good standing of the State Bar of Georgia with at least three years´ experience in the practice of law and must be competent to counsel and represent a person found not guilty by reason of insanity at the time of the crime. The salary of the mental health advocate shall be established by the board.

17-12-65.

The mental health advocate shall employ, with the advice and consent of the board and the director and in the manner and at the compensation prescribed by the board, as many assistant attorneys, clerks, investigators, stenographers, and any other persons as may be necessary for carrying out the responsibilities assigned to the division by law. A person employed under this Code section serves at the pleasure of the mental health advocate and the director.

17-12-66.

(a) 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 and has been determined to be indigent, as provided in this article, the court in which such charges are pending shall notify the mental health advocacy division of the board and the division may assume the defense and representation of such persons in all matters pursuant to Code Section 17-7-131 if the resources, funding, and staffing of the division allow; provided, however, that the public defender of any county or the court appointed attorney who represented the indigent at the time of the finding of not guilty by reason of insanity at the time of the crime shall have the option to retain responsibility for the representation of any such person.

(b) Nothing in this Code section shall prevent the court or the court appointed attorney from requesting the participation of the division prior to a finding of not guilty by reason of insanity at the time of the crime. The court or the court appointed attorney may request that the division assist in the case prior to a plea being entered and accepted by the court.

(c) 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, such representation shall be provided as otherwise provided by law.″

SECTION 2-2.

Said chapter is further amended by redesignating Code Sections 17-12-60 through 17-12-62 as Code Sections 17-12-80 through 17-12-82, respectively.

SECTION 2-3.

Said chapter is further amended by redesignating Code Sections 17-12-70 through 17-12-72 as Code Sections 17-12-100 through 17-12-102, respectively.

PART III

SECTION 3-1.

Said chapter is further amended by striking Article 5, relating to the office of the multicounty public defender, and inserting in lieu thereof the following:

″ARTICLE 5

~~17-12-90~~ 17-12-120.

As used in this article, the term:

(1) 'Board' means the Georgia Indigent Defense Board.

~~(1) 'Council' means the Georgia Indigent Defense Council created by Article 2 of this chapter.~~

(2) 'Office' means the office of the multicounty ~~public~~ capital defender created by this article.

~~17-12-91~~ 17-12-121.

There is created the office of the multicounty ~~public~~ capital defender to undertake the defense of all indigent persons charged with a capital felony for which the death penalty is being sought in any court in this state. The office shall serve all counties of this state.

~~17-12-92~~ 17-12-122.

The office of the multicounty ~~public~~ capital defender shall be a legal entity, shall have perpetual existence, may contract, may own property, may accept funds, grants, and gifts from any public or private source, which funds shall be used to defray the expenses incident to implementing its purposes, and may establish a principal office.

~~17-12-93~~ 17-12-123.

The ~~Georgia Indigent Defense Council and the council´s director~~ board shall be responsible for management of the office. Managerial duties shall include, but not be limited to, the following:

(1) Appointment of the multicounty ~~public~~ capital defender;

(2) Establishing the salaries of the multicounty ~~public~~ capital defender and the office´s staff; and

(3) Approving the level of staffing and establishing policy consistent with the intent of this article~~; and~~.

~~(4) Preparing an annual budget for the office, and administering the funds made available to the office, and overseeing the expenditure of such funds.~~

~~17-12-94~~ 17-12-124.

The ~~council and its director~~ multicounty capital defender shall prepare and submit to the board an annual budget showing all anticipated expenses of the office for the following fiscal year, which shall be the same as the fiscal year of this state. Such budget may be submitted by the multicounty ~~public~~ capital defender. The board shall have final authority over the budget and shall have authority over the expenditure of such funds as are made available to the multicounty capital defender office. The budget of the multicounty capital defender office shall be separate and independent from that of the office of the director of indigent defense.

~~17-12-95~~ 17-12-125.

The multicounty ~~public~~ capital defender shall be appointed by and shall serve at the pleasure of the ~~council and its director~~ board. The multicounty ~~public~~ capital defender must ~~have been licensed to practice law in this state for at least five years and must be competent to counsel and defend a person charged with a capital felony. The salary of the multicounty public defender shall be established by the council~~ be a member in good standing of the State Bar of Georgia with at least three years´ experience in the practice of law and must be competent to counsel and defend a person charged with a capital felony.

~~17-12-96~~ 17-12-126.

(a) The multicounty ~~public~~ capital defender shall employ, with the advice and consent of the ~~council and its director and in the manner~~ board and at the compensation prescribed by the ~~council~~ board, as many assistant attorneys, clerks, investigators, stenographers, and other persons as may be necessary for carrying out his or her responsibility under this

article. A person employed under this Code section serves at the pleasure of the multicounty ~~public defender and the council's director~~ capital defender.

(b) No person may 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.

~~17-12-97~~ 17-12-127.

(a) Whenever any person accused of a capital felony for which the death penalty is being sought has been determined to be indigent, as provided in Article 1 of this chapter, the court in which such charges are pending may notify the office, and the office shall assume the defense of such person if the resources, funding, and staffing of the office allow; provided, however, that the public defender of any county shall have the option to assume sole responsibility for the defense of any such person.

(b) If for any reason the office is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, such defense shall be provided as otherwise provided by law.

(c) The office shall be responsible for the defense of any person referred to it pursuant to subsection (a) of this Code section if the resources, funding, and staffing of the office allow. Such defense shall include all proceedings in the trial court and any appeals to the Supreme Court of Georgia. The office shall not assist with any petition for a writ of habeas corpus in federal court."

SECTION 3-2.

Title 15 of the Official Code of Georgia Annotated, relating to courts, is amended by striking Code Section 15-6-76.1, relating to election by clerks as to investing or depositing funds and the manner of depositing funds paid into the court registry, and inserting in lieu thereof the following:

"15-6-76.1.

(a) In counties where the clerk of the superior court exercised discretion to invest funds pursuant to Code Section 15-6-75 or to deposit funds in one or more interest-bearing accounts pursuant to Code Section 15-6-76, and such funds were invested or on deposit on January 1, 1993, the clerk may continue to invest such funds pursuant to Code Section 15-6-75 or deposit such funds pursuant to Code Section 15-6-76 until July 1, 1994. In such counties, clerks who do not elect to continue investing or depositing funds pursuant to such Code sections, or who cease depositing or investing such funds pursuant to such Code sections, shall be subject to the provisions of subsections (c) through (g) of this Code

section. In such counties, clerks shall provide a written notice to the Georgia Indigent Defense ~~Council~~ Board within 30 days following July 1, 1993, stating that funds were invested or on deposit pursuant to Code Section 15-6-75 or 15-6-76 on January 1, 1993, and stating whether they have elected to continue investing or depositing funds pursuant to Code Sections 15-6-75 and 15-6-76 or to comply with the provisions of subsections (c) through (g) of this Code section. In such counties, clerks may change their election by written notice to the Georgia Indigent Defense ~~Council~~ Board.

(b) In counties where no funds were invested or on deposit pursuant to Code Section 15-6-75 or 15-6-76 on January 1, 1993, clerks shall be subject to the provisions of subsections (c) through (g) of this Code section, effective July 1, 1993.

(c) When funds are paid into the registry of the court, the clerk shall deposit such funds in one or more interest-bearing trust accounts in investments authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(d) When funds have been paid into the registry of the court pursuant to a court order directing that such funds be deposited in an interest-bearing trust account for the benefit of one or more of the parties, the interest received from such funds after service charges or fees imposed by the bank or depository shall be paid to one or more of the parties as the order of the court directs.

(e) When funds have been paid into the registry of the court and the order of the court relating to such funds does not state that such funds shall be placed in an interest-bearing trust account for the benefit of one or more of the parties, the clerk shall deposit such funds in an interest-bearing trust account and the financial institution in which such funds are deposited shall remit, after service charges or fees are deducted, the interest generated by said funds directly, at least quarterly and within 30 days of receipt, to the Georgia Indigent Defense ~~Council~~ Board for distribution to the counties pursuant to Article 2 of Chapter 12 of Title 17. With each remittance the financial institution shall send a statement showing the name of the court, the rate of interest applied, the average monthly balance in the account against which the interest rate is applied, the service charges or fees of the bank or other depository, and the net remittance. This subsection shall include but not be limited to cash supersedeas bonds for criminal appeal, other supersedeas bonds, and bonds or funds paid into the court registry in actions involving interpleader, condemnation, and requests for injunctive relief. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received from such funds deposited in interest-bearing trust accounts to the counties pursuant to Article 2 of Chapter 12 of Title 17.

(f) In its discretion, the court may at any time amend its order to require that the funds be deposited into an interest-bearing account for the benefit of one or more of the parties to the action, and the clerk shall comply with such amended order.

(g) In counties where the service charges or fees of the bank or depository would exceed the interest received from funds subject to this Code section, the clerk shall be exempt from subsections (a) through (f) of this Code section. In such counties, the clerk shall send a written notice to the Georgia Indigent Defense ~~Council~~ Board."

SECTION 3-3.

Said title is further amended by striking Code Section 15-7-49, relating to remittance of interest from interest-bearing trust accounts to the Georgia Indigent Defense Council, and inserting in lieu thereof the following:

"15-7-49.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts and the interest from those funds shall be remitted to the Georgia Indigent Defense ~~Council~~ Board in accordance with the provisions of subsections (c) through (g) of Code Section 15-6-76.1. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received from such funds in accordance with subsection (e) of Code Section 15-6-76.1."

SECTION 3-4.

Said title is further amended by striking Code Section 15-9-18, relating to remittance of interest from cash bonds to the Georgia Indigent Defense Council, and inserting in lieu thereof the following:

"15-9-18.

Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code Section 15-16-27, the clerk shall deposit such funds into interest-bearing trust accounts and the interest from those funds shall be remitted to the Georgia Indigent Defense ~~Council~~ Board in accordance with the provisions of subsections (c) through (g) of Code Section 15-6-76.1. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received from such funds in accordance with subsection (e) of Code Section 15-6-76.1."

SECTION 3-5.

Said title is further amended by striking Code Section 15-10-240, relating to remittance of interest from funds to the Georgia Indigent Defense Council, and inserting in lieu thereof the following:

"15-10-240.

When funds are paid into the court registry, the clerk shall deposit such funds in interest-bearing trust accounts and the interest from those funds shall be remitted to the Georgia Indigent Defense ~~Council~~ Board in accordance with the provisions of subsections

(c) through (g) of Code Section 15-6-76.1. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received from such funds in accordance with subsection (e) of Code Section 15-6-76.1.″

SECTION 3-6.

Said title is further amended by striking Code Section 15-16-27, relating to deposit by sheriff of cash bonds and reserves of professional bondspersons in interest-bearing accounts and disposition of interest, and inserting in lieu thereof the following:

″15-16-27.

(a) Unless transferred to the appropriate clerk of court, the sheriff shall deposit cash bonds held by the sheriff in one or more interest-bearing trust accounts in investments authorized by Code Section 36-80-3 or by Chapter 83 of Title 36.

(b) The financial institution in which the funds are deposited shall remit, after service charges or fees are deducted, the interest generated by such funds directly, at least quarterly and within 30 days of receipt, to the Georgia Indigent Defense ~~Council~~ Board for distribution to the counties pursuant to Article 2 of Chapter 12 of Title 17. With each remittance the financial institution shall send a statement showing the name of the county, deposits and withdrawals from the account or accounts, interest paid, service charges or fees of the bank or other depository, and the net remittance. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received from such funds deposited in interest-bearing trust accounts to the counties pursuant to Article 2 of Chapter 12 of Title 17.

(c) In counties where the service charges or fees of the bank or depository would exceed the interest received from funds subject to this Code section, the sheriff shall be exempt from subsections (a) and (b) of this Code section. In such counties, the sheriff shall send a written notice to the Georgia Indigent Defense ~~Council~~ Board.″

SECTION 3-7.

Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and agencies, is amended by striking Code Section 35-6A-3, relating to membership on the Criminal Justice Coordinating Council, and inserting in lieu thereof the following:

″35-6A-3.

(a) The Criminal Justice Coordinating Council shall consist of 24 members and shall be composed as follows:

(1) The chairman of the Georgia Peace Officer Standards and Training Council, the chairman of the Georgia Organized Crime Prevention Council, the chairman of the Judicial Council of Georgia, the chairman of the Prosecuting Attorneys´ Council of the

State of Georgia, the commissioner of corrections, the chairman of the Board of Corrections, the vice-chairman of the Board of Public Safety, the chairman of the State Board of Pardons and Paroles, the State School Superintendent, the commissioner of community affairs, the president of the Council of Juvenile Court Judges, the director of ~~the Georgia Indigent Defense Council~~ indigent defense, the chairman of the Children and Youth Coordinating Council, and the commissioner of juvenile justice or their designees shall be ex officio members of the council, as full voting members of the council by reason of their office; and

(2) Ten members shall be appointed by the Governor for terms of four years, their initial appointments, however, being four for four-year terms, two for three-year terms, and four for two-year terms. Appointments shall be made so that there are always on the council the following persons: one county sheriff, one chief of police, one mayor, one county commissioner, one superior court judge, four individuals who shall be, by virtue of their training or experience, knowledgeable in the operations of the criminal justice system of this state, and one individual who shall be, by virtue of his or her training and experience, knowledgeable in the operations of the entire spectrum of crime victim assistance programs delivering services to victims of crime. No person shall serve beyond the time he or she holds the office or employment by reason of which he or she was initially eligible for appointment.

(b) In the event of death, resignation, disqualification, or removal for any reason of any member of the council, vacancies shall be filled in the same manner as the original appointment and successors shall serve for the unexpired term.

(c) The initial terms for all 19 original members shall begin July 1, 1981. The initial term for the member added in 1985 shall begin July 1, 1985. The initial term for the member added in 1988 shall begin July 1, 1988. The initial term for the member added in 1989 shall begin July 1, 1989. The State School Superintendent shall be a member effective on July 1, 1989. The director of ~~the Georgia Indigent Defense Council~~ indigent defense shall ~~be~~ become a member ~~effective on July 1, 1997~~ on December 31, 2003.

(d) Membership on the council does not constitute public office, and no member shall be disqualified from holding public office by reason of his or her membership."

SECTION 3-8.

Code Section 36-32-1 of the Official Code of Georgia Annotated, relating to the establishment of municipal courts, punishments, and the selection, election, or appointment of the mayor pro tempore or recorder pro tempore, is amended by inserting at the end thereof new subsections (f), (g), and (h) to read as follows:

″(f) Any municipal court operating within this state and having jurisdiction over the violation of municipal ordinances and over such other matters as are by specific or general law made subject to the jurisdiction of municipal courts shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty, as authorized by general law or municipal or county ordinance, unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Indigent Defense Board for representation of indigent persons in this state.

(g) Any municipal court operating within this state that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Indigent Defense Board for representation of indigent persons in this state.

(h) Any municipality or municipal court may contract with the Georgia Indigent Defense Board as a means of complying with the municipality´s or municipal court´s legal obligation to provide defense counsel at no cost to indigent persons appearing before the court in relation to violations of municipal ordinances, county ordinances, or state laws. The circuit public defender office or other approved indigent defense system for the judicial circuit in which the municipality is located shall have the obligation to provide such counsel for any case originating in municipal court that involves a charge of violation of state law and is bound over for prosecution to the state or superior court of the county in which the municipality is located.″

PART IV

SECTION 4-1.

Part I of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. Part II of this Act shall become effective on March 1, 2005. Part III of this Act will become effective on December 31, 2003.

SECTION 4-2.

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