

House Bill 828

By: Representative Mangham of the 62nd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to the
2 legal defense of indigents, so as to create the Georgia Indigent Defense Board; to provide for
3 membership; to provide that on December 31, 2003, the board shall assume all powers,
4 duties, and responsibilities of the Georgia Indigent Defense Council; to change certain
5 provisions relative to the distribution of funds to counties; to provide for rules and standards;
6 to enact the "Georgia Indigent Defense Act of 2003"; to provide a short title; to provide a
7 statement of purpose; to provide a statement of policy; to make certain findings; to define
8 certain terms; to provide for responsibilities of the Georgia Indigent Defense Board; to
9 provide for budget authority; to provide for the duties and responsibilities of the director of
10 the office of state public defender; to provide for the appointment of a circuit public
11 defender; to provide for the responsibilities of the circuit public defender; to provide for
12 conflicts of interest; to provide for the scope of representation; to provide for the duties of
13 the custodian of indigent detainees; to provide for an allocation of funding responsibilities;
14 to provide for certain prohibitions and qualifications; to provide for the mental health
15 advocacy division; to provide for its status; to provide for duties and responsibilities; to
16 provide for a budget; to provide for the appointment of a mental health advocate; to provide
17 for a staff; to provide for representation; to provide for the office of the multicounty capital
18 defender; to define certain terms; to provide for a multicounty capital defender; to provide
19 for responsibilities; to provide for a budget; to provide for appointment; to provide for the
20 employment of a staff; to amend Title 15 of the Official Code of Georgia Annotated, relating
21 to courts, so as to change references to the Georgia Indigent Defense Council; to amend Title
22 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
23 agencies, so as to change certain internal references; to amend Code Section 16-13-49 of the
24 Official Code of Georgia Annotated, relating to forfeitures, so as to change a certain
25 reference; to amend Code Section 36-32-1 of the Official Code of Georgia Annotated,
26 relating to the establishment of municipal courts, punishments, and the selection, election,
27 or appointment of the mayor pro tempore or recorder pro tempore, so as to provide for a
28 notice of right to representation; to provide for representation in municipal court; to provide

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

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

4 **PART I**
 5 **SECTION 1-1.**

6 Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to the legal
 7 defense of indigents, is amended by inserting immediately following Code Section 17-12-31
 8 a new Code section to read as follows:

9 "17-12-31.1.

10 (a) There is created the Georgia Indigent Defense Board, which shall be an independent
 11 agency within the judicial branch of state government. The board shall be responsible for
 12 assuring that adequate and effective legal representation is provided, independently of
 13 political considerations or private interests, to indigent persons who are entitled to
 14 representation under this article.

15 (b) The board shall consist of 15 members. The Georgia Supreme Court shall appoint ten
 16 members, one from each of the state's ten judicial administration districts; the Governor
 17 shall appoint three members; and the Lieutenant Governor and the Speaker of the House
 18 of Representatives shall each appoint one member. In making these appointments, the
 19 appointing authorities shall seek to identify and appoint persons who represent a diversity
 20 of backgrounds and experience, and shall receive suggestions from the State Bar of
 21 Georgia, the Georgia Association of Criminal Defense Lawyers, the councils representing
 22 the various categories of state court judges in Georgia, and the Prosecuting Attorneys'
 23 Council of the State of Georgia, as well as from the public and other interested
 24 organizations and individuals within the state. Board members shall serve four-year terms
 25 with a limit of two consecutive full terms after any initial abbreviated or unexpired term.
 26 The initial terms for board members representing odd-numbered judicial districts and the
 27 initial term for the appointee of the Lieutenant Governor shall be for two years, while all
 28 other initial appointees shall serve four-year terms.

29 (c) Members of the board shall be individuals with significant experience working in the
 30 criminal justice system or who have demonstrated a strong commitment to the provision
 31 of adequate and effective representation of indigent defendants.

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

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

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

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

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

15 (i) The board shall elect a chairperson and such officers from the members of the board
16 as it deems necessary and shall adopt such rules for the transaction of its business as it
17 desires. The chairperson and officers shall serve for a term of two years and may be
18 removed without cause by a vote of two-thirds of the members of the entire board and for
19 cause by a majority vote of the entire board. The chairperson shall retain a vote on all
20 matters except the removal of the chairperson for cause. The board shall keep and maintain
21 minutes of all board meetings.

22 (j) The members of the board shall receive no compensation for their services but shall be
23 reimbursed for their actual expenses incurred in the performance of their duties as members
24 of the board. Any expenses incurred by the board shall be paid from the general operating
25 budget of the board.

26 (k) On December 31, 2003, the board shall assume all powers, duties, and obligations of
27 the Georgia Indigent Defense Council, and all references in this Code to the Georgia
28 Indigent Defense Council shall be deemed to be references to the board. On such date, the
29 employees, assets, and resources of the Georgia Indigent Defense Council shall be
30 transferred to the board, and the board shall assume any executory contractual obligations
31 of the Georgia Indigent Defense Council, provided that allocated funding resources for
32 such obligations are also transferred.

33 (l) The board shall have the authority to prepare rules and standards in anticipation of
34 legislation enacting Article 1 of Chapter 12 of Title 17, the 'Georgia Indigent Defense Act
35 of 2003'; provided, however, that such rules and standards shall not become effective until
36 the effective date of such legislation.

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

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

10 **SECTION 1-2.**

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

15 "(g) Any other provision of this article to the contrary notwithstanding, the council shall
 16 cease to exist on December 31, 2003, and all powers, duties, obligations, and assets of the
 17 council shall be transferred to the Georgia Indigent Defense Board created by Code Section
 18 17-12-31.1, and all references in this Code to the council shall be deemed to be references
 19 to the Georgia Indigent Defense Board."

20 **PART II.**

21 **SECTION 2-1.**

22 Said chapter is further amended by striking in its entirety Article 1, relating to local indigent
 23 defense programs generally, and Article 2, relating to state funded local indigent defense
 24 programs, and inserting in lieu thereof the following:

25 "ARTICLE 1

26 Part 1

27 17-12-1.

28 (a) This article shall be known and may be cited as the 'Georgia Indigent Defense Act of
 29 2003.'

30 (b) The purpose of this article is to ensure that all indigent defendants who are entitled to
 31 legal representation under the Constitution and laws of the United States and the State of
 32 Georgia are provided uniformly effective representation in each of the judicial circuits of

1 the State of Georgia. Toward that goal, this article establishes a state-wide, independent
2 Georgia Indigent Defense Board.

3 (c)(1) The General Assembly declares it is the policy of this state to provide equal justice
4 under the law and equal and speedy access to the courts to all of its citizens, including
5 indigent criminal defendants.

6 (2) The General Assembly further declares that the Georgia Indigent Defense Board shall
7 at all times serve its clients independently of any political considerations or private
8 interests, provide legal representation to indigent criminal defendants that is comparable
9 to that which is available to nonindigent criminal defendants, and conduct the business
10 of the board in accordance with all applicable standards of ethics, performance, and
11 professionalism.

12 (3) The General Assembly further finds and declares:

13 (A) The provision of legal counsel for indigent persons accused of violating criminal
14 laws is a constitutionally mandated public responsibility;

15 (B) The provision of legal counsel for indigent persons accused of violating the
16 criminal laws of this state is the responsibility of the state government;

17 (C) Indigent defense counsel provided by the government should have the same degree
18 of professional independence as that of privately retained defense counsel;

19 (D) A state-wide public defender system organized by judicial circuits will provide
20 uniformly effective and efficient legal representation for indigent defendants throughout
21 Georgia;

22 (E) Indigent defense counsel should be provided with adequate support staff, including,
23 but not limited to, investigators, paralegals, social workers, expert witnesses, and other
24 resources necessary to make an independent assessment of each case and to assure
25 fairness and due process for each defendant;

26 (F) The workload of indigent defense counsel should never adversely affect the quality
27 of representation of the indigent client;

28 (G) Indigent defense counsel's ability, training, and experience should match the
29 complexity of the case;

30 (H) Indigent defense counsel should receive appropriate training and continuing legal
31 education courses in criminal law and procedure and trial practice;

32 (I) Indigent defense counsel should be systematically reviewed for quality and
33 efficiency of representation; and

34 (J) Indigent defendants are entitled to meet with indigent defense counsel as soon as
35 possible after arrest to ensure the adequate protection of constitutional and other legal
36 rights.

1 17-12-2.

2 As used in this article, the term:

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

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

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

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

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

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

16 (7) 'Indigent person' means a person who is financially unable to secure legal
17 representation and provide for all other necessary expenses of representation without
18 substantial financial hardship to his or her family or legal dependents in the defense of
19 criminal charges involving a possible deprivation of liberty.

20 (8) 'Office' means the office of the state public defender.

21 Part 2

22 17-12-20.

23 There is created the Georgia Indigent Defense Board, which shall be an independent
24 agency within the judicial branch of state government. The board shall be responsible for
25 assuring that adequate and effective legal representation is provided, independently of
26 political considerations or private interests, to indigent persons who are entitled to
27 representation under this article.

28 17-12-21.

29 (a) The board shall consist of 15 members. The Georgia Supreme Court shall appoint ten
30 members, one from each of the state's ten judicial administration districts; the Governor
31 shall appoint three members; and the Lieutenant Governor and the Speaker of the House
32 of Representatives shall each appoint one member. In making these appointments, the
33 appointing authorities shall seek to identify and appoint persons who represent a diversity
34 of backgrounds and experience, and shall receive suggestions from the State Bar of

1 Georgia, the Georgia Association of Criminal Defense Lawyers, the councils representing
2 the various categories of state court judges in Georgia, and the Prosecuting Attorneys'
3 Council of the State of Georgia, as well as from the public and other interested
4 organizations and individuals within the state. Board members shall serve four-year terms
5 with a limit of two consecutive full terms after any initial abbreviated or unexpired term.
6 The initial terms for board members representing odd-numbered judicial districts and the
7 initial term for the appointee of the Lieutenant Governor shall be for two years, while all
8 other initial appointees shall serve four-year terms.

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

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

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

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

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

26 (g) The board shall elect a chairperson and such officers from the members of the board
27 as it deems necessary and shall adopt such rules for the transaction of its business as it
28 desires. The chairperson and officers shall serve for a term of two years and may be
29 removed without cause by a vote of two-thirds of the members of the entire board and for
30 cause by a majority vote of the entire board. The chairperson shall retain a vote on all
31 matters except the removal of the chairperson for cause. The board shall keep and maintain
32 minutes of all board meetings.

33 (h) The members of the board shall receive no compensation for their services but shall
34 be reimbursed for their actual expenses incurred in the performance of their duties as
35 members of the board. Any expenses incurred by the board shall be paid from the general
36 operating budget of the board.

1 17-12-22.

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

4 (b) The board shall appoint a director of the office of the state public defender who shall
5 be chosen on the basis of training, experience, and other qualifications as set forth in this
6 article and board rules.

7 (c) The board shall submit to the General Assembly, with the advice of the director, a
8 proposed budget for the office, an annual report describing the activities of the office and
9 containing pertinent data on the operations, costs, and needs of the office, and such other
10 information as the General Assembly may require.

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

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

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

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

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

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

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

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

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

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

36 (e) The board shall be authorized to permit a judicial circuit to implement an alternative
37 delivery system to the one set forth in this article if the board reasonably determines that

1 the alternative system will equal or exceed the quality of the indigent defense
2 representation provided by a circuit public defender office at no greater cost to the state and
3 that the alternative system will comply with all applicable state standards relating to
4 indigent defense representation. In the event an alternative system is approved, the board
5 and the director shall review the operation of such system as deemed necessary and
6 determine whether such system is eligible to continue operating as an approved alternative
7 system. Initial and subsequent approvals of alternative systems shall be by a majority vote
8 of the entire board.

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

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

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

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

19 17-12-23.

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

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

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

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

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

Part 3

17-12-40.

(a)(1) 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.

(2)(A) The director shall appoint the circuit public defender for each of the circuit offices subject to approval by the board. Before making any such appointment, the director shall notify and solicit suggestions from the State Bar of Georgia and any bar associations and judges within the particular circuit, the Georgia Association of Criminal Defense Lawyers, as well as from the public and other interested organizations and individuals within the state and the circuit in which the appointment is to be made and consider such suggestions in making the appointment.

(B) The circuit public defenders 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 board. Circuit public defenders may be reappointed to additional terms at the discretion of the director.

(b)(1) The director, through the office of the state public defender, 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.

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

4 (c) The director shall:

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

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

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

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

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

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

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

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

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

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

29 17-12-41.

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

1 circuit public defender and director shall deem necessary to accomplish the purposes of this
2 article.

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

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

12 (d) The circuit public defender shall keep and maintain appropriate records and make
13 periodic reports to the director. These records shall include the number of persons
14 represented under this article, including cases assigned to other counsel based on conflict
15 of interest; the offenses charged; the outcome of each case; the expenditures made in
16 carrying out the duties imposed by this article; and any other information requested by the
17 director or the board.

18 17-12-42.

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

24 (b) Lawyers who seek appointment in conflict cases must have such experience or training
25 in the defense of criminal cases as is necessary in light of the complexity of the case to
26 which they are appointed and must meet such qualifications and standards for the
27 representation of indigent defendants as are established by the board.

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

30 17-12-43.

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

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

1 (2) A complex habeas corpus case, as defined by the board;

2 (3) A hearing on a revocation of probation;

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

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

7 (b) In each of the actions and proceedings enumerated in subsection (a) of this Code
8 section, entitlement to the services of counsel begins as soon as is feasible after the indigent
9 person is taken into custody or service is made upon him or her of the charge, petition,
10 notice, or other initiating process.

11 17-12-44.

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

15 (b) If a person, upon being taken into custody or at any time thereafter, informs the
16 custodial authority that he or she is indigent and desires counsel, the custodial authority
17 shall immediately inform the circuit public defender office serving the county in which the
18 person is located or for which the person is being held.

19 (c) Upon the release from custody of a person prior to trial, the custodial authority shall
20 inform the person of the right to appointed counsel and provide the telephone number and
21 address of the circuit public defender office or approved alternative system serving that
22 jurisdiction.

23 (d) The custodial authority shall provide all indigent detainees toll-free telephone access
24 to defense counsel at reasonable times and locations within the custodial institution.

25 17-12-45.

26 (a) The salary of the director shall be established by the board. The board shall establish
27 classes of assistant public defenders, investigators, and other employees, and shall establish
28 salary schedules for each employee classification.

29 (b) On and after January 1, 2004, the Georgia Indigent Defense Board, through funds
30 appropriated by the General Assembly, shall be responsible for the payment of the
31 following:

32 (1) The salaries of the director of the office of state public defender, and all circuit,
33 conflict, and assistant public defenders;

34 (2) The salaries of any investigators, paraprofessionals, clerical assistants, secretaries,
35 and other personnel as the director shall deem reasonably necessary to assure the uniform

1 and effective assistance of counsel to all indigent persons who are entitled to
2 representation under this article; and

3 (3) The payment of such additional costs as may be necessary to comply with all
4 applicable laws and otherwise fulfill the purposes set forth in this article.

5 (c) The governing authority of each county shall provide, in conjunction and cooperation
6 with the other counties in the judicial circuit, and in pro rata share, according to the
7 indigent caseload of each such county, appropriate facilities, including office space,
8 furniture, equipment, books, postage, supplies, utilities, telephone expenses, materials, and
9 interviewing facilities, in the jail and courthouse as may be necessary to equip, maintain,
10 and furnish the office or offices of the circuit public defender serving the judicial circuit
11 in which such county is located.

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

17 17-12-46.

18 The director and any attorney employed by the board or by any circuit public defender or
19 conflict defender office operating under this article shall not engage in the private practice
20 of law. Notwithstanding any other restrictions as may be imposed in this article, attorneys
21 with pending private legal matters at the time of appointment with any such office shall
22 have a reasonable length of time to conclude or transfer such cases, consistent with the
23 applicable standards of professional and ethical conduct. This Code section shall not apply
24 to private attorneys who accept appointments on a case-by-case basis.

25 Part 4

26 17-12-60.

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

31 17-12-61.

32 The mental health advocacy division shall be a legal entity; shall have perpetual existence;
33 may contract; may own property; may accept funds, grants, and gifts from any public or

1 private source, which funds shall be used to defray the expenses incident to implementing
2 its purposes; and may establish a principal office.

3 17-12-62.

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

7 (1) Appointment of the mental health advocate;

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

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

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

13 17-12-63.

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

17 17-12-64.

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

23 17-12-65.

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

30 17-12-66.

31 (a) Whenever any person has been found not guilty by reason of insanity at the time of the
32 crime pursuant to Code Section 17-7-131 and has been determined to be indigent, as

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

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

12 (c) If for any reason the mental health advocacy division is unable to represent any
 13 indigent person found not guilty by reason of insanity at the time of the crime, such
 14 representation shall be provided as otherwise provided by law."

15 **SECTION 2-2.**

16 Said chapter is further amended by redesignating Article 3 as Article 2 and Code Sections
 17 17-12-60 through 17-12-62 as Code Sections 17-12-80 through 17-12-82, respectively.

18 **SECTION 2-3.**

19 Said chapter is further amended by redesignating Article 4 as Article 3 and Code Sections
 20 17-12-70 through 17-12-72 as Code Sections 17-12-100 through 17-12-102, respectively.

21 **PART III**

22 **SECTION 3-1.**

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

25 **"ARTICLE 5 4**

26 ~~17-12-90~~ 17-12-120.

27 As used in this article, the term:

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

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

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

3 ~~17-12-91~~ 17-12-121.

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

7 ~~17-12-92~~ 17-12-122.

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

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

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

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

17 (2) Establishing the salaries of the multicounty public capital defender and the office's
18 staff; and

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

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

23 ~~17-12-94~~ 17-12-124.

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

1 ~~17-12-95~~ 17-12-125.

2 The multicounty ~~public~~ capital defender shall be appointed by and shall serve at the
3 pleasure of the ~~council and its director~~ board. The multicounty ~~public~~ capital defender
4 must ~~have been licensed to practice law in this state for at least five years and must be~~
5 ~~competent to counsel and defend a person charged with a capital felony. The salary of the~~
6 ~~multicounty public defender shall be established by the council~~ be a member in good
7 standing of the State Bar of Georgia and must have significant experience in the legal
8 representation of persons charged with capital offenses.

9 ~~17-12-96~~ 17-12-126.

10 (a) The multicounty ~~public~~ capital defender shall employ, with the advice and consent of
11 the ~~council and its director and in the manner~~ board and at the compensation prescribed by
12 the ~~council~~ board, as many assistant attorneys, clerks, investigators, stenographers, and
13 other persons as may be necessary for carrying out his or her responsibility under this
14 article. A person employed under this Code section serves at the pleasure of the
15 multicounty ~~public defender and the council's director~~ capital defender.

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

20 ~~17-12-97~~ 17-12-127.

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

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

30 (c) The office shall be responsible for the defense of any person referred to it pursuant to
31 subsection (a) of this Code section if the resources, funding, and staffing of the office
32 allow. Such defense shall include all proceedings in the trial court and any appeals to the
33 Supreme Court of Georgia. The office shall not assist with any petition for a writ of habeas
34 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

1 said funds directly, at least quarterly and within 30 days of receipt, to the Georgia Indigent
 2 Defense ~~Council~~ Board for distribution to the counties pursuant to Article ~~2~~ 1 of Chapter
 3 12 of Title 17. With each remittance the financial institution shall send a statement
 4 showing the name of the court, the rate of interest applied, the average monthly balance in
 5 the account against which the interest rate is applied, the service charges or fees of the bank
 6 or other depository, and the net remittance. This subsection shall include but not be limited
 7 to cash supersedeas bonds for criminal appeal, other supersedeas bonds, and bonds or funds
 8 paid into the court registry in actions involving interpleader, condemnation, and requests
 9 for injunctive relief. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest
 10 received from such funds deposited in interest-bearing trust accounts to the counties
 11 pursuant to Article ~~2~~ 1 of Chapter 12 of Title 17.

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

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

19 SECTION 3-3.

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

23 "15-7-49.

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

30 SECTION 3-4.

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

1 "15-9-18.
 2 Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code
 3 Section 15-16-27, the clerk shall deposit such funds into interest-bearing trust accounts and
 4 the interest from those funds shall be remitted to the Georgia Indigent Defense ~~Council~~
 5 Board in accordance with the provisions of subsections (c) through (g) of Code Section
 6 15-6-76.1. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received
 7 from such funds in accordance with subsection (e) of Code Section 15-6-76.1."

8 **SECTION 3-5.**

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

12 "15-10-240.

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

19 **SECTION 3-6.**

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

23 "15-16-27.

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

27 (b) The financial institution in which the funds are deposited shall remit, after service
 28 charges or fees are deducted, the interest generated by such funds directly, at least quarterly
 29 and within 30 days of receipt, to the Georgia Indigent Defense ~~Council~~ Board for
 30 distribution to the counties pursuant to Article ~~2~~ 1 of Chapter 12 of Title 17. With each
 31 remittance the financial institution shall send a statement showing the name of the county,
 32 deposits and withdrawals from the account or accounts, interest paid, service charges or
 33 fees of the bank or other depository, and the net remittance. The Georgia Indigent Defense
 34 ~~Council~~ Board shall allocate all interest received from such funds deposited in

1 interest-bearing trust accounts to the counties pursuant to Article ~~2~~ 1 of Chapter 12 of Title
2 17.

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

7 **SECTION 3-7.**

8 Code Section 16-13-49 of the Official Code of Georgia Annotated, relating to forfeitures, is
9 amended by striking in its entirety division (u)(4)(D)(iv) and inserting in lieu thereof the
10 following:

11 "(iv) Money distributed to the state pursuant to this subsection shall be paid into the
12 general fund of the state treasury, it being the intent of the General Assembly that the
13 same be used, subject to appropriation from the general fund in the manner provided
14 by law, for funding of Article ~~2~~ 1 of Chapter 12 of Title 17, ~~"The Georgia Indigent~~
15 ~~Defense Act~~ the 'Georgia Indigent Defense Act of 2003,' for representation of
16 indigents in criminal cases; for funding of the Crime Victims Emergency Fund; for
17 law enforcement and prosecution agency programs and particularly for funding of
18 advanced drug investigation and prosecution training for law enforcement officers and
19 prosecuting attorneys; for drug treatment, rehabilitation, prevention, or education or
20 any other program which responds to problems created by drug or substance abuse;
21 for use as matching funds for grant programs related to drug treatment or prevention;
22 or for financing the judicial system of the state."

23 **SECTION 3-8.**

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

27 "35-6A-3.

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

30 (1) The chairman of the Georgia Peace Officer Standards and Training Council, the
31 chairman of the Georgia Organized Crime Prevention Council, the chairman of the
32 Judicial Council of Georgia, the chairman of the Prosecuting Attorneys' Council of the
33 State of Georgia, the commissioner of corrections, the chairman of the Board of
34 Corrections, the vice-chairman of the Board of Public Safety, the chairman of the State
35 Board of Pardons and Paroles, the State School Superintendent, the commissioner of

1 community affairs, the president of the Council of Juvenile Court Judges, the director of
 2 ~~the Georgia Indigent Defense Council~~ indigent defense, the chairman of the Children and
 3 Youth Coordinating Council, and the commissioner of juvenile justice or their designees
 4 shall be ex officio members of the council, as full voting members of the council by
 5 reason of their office; and

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

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

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

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

28 SECTION 3-9.

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

33 "(f) Any municipal court operating within this state and having jurisdiction over the
 34 violation of municipal ordinances and over such other matters as are by specific or general
 35 law made subject to the jurisdiction of municipal courts shall not impose any punishment
 36 of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost

1 enforceable by confinement, probation, or other loss of liberty, as authorized by general
2 law or municipal or county ordinance, unless the court provides to the accused the right to
3 representation by a lawyer, and provides to those accused who are indigent the right to
4 counsel at no cost to the accused. Such representation shall be subject to all applicable
5 standards adopted by the Georgia Indigent Defense Board for representation of indigent
6 persons in this state.

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

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

23 **PART IV**

24 **SECTION 4-1.**

25 Part I of this Act shall become effective upon its approval by the Governor or upon its
26 becoming law without such approval. Part II of this Act shall become effective on March
27 1, 2005. Part III of this Act shall become effective on December 31, 2003.

28 **SECTION 4-2.**

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