

The Senate Judiciary Committee offered the following substitute to HB 770:

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 provide that on such
5 date the Georgia Indigent Defense Council shall cease to exist; to change certain provisions
6 relative to the distribution of funds to counties; to provide for rules and standards; to enact
7 the "Georgia Indigent Defense Act of 2003"; to provide a short title; to provide a statement
8 of purpose; to provide a statement of policy; to make certain findings; to define certain terms;
9 to provide for responsibilities of the Georgia Indigent Defense Board; to provide for budget
10 authority; to provide for the duties and responsibilities of the director of indigent defense; to
11 provide for the appointment of a circuit public defender; to provide for the responsibilities
12 of the circuit public defender; to provide for conflicts of interest; to provide for the scope of
13 representation; to provide for the duties of the custodian of indigent detainees; to provide for
14 an allocation of funding responsibilities; to provide for certain prohibitions and
15 qualifications; to provide for the mental health advocacy division; to provide for its status;
16 to provide for duties and responsibilities; to provide for a budget; to provide for the
17 appointment of a mental health advocate; to provide for a staff; to provide for representation;
18 to provide for the office of the multicounty capital defender; to define certain terms; to
19 provide for a multicounty capital defender; to provide for responsibilities; to provide for a
20 budget; to provide for appointment; to provide for the employment of a staff; to amend Title
21 15 of the Official Code of Georgia Annotated, relating to courts, so as to change references
22 to the Georgia Indigent Defense Council; to amend Title 35 of the Official Code of Georgia
23 Annotated, relating to law enforcement officers and agencies, so as to change certain internal
24 references; to amend Code Section 36-32-1 of the Official Code of Georgia Annotated,
25 relating to the establishment of municipal courts, punishments, and the selection, election,
26 or appointment of the mayor pro tempore or recorder pro tempore, so as to provide for a
27 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 Article 2 of Chapter 12 of Title 17 of the Official Code of Georgia Annotated, relating to
7 state funded local indigent defense programs, is amended by inserting immediately following
8 Code Section 17-12-31 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 Governor shall appoint ten members, one
16 from each of the state's ten judicial districts. Of those ten appointed, seven shall be
17 members in good standing of the State Bar of Georgia and shall include at least one
18 superior court judge and one judge of a court other than a superior court. Three such
19 appointments shall not be members of the State Bar of Georgia and shall include at least
20 one county commissioner. The Speaker of the House of Representatives and the Senate
21 Committee on Assignments shall each appoint one member. The Supreme Court of
22 Georgia shall appoint three members. In making these appointments, the appointing
23 authorities shall seek to identify and appoint persons who represent a diversity of
24 backgrounds and experience, and shall receive suggestions from the State Bar of Georgia,
25 the Georgia Association of Criminal Defense Lawyers, the councils representing the
26 various categories of state court judges in Georgia, and the Prosecuting Attorneys' Council
27 of the State of Georgia, as well as from the public and other interested organizations and
28 individuals within the state. Board members shall serve four-year terms with a limit of two
29 consecutive full terms after any initial abbreviated or unexpired term. The initial terms for
30 board members representing odd-numbered judicial districts and the initial term for the
31 appointee of the Senate Committee on Assignments shall be for two years, while all other
32 initial appointees shall serve four-year terms.

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

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

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

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

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

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

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

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

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

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

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

14 **SECTION 1-2.**

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

19 "(g) Any other provision of this article to the contrary notwithstanding, the council shall
 20 cease to exist on December 31, 2003, and all powers, duties, obligations, and assets of the
 21 council shall be transferred to the Georgia Indigent Defense Board created by Code Section
 22 17-12-31.1, and all references in this Code to the council shall be deemed to be references
 23 to the Georgia Indigent Defense Board."

24 **SECTION 1-3.**

25 Said article is further amended by striking in its entirety subsection (b) of Code Section
 26 17-12-36, relating to the Georgia Indigent Defense Council, preparation of an annual budget,
 27 solicitation of public and private funds, and the manner of distribution of funds to
 28 participating counties, and inserting in lieu thereof the following:

29 "(b) At least 90 percent of all state appropriated funds shall be distributed by the council
 30 to participating counties ~~on an equitable basis, based on judicial administrative district and~~
 31 ~~judicial circuit population, indigent criminal caseloads, and previous year expenditures for~~
 32 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.

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

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

6 Part 2

7 17-12-20.

8 There is created the Georgia Indigent Defense Board, which shall be an independent
9 agency within the judicial branch of state government. The board shall be a continuation
10 of the Georgia Indigent Defense Board as such exists on March 1, 2005. The board shall
11 be responsible for assuring that adequate and effective legal representation is provided,
12 independently of political considerations or private interests, to indigent persons who are
13 entitled to representation under this article.

14 17-12-21.

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

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

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

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

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

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

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

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

29 17-12-22.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 17-12-23.

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

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

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

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

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

23 Part 3

24 17-12-40.

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

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

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

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

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

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

21 (d) The director shall:

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

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

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

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

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

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

1 consult with professional bodies concerning the implementation and improvement of
2 programs for providing indigent services;

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

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

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

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

10 17-12-41.

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

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

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

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

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

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

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

30 17-12-42.

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

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

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

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

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

19 17-12-43.

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

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

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

1 17-12-44.

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

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

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

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

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

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

16 17-12-45.

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

20 17-12-46.

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

30 17-12-47.

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

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

5 17-12-48.

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

11 Part 4

12 17-12-60.

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

17 17-12-61.

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

22 17-12-62.

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

- 26 (1) Appointment of the mental health advocate;
- 27 (2) Establishing the salaries of the mental health advocate and the division's staff;
- 28 (3) Approving the level of staffing and establishing policy consistent with the intent of
29 this part; and
- 30 (4) Preparing an annual budget for the division, administering the funds made available
31 to the division, and overseeing the expenditure of such funds.

1 17-12-63.

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

5 17-12-64.

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

11 17-12-65.

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

18 17-12-66.

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

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

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

~~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

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

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

7 ~~17-12-97~~ 17-12-127.

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

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

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

22 SECTION 3-2.

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

27 "15-6-76.1.

28 (a) In counties where the clerk of the superior court exercised discretion to invest funds
 29 pursuant to Code Section 15-6-75 or to deposit funds in one or more interest-bearing
 30 accounts pursuant to Code Section 15-6-76, and such funds were invested or on deposit on
 31 January 1, 1993, the clerk may continue to invest such funds pursuant to Code Section
 32 15-6-75 or deposit such funds pursuant to Code Section 15-6-76 until July 1, 1994. In such
 33 counties, clerks who do not elect to continue investing or depositing funds pursuant to such
 34 Code sections, or who cease depositing or investing such funds pursuant to such Code
 35 sections, shall be subject to the provisions of subsections (c) through (g) of this Code

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

8 (b) In counties where no funds were invested or on deposit pursuant to Code Section
9 15-6-75 or 15-6-76 on January 1, 1993, clerks shall be subject to the provisions of
10 subsections (c) through (g) of this Code section, effective July 1, 1993.

11 (c) When funds are paid into the registry of the court, the clerk shall deposit such funds
12 in one or more interest-bearing trust accounts in investments authorized by Code Section
13 36-80-3 or by Chapter 83 of Title 36.

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

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

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

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

5 SECTION 3-3.

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

9 "15-7-49.

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

16 SECTION 3-4.

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

20 "15-9-18.

21 Whenever the sheriff transfers cash bonds to the clerk of the court, pursuant to Code
 22 Section 15-16-27, the clerk shall deposit such funds into interest-bearing trust accounts and
 23 the interest from those funds shall be remitted to the Georgia Indigent Defense ~~Council~~
 24 Board in accordance with the provisions of subsections (c) through (g) of Code Section
 25 15-6-76.1. The Georgia Indigent Defense ~~Council~~ Board shall allocate all interest received
 26 from such funds in accordance with subsection (e) of Code Section 15-6-76.1."

27 SECTION 3-5.

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

31 "15-10-240.

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

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

4 **SECTION 3-6.**

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

8 "15-16-27.

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

12 (b) The financial institution in which the funds are deposited shall remit, after service
 13 charges or fees are deducted, the interest generated by such funds directly, at least quarterly
 14 and within 30 days of receipt, to the Georgia Indigent Defense ~~Council~~ Board for
 15 distribution to the counties pursuant to Article 2 of Chapter 12 of Title 17. With each
 16 remittance the financial institution shall send a statement showing the name of the county,
 17 deposits and withdrawals from the account or accounts, interest paid, service charges or
 18 fees of the bank or other depository, and the net remittance. The Georgia Indigent Defense
 19 ~~Council~~ Board shall allocate all interest received from such funds deposited in
 20 interest-bearing trust accounts to the counties pursuant to Article 2 of Chapter 12 of Title
 21 17.

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

26 **SECTION 3-7.**

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

30 "35-6A-3.

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

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

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

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

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

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

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

31 SECTION 3-8.

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

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

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

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

27 **PART IV**
 28 **SECTION 4-1.**

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

32 **SECTION 4-2.**

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